NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT
Act 451 of 1994

AN ACT to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2005, Act 116, Imd. Eff. Sept. 22, 2005;—Am. 2013, Act 22, Imd. Eff. May 8, 2013.

Compiler's note: Act 160 of 2004, which was approved by the governor and filed with the secretary of state on June 18, 2004, provided for the amendment of Act 451 of 1994 by amending Sec. 40103 and adding Sec. 40110a. The amended and added sections were effective June 18, 2004. On March 28, 2005, a petition seeking a referendum on Act 160 of 2004 was filed with the Secretary of State. Const 1963, art 2, sec 9, provides that no law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election. A referendum on Act 160 of 2004 was presented to the electors at the November 2006 general election as Proposal 06-3, which read as follows:

"PROPOSAL 06-3

"A REFERENDUM ON PUBLIC ACT 160 OF 2004 — AN ACT TO ALLOW THE ESTABLISHMENT OF A HUNTING SEASON FOR MOURNING DOVES

"Public Act 160 of 2004 would:

"Authorize the Natural Resources Commission to establish a hunting season for mourning doves.

"Require a mourning dove hunter to have a small game license and a $2.00 mourning dove stamp.

"Stipulate that revenue from the stamp must be split evenly between the Game and Fish Protection Fund and the Fish and Wildlife Trust Fund.

"Require the Department of Natural Resources to address responsible mourning dove hunting; management practices for the propagation of mourning doves; and participation in mourning dove hunting by youth, the elderly and the disabled in the Department's annual hunting guide.

"Should this law be approved?

"Yes [ ]

"No [ ]"

Act 160 of 2004 was rejected by a majority of the electors voting thereon at the November 2006 general election.

For transfer of powers and duties of department of natural resources to department of natural resources and environment, and abolishment of department of natural resources, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

Popular name: Act 451

Popular name: NREPA

The People of the State of Michigan enact:

ARTICLE I

GENERAL PROVISIONS

PART 1

SHORT TITLE AND SAVINGS CLAUSES

324.101 Short title.

Sec. 101. This act shall be known and may be cited as the "natural resources and environmental protection act".

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.102 Repeal of statute; effect.

Sec. 102. The repeal of any statute by this act does not relinquish any penalty, forfeiture, or liability, whether criminal or civil in nature, and such statute shall be treated as still remaining in force as necessary for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture, or liability.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.103 Heading or title; effect.

Sec. 103. A heading or title of an article, chapter, part, or subpart of this act shall not be considered as a part of this act or be used to construe the act more broadly or narrowly than the text of the sections of the act would indicate, but shall be considered as inserted for the convenience of the users of this act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.104 Members of predecessor agency; powers.

Sec. 104. When a board, commission, committee, council, or other agency created by or pursuant to this act was preceded by an agency with the same or similar name and functions, members of the predecessor agency shall continue in office for the duration of the terms of office for which they were appointed and with the new members appointed shall constitute the new agency. Members shall be appointed under this act only as terms of the former members expire or vacancies occur. Members of the predecessor agency may be appointed to the new agency to succeed themselves subject to the limits for the total period of service set forth in this act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.105 Existing rules; effect.

Sec. 105. When the department or other agency is directed to promulgate rules by this act and rules exist on the date the requirement to promulgate rules takes effect, which rules the department or agency believes adequately cover the matter, the department or agency may determine that new rules are not required or may delay the promulgation of new rules until the department or agency considers it advisable.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.106 Orders; effect.

Sec. 106. Except as otherwise provided by law, this act does not repeal or alter the content or effect of orders that were issued pursuant to an act that is repealed by this act and codified as a part of this act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.107 Editorial changes; effect; intent.

Sec. 107. It is the intention of the legislature that editorial changes in the language of statutes codified as parts within this act not be construed as changes to the meanings of those statutes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 3
DEFINITIONS

324.301 Definitions.

Sec. 301. Except as otherwise defined in this act, as used in this act:

(a) "Commission" means the commission of natural resources.

(b) "Department" means the director of the department of natural resources or his or her designee to whom the director delegates a power or duty by written instrument.

(c) "Department of natural resources" means the principal state department created in section 501.

(d) "Director" means the director of the department of natural resources.

(e) "Local unit of government" or "local unit" means a municipality or county.

(f) "Michigan conservation and recreation legacy fund" means the Michigan conservation and recreation legacy fund established in section 40 of article IX of the state constitution of 1963 and provided for in section 2002.

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(g) "Municipality" means a city, village, or township.

(h) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(i) "Public domain" means all land owned by this state or land deeded to this state under state law.

(j) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2018, Act 240, Eff. Sept. 25, 2018.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

PART 5
DEPARTMENT OF NATURAL RESOURCES

GENERAL POWERS AND DUTIES

324.501 Department of natural resources; creation; powers and duties; commission of natural resources; creation; powers; appointment, qualifications, and terms of members; vacancy; removal; meetings; secretary; chairperson; quorum; conducting business at public meeting; notice; appointment and employment of director; appointment of deputy director, assistants, and employees; powers and duties of persons delegated decision making authority; vacancy in office of director; compensation and expenses; offices and equipment; oath.

Sec. 501. (1) A department of natural resources for this state is created which shall possess the powers and perform the duties granted and imposed by this act and as otherwise provided by law.

(2) The commission of natural resources is created as the head of the department of natural resources and may establish general policies related to natural resources management and environmental protection for the guidance of the director. In addition, the commission has appellate authority as provided in section 1101. The commission shall be composed of 7 members, not more than 4 of whom shall be members of the same political party, appointed by the governor by and with the advice and consent of the senate. A member of the commission shall be selected with special reference to that person's training and experience related to at least 1 of the principal lines of activities vested in the department of natural resources and the ability and fitness of that person to deal with those activities. The term of office of each member of the commission shall be 4 years. The governor shall fill a vacancy occurring in the membership of the commission and may remove a member of the commission for cause after a hearing. Each member of the commission shall hold office until the appointment and qualification of that member's successor.

(3) The commission, within 30 days after having qualified and annually after that time, shall meet at its office in Lansing and organize by appointing a secretary, who need not be a member of the commission. The governor shall appoint a chairperson of the commission from among its members, who shall serve as chairperson at the pleasure of the governor. Four members of the commission constitute a quorum for the transaction of business. The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A meeting may be called by the chairperson and shall be called on request of a majority of the members of the commission. A meeting may be held as often as necessary and at other places than the commissioners' offices at Lansing. The commission shall meet at least once each month.

(4) The commission shall appoint and employ a director who shall continue in office at the pleasure of the commission. The director shall appoint 1 or more deputy directors and other assistants and employees as are necessary to implement this part and any other law of this state affecting the powers and duties of the department of natural resources. A person to whom the director has lawfully delegated decision making authority in writing may perform a duty or exercise a power conferred by law upon the department at the time and to the extent the duty and power is delegated to that person by the director. When a vacancy in the office of director occurs, or the director is unable to perform the director's duties or is absent from the state, the powers and duties of the director as prescribed by law shall be imposed on and transferred to a deputy director until the vacancy is filled or the director's inability or absence from the state ceases.

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(5) The compensation of the deputy directors, the assistants, and the employees and the number of assistants and employees shall be subject to the approval of the state administrative board. The members of the commission shall not receive compensation under this part, but each member and the other officers and employees of the department of natural resources shall be entitled to reasonable expenses while traveling in the performance of their duties prescribed by this act. The salaries and expenses authorized under this act shall be paid out of the state treasury in the same manner as the salaries of other state officers and employees are paid. The department of management and budget shall furnish suitable offices and office equipment, at Lansing, for the use of the department of natural resources. Each member of the commission and the director shall qualify by taking and subscribing to the constitutional oath of office and by filing it in the office of the secretary of state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.2101 et seq. and R 324.1501 et seq. of the Michigan Administrative Code.

324.501a Jurisdiction, rights, and responsibilities of Great Lakes states and provinces.

Sec. 501a. The Great Lakes are a binational public treasure and are held in trust by the Great Lakes states and provinces. Management of the water resources of the Great Lakes and the Great Lakes basin is subject to the jurisdiction, rights, and responsibilities of the Great Lakes states and provinces. Effective management of the water resources of the Great Lakes requires the in-basin exercise of such jurisdiction, rights, and responsibilities in the interest of all the people of the Great Lakes basin.

History: Add. 2002, Act 148, Imd. Eff. Apr. 5, 2002.

Compiler's note: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

Popular name: Act 451

Popular name: NREPA

324.502 Rules; powers of department; contracts for taking and storage of mineral products; disposition and use of money; drilling operations for taking oil or gas from lake bottomlands of Great Lakes; prohibition; compliance with applicable ordinances and statutes.

Sec. 502. (1) The commission may promulgate rules, not inconsistent with law, governing its organization and procedure.

(2) The department may do 1 or more of the following:

(a) Promulgate and enforce reasonable rules concerning the use and occupancy of lands and property under its control in accordance with section 504.

(b) Provide and develop facilities for outdoor recreation.

(c) Conduct investigations it considers necessary for the proper administration of this part.

(d) Remove and dispose of forest products as required for the protection, reforestation, and proper development and conservation of the lands and property under the control of the department.

(e) Require the payment of a fee as provided by law for a daily permit or other authorization that allows the person to hunt and take waterfowl on a public hunting area managed and developed for waterfowl.

(3) Except as provided in subsection (4), the department may enter into contracts for the taking of coal, oil, gas, and other mineral products from state owned lands, upon a royalty basis or upon another basis, and upon the terms the department considers just and equitable subject to section 502a. This contract power includes authorization to enter into contracts for the storage of gas or other mineral products in or upon state owned lands, if the consent of the state agency having jurisdiction and control of the state owned land is first obtained. A contract permitted under this section for the taking of coal, oil, gas, or metallic mineral products, or for the storage of gas or other mineral products, is not valid unless the contract is approved by the state administrative board. Money received from a contract for the storage of gas or other mineral products in or upon state lands shall be transmitted to the state treasurer for deposit in the general fund of the state to be used for the purpose of defraying the expenses incurred in the administration of this act and other purposes provided by law. Other money received from a contract permitted under this subsection, except money received from lands acquired with money from the former game and fish protection fund or the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010, shall be transmitted to the state treasurer for deposit in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963 and provided for in part 19. However, the money

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received from the payment of service charges by a person using areas managed for waterfowl shall be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010 and used only for the purposes provided by law. Money received from bonuses, rentals, delayed rentals, royalties, and the direct sale of resources, including forest resources, from lands acquired with money from the former game and fish protection fund or the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010 shall be credited to the Michigan game and fish protection trust fund established in section 41 of article IX of the state constitution of 1963 and provided for in part 437, except as otherwise provided by law.

(4) The department shall not enter into a contract that allows drilling operations beneath the lake bottomlands of the Great Lakes, the connected bays or harbors of the Great Lakes, or the connecting waterways as defined in section 32301, for the exploration or production of oil or gas.

(5) This section does not permit a contract for the taking of gravel, sand, coal, oil, gas, or other metallic mineral products that does not comply with applicable local ordinances and state law.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1996, Act 272, Imd. Eff. June 12, 1996;—Am. 1998, Act 114, Imd. Eff. June 9, 1998;—Am. 2002, Act 148, Imd. Eff. Apr. 5, 2002;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.2101 et seq.; R 324.1501 et seq.; and R 324.14501 et seq. of the Michigan Administrative Code.

324.502a Designation of state land reserve; petition, recommendation, or motion; eligibility for commission consideration; public testimony; issuance of commission recommendation; offer and adoption of resolution by legislature; purchase, trade, or acquisition of other holdings.

Sec. 502a. (1) Upon petition by a person, recommendation of the department, or its own motion, the commission shall place on its agenda at an upcoming meeting of the commission the question of designation of a state land reserve. The petition, recommendation, or motion shall include the land proposed for inclusion within the state land reserve and a rationale for its inclusion. A tract of land is eligible for commission consideration for designation as a state land reserve if it includes at least 640 contiguous acres of state owned land and contains 1 or more of the following:

(a) A critical dune as regulated under part 353.

(b) A high-risk area regulated under part 323.

(c) A wetland regulated under part 303.

(d) An endangered species protected under part 365.

(e) A wilderness area or natural area regulated under part 351.

(f) A natural river regulated under part 305.

(g) Any other significant surface or subsurface natural feature or area of environmental sensitivity.

(2) Prior to making its recommendation on the designation of a state land reserve, the commission shall receive public testimony on the issue. After considering the public testimony, the commission shall issue a written recommendation to the legislature on whether or not the commission believes a state land reserve should be designated. In making its recommendation, the commission shall consider the need for a buffer zone surrounding the land to eliminate the potential drainage of oil and gas. The commission may expand or restrict the land area proposed for the state land reserve. The commission shall include with the recommendation a rationale for its recommendation.

(3) Upon receipt of a recommendation from the commission under subsection (2), a member of the legislature may offer a resolution to create a state land reserve pursuant to section 5 of article X of the state constitution of 1963. The resolution is not required to conform to the recommendation of the commission. When considering this resolution, the legislature shall also consider the need for a buffer zone surrounding the land to eliminate the potential drainage of oil and gas.

(4) If the legislature adopts the resolution under subsection (3) by 2/3 of the members elected to and serving in each house, a state land reserve is designated. Pursuant to section 5 of article X of the state constitution of 1963, land within a state land reserve shall not be removed from the reserve, sold, leased, or

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otherwise disposed of except by a resolution of the legislature.

(5) Upon designation of a state land reserve under subsection (4), the department shall attempt to purchase, trade, or otherwise acquire any holdings within the contiguous area of the state land reserve that improve ownership patterns, including any severed mineral rights. The owner of an inholding described in this subdivision who offers that land or interest in that land for sale or lease, if that land transfer is subject to the state transfer tax, shall first offer that land or interest in land to the state and shall give the state a right of first refusal.

History: Add. 1998, Act 114, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.503 Duties of department; powers and jurisdiction; purchase of surface rights; limitations; record; strategic plan; managed public land strategy; volunteers; granting concessions; lease and sale of land; reservation of mineral rights; sale of economic share of royalty interests; definitions.

Sec. 503. (1) The department shall protect and conserve the natural resources of this state; provide and develop facilities for outdoor recreation; prevent the destruction of timber and other forest growth by fire or otherwise; promote the reforesting of forestlands belonging to this state; prevent and guard against the pollution of lakes and streams within this state and enforce all laws provided for that purpose with all authority granted by law; and foster and encourage the protection and propagation of game and fish. Before issuing an order or promulgating a rule under this act that will designate or classify land managed by the department for any purpose, the department shall consider, in addition to any other matters required by law, all of the following:

(a) Providing for access to and use of the public land for recreation and tourism.

(b) The existence of or potential for natural resources-based industries, including forest management, mining, or oil and gas development on the public land.

(c) The potential impact of the designation or classification on private property in the immediate vicinity.

(2) The department has the power and jurisdiction over the management, control, and disposition of all land under the public domain, except for those lands under the public domain that are managed by other state agencies to carry out their assigned duties and responsibilities. On behalf of the people of this state, the department may accept gifts and grants of land and other property and may buy, sell, exchange, or condemn land and other property, for any of the purposes of this part.

(3) If any payment under subpart 13 or 14 of part 21 or section 51106 for land located north of the Mason-Arenac line is not made in full and on time during a fiscal year, then, until the end of that fiscal year, the department shall not purchase surface rights to land located north of the Mason-Arenac line unless 1 or both of the following apply:

(a) Full payment was made later during that fiscal year.

(b) The specific acquisition is approved by resolution adopted by the following, as applicable:

(*i*) If the land is located in a single township, the township board.

(*ii*) If the land is located in 2 or more townships, the county board of commissioners of the county where the land is located.

(4) For the purposes of subsections (3) and (9), respectively, land in which the department acquires or owns surface rights does not include any of the following:

(a) Land acquired under an option agreement in effect on the date when the payment described in subsection (3) became due if the acquisition takes place within 120 days after the payment became due.

(b) Land in which the department has a conservation easement.

(c) Land that, before July 2, 2012, was platted under the land division act, 1967 PA 288, MCL 560.101 to 560.293, or a predecessor act and acquired by the department.

(d) Any of the following if acquired on or after July 2, 2012:

(*i*) Land with an area of not more than 80 acres, or a right-of-way, for accessing other land owned by the department or for accessing the waters of the state as defined in section 3101.

(*ii*) Land for a trail, subject to all of the following:

(A) If the traveled portion of the proposed trail is located within an abandoned railroad right-of-way, the land excluded is limited to the abandoned railroad right-of-way.

(B) If the traveled portion of the proposed trail is located in a utility easement, the land excluded is limited to the utility easement.

(C) If sub-subparagraphs (A) and (B) do not apply, the land excluded is limited to the traveled portion of

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the proposed trail and contiguous land. For the purposes of the exclusion, the area of the contiguous land shall not exceed the product of 100 feet multiplied by the length of the proposed trail in feet.

(*iii*) Land that, on July 2, 2012 was commercial forestland as defined in section 51101 if the land continues to be used in a manner consistent with part 511.

(*iv*) Land acquired by the department by gift, including the gift of funds specifically dedicated to land acquisition.

(*v*) Land acquired by the department through litigation.

(5) The department shall maintain a record of land as described in subsection (4)(a) to (d). The record shall include the location, acreage, date of acquisition, and use of the land.

(6) By October 1, 2014, the department shall develop a written strategic plan to guide the acquisition and disposition of state lands managed by the department, submit the plan to the relevant legislative committees, and post the plan on the department's website. In developing the plan, the department shall solicit input from the public and local units of government.

(7) The strategic plan shall do all of the following:

(a) Divide this state into regions.

(b) Identify lands managed by the department in each region.

(c) Set forth for each region measurable strategic performance goals with respect to all of the following for land managed by the department:

(*i*) Maximizing availability of points of access to the land and to bodies of water on or adjacent to the land.

(*ii*) Maximizing outdoor recreation opportunities.

(*iii*) Forests.

(*iv*) Wildlife and fisheries.

(d) To assist in achieving the goals set forth in the strategic plan pursuant to subdivision (c), identify all of the following:

(*i*) Land to be acquired.

(*ii*) Land to be disposed of.

(*iii*) Plans for natural resource management.

(e) To the extent feasible, identify public lands in each region that are not managed by the department but affect the achievement of the goals set forth in the strategic plan pursuant to subdivision (c).

(f) Identify ways that the department can better coordinate the achievement of the goals set forth in the strategic plan pursuant to subdivision (c), recognizing that public lands are subject to multiple uses and both motorized and nonmotorized uses.

(g) Identify critical trail connectors to enhance motorized and nonmotorized natural-resource-dependent outdoor recreation activities for public enjoyment.

(8) The legislature approves the strategic plan entitled "Department of Natural Resources Managed Public Land Strategy" issued by the department and dated July 1, 2013. The department shall implement the most recent legislatively approved strategic plan and shall not change the plan except by a plan update proposed pursuant to subsection (10) and subsequently approved by the legislature.

(9) The department shall annually submit to the relevant legislative committees and post and annually update on the department's website all of the following:

(a) A report on the implementation of the plan.

(b) The number of acres of land in which the department owns surface rights north of the Mason-Arenac line, south of the Mason-Arenac line, and in total for this state.

(c) Information on the total number of each of the following:

(*i*) Acres of land managed by the department.

(*ii*) Acres of state park and state recreation area land.

(*iii*) Acres of state game and state waterfowl areas.

(*iv*) Acres of land managed by the department and open for public hunting.

(*v*) Acres of state-owned mineral rights managed by the department that are under a development lease.

(*vi*) Acres of state forestland.

(*vii*) Public boating access sites managed by the department.

(*viii*) Miles of motorized trails managed by the department.

(*ix*) Miles of nonmotorized trails managed by the department.

(10) For legislative consideration and approval, as provided in subsection (8), by July 1, 2021, and every 6 years thereafter, the department shall propose an update to the strategic plan, submit the proposed updated plan to the relevant legislative committees, and post the proposed updated plan on the department's website. At least 60 days before posting the proposed updated plan, the department shall prepare, submit to the relevant legislative committees, and post on the department's website a report that covers all of the following

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and includes department contact information for persons who wish to comment on the report:

(a) Progress toward the goals set forth in the strategic plan pursuant to subsection (7)(c).

(b) Any proposed changes to the goals, including the rationale for the changes.

(c) The department's engagement and collaboration with local units of government.

(11) Subject to subsection (12), if land owned by this state and managed by the department, land owned by the federal government, and land that is commercial forestland as defined in section 51101 constitute 40% or more of the land in a county, the department shall not acquire land in that county if, not more than 60 days after the department sent the notice of the proposed acquisition to the board under section 2165, the department receives a copy of a resolution rejecting the proposed acquisition adopted by the following, as applicable:

(a) If the land is located in a single township, the township board.

(b) If the land is located in 2 or more townships, the county board of commissioners.

(12) Subsection (11) does not apply to land described in subsection (4)(d).

(13) The department may accept funds, money, or grants for development of salmon and steelhead trout fishing in this state from the government of the United States, or any of its departments or agencies, pursuant to the anadromous fish conservation act, 16 USC 757a to 757f, and may use this money in accordance with the terms and provisions of that act. However, the acceptance and use of federal funds does not commit state funds and does not place an obligation upon the legislature to continue the purposes for which the funds are made available.

(14) The department may appoint persons to serve as volunteers to assist the department in meeting its responsibilities as provided in this part. Subject to the direction of the department, a volunteer may use equipment and machinery necessary for the volunteer service, including, but not limited to, equipment and machinery to improve wildlife habitat on state game areas.

(15) The department may lease lands owned or controlled by the department or may grant concessions on lands owned or controlled by the department to any person for any purpose that the department determines to be necessary to implement this part. The department shall grant each concession for a term of not more than 7 years based on extension, renegotiation, or competitive bidding. However, if the department determines that a concession requires a capital investment in which reasonable financing or amortization necessitates a longer term, the department may grant a concession for up to a 15-year term. A concession granted under this subsection shall require, unless the department authorizes otherwise, that all buildings and equipment be removed at the end of the concession's term. Any lease entered into under this subsection shall limit the purposes for which the leased land is to be used and shall authorize the department to terminate the lease upon a finding that the land is being used for purposes other than those permitted in the lease. Unless otherwise provided by law, money received from a lease or a concession of tax reverted land shall be credited to the fund providing financial support for the management of the leased land. Money received from a lease of any other land shall be credited to the fund from which the land was purchased. However, money received from program-related leases on these lands shall be credited to the fund providing financial support for the management of the leased lands. For land managed by the forest management division of the department, that fund is either the forest development fund established pursuant to section 50507 or the forest recreation account of the Michigan conservation and recreation legacy fund provided for in section 2005. For land managed by the wildlife or fisheries division of the department, that fund is the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(16) When the department sells land, the deed may reserve all mineral, coal, oil, and gas rights to this state only if the land is in production or is leased or permitted for production, or if the department determines that the land has unusual or sensitive environmental features or that it is in the best interest of this state to reserve those rights as determined by commission policy. However, the department shall not reserve the rights to sand, gravel, clay, or other nonmetallic minerals. When the department sells land that contains subsurface rights, the department shall include a deed restriction that restricts the subsurface rights from being severed from the surface rights in the future. If the landowner severs the subsurface rights from the surface rights, the subsurface rights revert to this state. The deed may reserve to this state the right of ingress and egress over and across land along watercourses and streams. Whenever an exchange of land is made with the United States government, a corporation, or an individual for the purpose of consolidating the state forest reserves, the department may issue deeds without reserving to this state the mineral, coal, oil, and gas rights and the rights of ingress and egress. The department may sell the limestone, sand, gravel, or other nonmetallic minerals. However, the department shall not sell a mineral or nonmetallic mineral right if the sale would violate part 353, part 637, or any other provision of law. The department may sell all reserved mineral, coal, oil, and gas rights to such lands upon terms and conditions as the department considers proper and may sell oil and gas rights as provided in part 610. The owner of those lands as shown by the records shall be given

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priority in case the department authorizes any sale of those lands, and, unless the landowner waives that priority, the department shall not sell such rights to any other person. For the purpose of this section, mineral rights do not include rights to sand, gravel, clay, or other nonmetallic minerals.

(17) The department may enter into contracts for the sale of the economic share of royalty interests it holds in hydrocarbons produced from devonian or antrim shale qualifying for the nonconventional source production credit determined under section 45k of the internal revenue code of 1986, 26 USC 45k. However, in entering into these contracts, the department shall ensure that revenues to the natural resources trust fund under these contracts are not less than the revenues the natural resources trust fund would have received if the contracts were not entered into. The sale of the economic share of royalty interests under this subsection may occur under contractual terms and conditions considered appropriate by the department and as approved by the state administrative board. Funds received from the sale of the economic share of royalty interests under this subsection shall be transmitted to the state treasurer for deposit in the state treasury as follows:

(a) Net proceeds allocable to the nonconventional source production credit determined under section 45k of the internal revenue code of 1986, 26 USC 45k, under this subsection shall be credited to the environmental protection fund created in section 503a.

(b) Proceeds related to the production of oil or gas from devonian or antrim shale shall be credited to the natural resources trust fund or other applicable fund as provided by law.

(18) As used in this section:

(a) "Concession" means an agreement between the department and a person under terms and conditions as specified by the department to provide services or recreational opportunities for public use.

(b) "Lease" means a conveyance by the department to a person of a portion of this state's interest in land under specific terms and for valuable consideration, thereby granting to the lessee the possession of that portion conveyed during the period stipulated.

(c) "Mason-Arenac line" means the line formed by the north boundaries of Mason, Lake, Osceola, Clare, Gladwin, and Arenac Counties.

(d) "Natural resources trust fund" means the Michigan natural resources trust fund established in section 35 of article IX of the state constitution of 1963 and provided for in section 1902.

(e) "Net proceeds" means the total receipts received from the sale of royalty interests under subsection (17) less costs related to the sale. Costs may include, but are not limited to, legal, financial advisory, geological or reserve studies, and accounting services.

(f) "Relevant legislative committees" means the senate and house committees with primary responsibility for natural resources and outdoor recreation and the corresponding appropriation subcommittees.

(g) "Strategic plan" or "plan" means the plan developed under subsection (6), as updated under subsection (10), if applicable.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 133, Imd. Eff. Mar. 19, 1996;—Am. 1998, Act 117, Imd. Eff. June 9, 1998;—Am. 1998, Act 419, Imd. Eff. Dec. 29, 1998;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2011, Act 65, Imd. Eff. June 28, 2011;—Am. 2012, Act 240, Imd. Eff. July 2, 2012;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012;—Am. 2018, Act 240, Eff. Sept. 25, 2018.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.2101 et seq. and R 324.1501 et seq. of the Michigan Administrative Code.

324.503a Environmental protection fund.

Sec. 503a. (1) The environmental protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the environmental protection fund. The state treasurer shall direct the investment of the environmental protection fund. The state treasurer shall credit to the environmental protection fund interest and earnings from fund investments.

(3) Money in the environmental protection fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the environmental protection fund shall be expended, upon appropriation, only for such purposes as are specifically provided by law.

History: Add. 1996, Act 133, Imd. Eff. Mar. 19, 1996.

Popular name: Act 451

Popular name: NREPA

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324.503b Divestment from terror act; compliance by state treasurer.

Sec. 503b. The state treasurer shall comply with the divestment from terror act in making investments under this act.

History: Add. 2008, Act 236, Imd. Eff. July 17, 2008.

Popular name: Act 451

Popular name: NREPA

324.504 Department of natural resources; rules for protection and preservation of lands and property; copies to legislative committees; duties of department; applicability of subsection (2) to commercial forestland; public access to certain land; written resolution requesting removal of human-made barrier; expanding access to certain state land for outdoor recreation; certain rules prohibited; orders; violation as civil infraction; fine.

Sec. 504. (1) The department shall promulgate rules to protect and preserve lands and other property under its control from depredation, damage, or destruction or wrongful or improper use or occupancy. Not more than 10 days after promulgating a rule under this subsection, the department shall provide a copy of the rule to the relevant legislative committees, as defined in section 503. Within 6 months after the effective date of a rule promulgated under this subsection that limits the use of or access to more than 500 acres of state forest, the department shall, if requested by the chair of a relevant legislative committee, provide testimony to the committee on the implementation and effects of the rule.

(2) Subject to subsection (3), the department shall do all of the following:

(a) Keep land under its control open to hunting unless the department determines that the land should be closed to hunting because of public safety, fish or wildlife management, or homeland security concerns or as otherwise required by law.

(b) Manage land under its control to support and promote hunting and fishing opportunities to the extent authorized by law.

(c) Manage land under its control to prevent any net decrease in the acreage of such land that is open to hunting.

(3) Subsection (2) does not apply to commercial forestland as defined in section 51101.

(4) The department is urged to promote public enjoyment of this state's wildlife and other natural resources by providing public access to lands under the control of the department for outdoor recreation activities dependent on natural resources, providing reasonable consideration for both motorized and nonmotorized activities.

(5) If the department receives a written resolution from a recreational users organization or the legislative body of a local unit of government requesting the removal of a berm, gate, or other human-made barrier on land under the department's control, the department shall notify the requestor in writing within 60 days of 1 of the following:

(a) That the barrier will be removed. In this case, the department shall remove the barrier within 180 days after receiving the written request.

(b) The reasons the department believes the barrier should not be removed and the right of the recreational users organization or local unit of government, within 21 days after the department sends the written notice, to request in writing a public meeting on the matter. If the recreational users organization or local unit of government requests a public meeting as provided in this subdivision, the department shall conduct a public meeting within the city, village, or township where the barrier is located to explain the department's position and receive comments on the proposed removal. After the meeting, and within 180 days after receiving the request to remove the barrier, the department shall approve or deny the request and notify the requestor in writing. If the request is denied, the notice shall include the reasons for denial. If the request is approved, the department shall remove the barrier as follows:

(*i*) Unless subparagraph (*ii*) applies, within 180 days after the public meeting.

(*ii*) Within 30 days, if the recreational users organization or legislative body requesting the removal of the barrier agrees with the department to remove the barrier under the department's oversight and at the requestor's expense.

(c) That the department will not consider the request. The department is not required to consider the request if, within the 3-year period preceding the receipt of the request, the department received another request for removal of the barrier and acted or is acting on the request under subdivision (a) or (b). The notice under this subdivision shall explain why the request is not being considered and specify the date after which the department is required, if the barrier has not already been removed, to consider a new request.

(6) Upon request from a local unit of government, the department shall work with the local unit to allow

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use of state land managed by the department and located within the local unit that will benefit the local community by increasing outdoor recreation opportunities and expanding access to and appropriate use of the natural resources and outdoors. The department may charge the local unit a reasonable fee for the use that does not exceed the costs incurred by the department for the use.

(7) This section does not authorize the department to promulgate a rule that applies to commercial fishing except as otherwise provided by law.

(8) The department shall not promulgate or enforce a rule that prohibits an individual who is licensed or exempt from licensure under 1927 PA 372, MCL 28.421 to 28.435, from carrying a pistol in compliance with that act, whether concealed or otherwise, on property under the control of the department.

(9) The department shall issue orders necessary to implement rules promulgated under this section. The orders are effective upon posting.

(10) In issuing an order under subsection (9), the department shall comply with the following procedures in a manner that ensures adequate public notice and opportunity for public comment:

(a) The department shall prepare the order after considering comments from department field personnel.

(b) The department shall conduct a public meeting and otherwise provide an opportunity for public comment on the order.

(c) Commencing at least 30 days before the first meeting and continuing through the public comment period under subdivision (b), the natural resources commission shall include the order on a public meeting agenda and the department shall post the order on its website. If the order will result in a loss of public land open to hunting, the agenda and website posting shall specify the number of acres affected.

(d) Not less than 30 days before issuance of an order, the department shall provide a copy of the order to the relevant legislative committees. This subdivision does not apply to an order that does not alter the substance of a lawful provision that exists in the form of a statute, rule, regulation, or order at the time the order is prepared.

(11) Subsection (10) does not apply to an order for emergency management purposes that is in effect for 90 days or less.

(12) If an order limits the use of or access to more than 500 acres of state forest, the department shall provide a copy of the order to the relevant legislative committees not more than 10 days after the order is issued. If requested by the chair of a relevant legislative committee, the department shall provide testimony on the implementation and effects of such an order at a committee hearing held within 6 months after the effective date of the order.

(13) The department may revise an order issued pursuant to subsection (9). The revision is subject to subsections (10) to (12), as applicable.

(14) A person who violates a rule promulgated under this section or an order issued under this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(15) As used in this section, "relevant legislative committees" means that term as defined in section 503.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 171, Imd. Eff. Apr. 18, 1996;—Am. 2004, Act 130, Imd. Eff. June 3, 2004;—Am. 2009, Act 47, Imd. Eff. June 18, 2009;—Am. 2018, Act 237, Eff. Sept. 25, 2018;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.291a et seq. and R 299.921 et seq. of the Michigan Administrative Code.

324.505 Federal fish stock and programs; application; listing of programs supplied to legislature.

Sec. 505. The department, in pursuing the state's policy of propagating fish for the purpose of stocking the streams and lakes of the state, shall accept federal fish stock for such programs, and shall apply for all federal fish stock programs that do not commit the state to future expenditures.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.506 Availability of writings to public.

Sec. 506. A writing prepared, owned, used, in the possession of, or retained by the department or the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

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Popular name: NREPA

324.507 Declaration of necessity.

Sec. 507. This part is declared to be immediately necessary for the preservation of the public health, safety, and welfare and the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.508 Fees and rentals for photographic or publication products or services; disposition and use; limitation; unexpended fees and rentals.

Sec. 508. The department may establish and collect fees and rentals for any photographic or publication products or services that the department provides. The fees and rentals shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department of natural resources and used to provide the photographic or publication products or services. The fees and rentals shall not exceed the material costs to the department of providing the products or services. In addition, the expenditures made in a fiscal year to provide the photographic and publication products or services shall not exceed the amount appropriated for that purpose for that fiscal year, plus any amounts carried over from previous fiscal years, or the amount of fees and rentals actually received during that fiscal year, plus any amounts carried over from previous fiscal years, whichever is less. Any unexpended fees and rentals collected pursuant to this section, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes described in this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.509 Permit for use of state parks; disposition of revenue from permit fees and concessions at state parks; use of fees for processing applications for use of state forests; creation of forest land user fund.

Sec. 509. (1) The department may require that a person obtain a permit for the use of a state park. The department may establish and collect fees for permits to use state parks. The revenue realized by the department from permit fees and concessions at state parks shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department of natural resources for improvement and maintenance of state parks.

(2) The department may establish and collect fees to cover the costs to the department for the processing of applications and for monitoring of permits for the use of state forests that require extensive review. The forest land user fund is created in the state treasury. Money received under this subsection shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal year. Money in the fund may be appropriated to the department to cover the costs of reviewing applications and monitoring of permits for the use of state forests.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 420, Imd. Eff. Dec. 29, 1998.

Popular name: Act 451

Popular name: NREPA

324.509a MacMullan conference center account; creation and establishment; deposits; purpose; annual report.

Sec. 509a. There is hereby created and established under the jurisdiction and control of the department a revolving account to be known as the MacMullan conference center account. All of the fees and other revenues generated from the operation of the MacMullan conference center shall be deposited in the MacMullan conference center account. Appropriations shall be made from the account for the support of program operations and the maintenance and operation of the facility, and shall not exceed the estimated revenues for the fiscal year in which they are made, together with any unexpended balances from prior years. The department shall submit an annual report of operations and expenditures regarding the MacMullan conference center account to the appropriations committees of the senate and house of representatives and the house and senate fiscal agencies at the end of the fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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Popular name: NREPA

324.509b MacMullan conference center; restrictions on availability.

Sec. 509b. The MacMullan conference center shall be available only to the following:

(a) The department.

(b) Federal, state, and local government agencies.

(c) Education institutions.

(d) Nonprofit corporations or associations organized pursuant to the nonprofit corporation act, 1962 PA 162, MCL 450.2101 to 450.3192.

(e) Community service clubs.

(f) Groups of persons with disabilities.

(g) Members of the legislature for purposes related to the business of the legislature.

(h) Entities and organizations that wish to use the conference center to host an event that has a natural resources or environmental agenda.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998.

Popular name: Act 451

Popular name: NREPA

324.510 Disposition of certain reimbursements and other money; disposition and use of aircraft fees; limitation.

Sec. 510. (1) Money received by the department of natural resources for reimbursement of damages to department of natural resources property, reimbursement of land recording fees, sale of farm animals from Maybury state park, reimbursement for utilities for the Michigan state exposition and fairgrounds, reproduction of the agenda of the commission or other meetings of the department, reimbursement for forest fire protection services provided to the federal government or other states, and money received from forfeited cash bonds, security bonds, and court ordered reimbursements may be credited to the accounts from which these disbursements were or are to be made.

(2) The department may establish and collect fees for use of aircraft and pilots of the department of natural resources. The aircraft fees collected shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department of natural resources and used to pay all operating and maintenance costs of the aircraft, including depreciation and aircraft replacement, but shall not exceed the fee revenue collected for the fiscal year together with any unexpended balances of prior years.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.511 Fees for department of natural resources magazine, publications, and related materials; disposition and use of fees; retained earnings; disposition of unexpended fees and excess collections; annual allocation to magazine account; accounting records.

Sec. 511. The department may establish and collect fees for the department of natural resources magazine, publications, and related materials. Fees collected shall be credited to a separate fund of the state treasury and shall be available for appropriation to the department and used to pay all direct and indirect operating costs of the magazine and for the purchase of other related publications and materials. The retained earnings balance of the magazine at the end of the fiscal year shall not fall below the retained earnings balance at the end of the prior fiscal year. Any unexpended fees collected pursuant to this section, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes described in this section. The magazine account shall receive an annual allocation of interest earned by the state treasurer's common cash fund on cash balances of the magazine pursuant to procedures established by the state treasurer. Accounting records of the magazine shall be maintained on an accrual basis consistent with generally accepted accounting principles, including the establishment of separate asset, liability, and equity accounts for the magazine.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.512 Film production located in state; authorization by director or commission to use property; exception; cooperation with Michigan film office; definitions.

Sec. 512. (1) The director may authorize a person engaged in the production of a film in this state to use

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without charge property owned by or under the control of the department for the purpose of producing a film under terms and conditions established by the director. The economic and other benefits to this state of film production located in this state shall be considered to be the value received by this state in exchange for the use of property under this section.

(2) The director or the commission shall not authorize the use of property owned by or under the control of the department for the production of a film that includes obscene matter or an obscene performance or for a production for which records are required to be maintained with respect to any performer under 18 USC 2257.

(3) The department shall cooperate with the Michigan film office in providing the office with information about potential film locations owned by or under the control of the department and the use of property owned by or under the control of the department.

(4) As used in this section:

(a) "Film" means single media or multimedia entertainment content for distribution or exhibition to the general public by any means and media in any digital media format, film, or videotape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website.

(b) "Michigan film office" means the Michigan film office created in section 29a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2029a.

(c) "Obscene matter or an obscene performance" means matter described in 1984 PA 343, MCL 752.361 to 752.374.

History: Add. 2008, Act 82, Imd. Eff. Apr. 8, 2008.

Popular name: Act 451

Popular name: NREPA

324.513 Gift certificates.

Sec. 513. Beginning not later than March 1, 2009, the department shall offer to the public 1 or more gift certificates redeemable for at least all of the following:

(a) Hunting and fishing license fees under part 435.

(b) State park motor vehicle permit and camping fees under part 741.

(c) Mooring fees under part 781.

(d) Off-road vehicle license fees under part 811.

(e) Snowmobile license fees under part 821.

History: Add. 2008, Act 293, Imd. Eff. Oct. 6, 2008.

Popular name: Act 451

Popular name: NREPA

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PART 7

FOREST AND MINERAL RESOURCE DEVELOPMENT

324.701 Repealed. 2018, Act 570, Eff. Mar. 28, 2019.

Compiler's note: The repealed section pertained to definition of "fund."

Popular name: Act 451

Popular name: NREPA

324.702 Duties of department.

Sec. 702. The department shall do all of the following:

(a) Provide advice and recommendations to the legislature, the governor, and executive departments to promote the development of the forestry and forest products industry and the mineral extraction and utilization industry in this state.

(b) Develop programs and coordinate existing and proposed programs to encourage innovative and competitively viable economic development of forest and mineral related industries.

(c) Review existing laws and regulations pertaining to forestry and the mineral industry and develop proposals for new laws or changes in existing law to improve this state's forest and mineral resource development as considered appropriate by the department.

(d) Promote and provide for educational programs for the general public and members of local government to increase awareness of the importance of the forestry and forest products industry and the mineral industry to this state.

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(e) Consult with representatives of science, industry, labor, government, and other groups and utilize the services of public and private organizations, including colleges and universities, as the department considers necessary or helpful in the discharge of its duties under subdivisions (a) to (d).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 570, Eff. Mar. 28, 2019.

Popular name: Act 451

Popular name: NREPA

324.703-324.705 Repealed. 2018, Act 570, Eff. Mar. 28, 2019.

Compiler's note: The repealed sections pertained to the forest and mineral resource development fund and grant and loan program.

Popular name: Act 451

Popular name: NREPA

PART 9
JOINT ENVIRONMENTAL MANAGEMENT AUTHORITIES

324.901 Definitions.

Sec. 901. As used in this part:

(a) "Articles" means the articles of incorporation of an authority.

(b) "Authority" means a joint city-state environmental management authority created pursuant to section 902.

(c) "Board" means the board of directors of the authority.

(d) "Solid waste" means solid waste as defined in part 115.

(e) "State agency" means either the department or the governing body of the state park that is participating in an authority.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.902 Environmental management authority; creation; powers; appointment, terms, and removal of members; quorum; compensation; business conducted at public meeting; writings; election of officers.

Sec. 902. (1) The governing body of any city within whose corporate boundaries a state park comprises more than 75% of the land area and the governing body of any such state park or, if there is none, the department, may create an environmental management authority for that city. An authority may contract and be contracted with, sue and be sued, and take action in the courts of this state. An authority, once created, shall exercise its powers as an autonomous entity, independent of any state department.

(2) An authority shall be governed by a board of directors consisting of 5 voting members and 2 nonvoting ex officio members who are appointed as follows:

(a) One individual appointed by the state park governing body or the department if there is no qualifying state park.

(b) One individual appointed by the chair of the state park governing body or the department if there is no qualifying state park.

(c) One individual appointed by the governing body of the city.

(d) One individual appointed by the mayor of the city.

(e) One individual appointed by agreement of at least 3 of the 4 individuals appointed pursuant to subdivisions (a), (b), (c), and (d).

(f) The director of the department of management and budget, or an employee of the department of management and budget who is designated by the director of the department of management and budget, shall serve as a nonvoting ex officio member.

(g) One member of the joint capital outlay subcommittee of the appropriations committees of the senate and house of representatives, appointed by the chair of that subcommittee, shall serve as a nonvoting ex officio member.

(3) Voting members of the board shall serve terms of 4 years. Vacancies shall be filled in the same manner as the original appointment for an unexpired term. Of the members first appointed, the members appointed by the chair of the state agency and the mayor of the city shall serve for 2 years, the members appointed by the state agency and the governing body of the city shall serve for 3 years, and the member appointed by agreement of the other members shall serve for 4 years. Ex officio nonvoting members do not have fixed terms of office.

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(4) An individual appointed by the governing body of a city or by the mayor may be removed in the same manner as provided by the city's charter.

(5) A majority of the members of a board constitutes a quorum for the purpose of conducting business and exercising the powers of the authority. Official action may be taken by an authority upon the vote of a majority of the board members present, unless the bylaws of the authority require a larger number.

(6) Members of the board shall not receive compensation for services as members of an authority but are entitled to necessary expenses, including travel expenses, incurred in the discharge of their duties.

(7) The business that an authority may perform shall be conducted at a public meeting of the authority held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(8) A writing prepared, owned, or used by an authority in the performance of an official function shall be made available in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(9) At its first meeting, a board shall elect a chairperson and any other officers it considers necessary. The authority shall meet at least quarterly.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.903 Articles of incorporation; contents.

Sec. 903. (1) A board shall draft and adopt articles of incorporation and bylaws for the administration of the authority.

(2) An authority's articles shall state the name of the authority; the name of the participating city and state agency; the purposes for which the authority is formed; the powers, duties, and limitations of the authority and its board; the manner in which participating local and state governmental units shall take part in the governance of the authority; the general method of amending the articles; and any other matters that the board considers advisable.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.904 Articles of incorporation; procedure for adoption.

Sec. 904. (1) The articles of an authority shall be adopted and may be amended by an affirmative vote of a majority of the members serving on the governing body of the participating city and state agency.

(2) Before the articles or amendments to the articles are adopted, the articles or amendments to the articles shall be published by the clerk of the city at least once in a newspaper generally circulated within the participating city.

(3) The adoption of articles or amendments to the articles by the respective governing bodies shall be evidenced by an endorsement on the articles or amendments by the clerk or secretary of the governing bodies in a form substantially as follows:

"These articles of incorporation (or amendments to the articles of incorporation) were adopted by an affirmative vote of a majority of the members serving on the governing body of _____, _____ at a meeting duly held on the _____ day of _____, A.D., _____."

(4) Upon adoption of the articles or amendments to the articles, a printed copy of the articles or the amended articles shall be filed with the secretary of state, the clerk of the city, and the secretary of the state commission.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.905 Powers of authority subject to articles of incorporation.

Sec. 905. (1) The articles may authorize an authority to propose standards, criteria, and regulations.

(2) To the extent authorized in the articles, an authority may plan, promote, finance, issue bonds for, acquire, improve, enlarge, extend, own, lease, construct, replace, or contract for public improvements and services, including, but not limited to, the following:

(a) Water and sewer public improvements and services.

(b) Solid waste collection, recycling, and disposal.

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(c) Other public improvements relating to environmental matters that the city and the state agency in writing agree to assume.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.906 Powers of authority generally.

Sec. 906. An authority may do 1 or more of the following:

(a) Acquire and hold, by purchase, lease, grant, gift, devise, land contract, installment purchase contract, bequest, or other legal means, real and personal property inside or outside the boundaries of the authority. The property may include franchises, easements, or rights-of-way on, under, or above any property. The authority may pay for the property, or pledge for the payment of the property, from revenue of the authority.

(b) Apply for and accept grants, loans, or contributions from the federal government or any of its agencies, this state, the city, or other public or private agencies to be used for any of the purposes of this part.

(c) Contract with the city for the provision of services of a type listed in section 905(2) for a period not exceeding 30 years. The service may be established or funded in conjunction with an existing service of a local governmental unit, and the provision of a service of a local governmental unit may be delegated to an authority. A charge specified in a contract is subject to increase by the authority if that increase is necessary to provide funds to meet the authority's obligations.

(d) Retain full-time employees to staff the authority and to implement the policies of the authority.

(e) Provide for and be responsible for the maintenance of all of the following for a public purpose, subject to the articles and bylaws of the authority:

(*i*) Potable water.

(*ii*) Sewage systems.

(*iii*) Solid waste management.

(*iv*) Other municipal functions delegated to it in writing by the respective governing bodies of the participating city and state agency.

(f) Assess and collect fees for its services and expenses.

(g) Receive revenue from any source as appropriated by the legislature or the governing body of the city.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.907 Dissolution of authority.

Sec. 907. Upon the expiration of a term agreed by the incorporating units, the authority shall be dissolved unless the city and the state agency agree to extend the existence of the authority for an additional term of years. The authority may only be dissolved during a term upon the vote of a 2/3 majority of the governing bodies of both the city and the state agency. Upon dissolution, the assets of the authority become the property of the city.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 11
GENERAL APPELLATE RIGHTS AND PUBLIC ACCESS TO GOVERNMENT

324.1101 Review of decision.

Sec. 1101. (1) If a person has legal standing to challenge a final decision of the department under this act regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit or operating license, the commission, upon request of that person, shall review the decision and make the final agency decision. A preliminary, procedural, or intermediate decision of the department is reviewable by the commission only if the commission elects to grant a review. If a person is granted review by the commission under this section, the person is considered to have exhausted his or her administrative remedies with regard to that matter. The commission may utilize administrative law judges or hearing officers to conduct the review of decisions as contested case hearings and to issue proposals for decisions as provided by law or rule.

(2) In all instances, except those described in subsection (1), if a person has legal standing to challenge a final decision of the department under this act, that person may seek direct review by the courts as provided

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by law. Direct review by the courts is available to that person as an alternative to any administrative remedy that is provided in this act. A preliminary, procedural, or intermediate action or ruling of the department is not immediately reviewable, except that the court may grant leave for review of a preliminary, procedural, or intermediate action or ruling if the court determines that review of the final decision would not provide an adequate remedy. If a person is granted direct review by the courts under this section, the person is considered to have exhausted his or her administrative remedies with regard to that matter.

(3) If the court does not review a decision of the department brought before the court as provided in this section, the person with legal standing retains any administrative appeal rights that are otherwise provided by law.

(4) If the court reviews a preliminary, procedural, or intermediate decision of the department brought before the court as provided in this section, the person with legal standing retains the right to judicial review of the final decision of the department as provided by law.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1102 Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 1102. A petition under section 4307, 4709, or 11906, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 187, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

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PART 13
PERMITS

324.1301 Definitions.

Sec. 1301. As used in this part:

(a) "Application period" means the period beginning when an application for a permit is received by the state and ending when the application is considered to be administratively complete under section 1305 and any applicable fee has been paid.

(b) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a particular permit. As used in sections 1315 to 1317, "department" means the department of environmental quality.

(c) "Director" means the director of the state department authorized under this act to approve or deny an application for a particular permit or the director's designee. As used in sections 1313 to 1317, "director" means the director of the department of environmental quality.

(d) "Environmental permit review commission" or "commission" means the environmental permit review commission established under section 1313(1).

(e) "Environmental permit panel" or "panel" means a panel of the environmental permit review commission, appointed under section 1315(2).

(f) "Permit", except as provided in subdivision (g), means a permit, operating license, or registration required by any of the following sections or by rules promulgated thereunder, or, in the case of section 9112, by an ordinance referred to in that section:

(*i*) Section 3104, floodplain alteration permit.

(*ii*) Section 3503, permit for use of water in mining iron ore.

(*iii*) Section 4105, sewerage system construction permit.

(*iv*) Section 6516, vehicle testing license.

(*v*) Section 6521, motor vehicle fleet testing permit.

(*vi*) Section 8310, restricted use pesticide dealer license.

(*vii*) Section 8310a, agricultural pesticide dealer license.

(*viii*) Section 8504, license to manufacture or distribute fertilizer.

(*ix*) Section 9112, local soil erosion and sedimentation control permit.

(*x*) Section 11509, solid waste disposal area construction permit.

(*xi*) Section 11512, solid waste disposal area operating license.

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(*xii*) Section 11542, municipal solid waste incinerator ash landfill operating license amendment.

(*xiii*) Section 11702, septage waste servicing license or septage waste vehicle license.

(*xiv*) Section 11709, septage waste site permit.

(*xv*) Section 30104, inland lakes and streams project permit.

(*xvi*) Section 30304, state permit for dredging, filling, or other activity in wetland. Permit includes an authorization for a specific project to proceed under a general permit issued under section 30312.

(*xvii*) Section 31509, dam construction, repair, or removal permit.

(*xviii*) Section 32312, flood risk, high risk, or environmental area permit.

(*xix*) Section 32512, permit for dredging and filling bottomland.

(*xx*) Section 32603, permit for submerged log removal from Great Lakes bottomlands.

(*xxi*) Section 35304, department permit for critical dune area use.

(*xxii*) Section 36505, endangered species permit.

(*xxiii*) Section 41329, nonnative aquatic species sales registration.

(*xxiv*) Section 41702, game bird hunting preserve license.

(*xxv*) Section 42101, dog training area permit.

(*xxvi*) Section 42501, fur dealer's license.

(*xxvii*) Section 42702, game dealer's license.

(*xxviii*) Section 44513, charter boat operating permit under reciprocal agreement.

(*xxix*) Section 44516, boat livery operating permit.

(*xxx*) Section 45902, game fish propagation license.

(*xxxi*) Section 45906, game fish import license.

(*xxxii*) Section 48705, permit to take amphibians and reptiles for scientific or educational use.

(*xxxiii*) Section 61525, oil or gas well drilling permit.

(*xxxiv*) Section 62509, brine, storage, or waste disposal well drilling or conversion permit or test well drilling permit.

(*xxxv*) Section 63103a, ferrous mineral mining permit.

(*xxxvi*) Section 63514 or 63525, surface coal mining and reclamation permit or revision of the permit, respectively.

(*xxxvii*) Section 63704, sand dune mining permit.

(*xxxviii*) Section 72108, use permits for a Pure Michigan Trail.

(*xxxix*) Section 76109, sunken aircraft or watercraft abandoned property recovery permit.

(*xxxx*) Section 76504, Mackinac Island motor vehicle and land use permits.

(*xxxxi*) Section 80159, buoy or beacon permit.

(g) "Permit", as used in sections 1313 to 1317, means any permit or operating license that meets both of the following conditions:

(*i*) The applicant for the permit or operating license is not this state or a political subdivision of this state.

(*ii*) The permit or operating license is issued by the department of environmental quality under this act or the rules promulgated under this act.

(h) "Processing deadline" means the last day of the processing period.

(i) "Processing period", subject to section 1307(2) and (3), means the following time period after the close of the application period, for the following permit, as applicable:

(*i*) Twenty days for a permit under section 61525 or 62509.

(*ii*) Thirty days for a permit under section 9112 or 44516.

(*iii*) Thirty days after the department consults with the underwater salvage and preserve committee created under section 76103, for a permit under section 76109.

(*iv*) Sixty days, for a permit under section 30104 for a minor project established under section 30105(7) or 32512a(1), or an authorization for a specific project to proceed under a general permit issued under section 30105(8) or 32512a(2), or for a permit under section 32312 or 41329.

(*v*) Sixty days or, if a hearing is held, 90 days for a permit under section 35304.

(*vi*) Sixty days or, if a hearing is held, 120 days for a permit under section 30104, other than a permit or authorization described in subparagraph (*ii*) or (*iv*), or for a permit under section 31509.

(*vii*) Ninety days for a permit under section 11512, a revision of a surface coal mining and reclamation permit under section 63525, or a permit under section 72108.

(*viii*) Ninety days or, if a hearing is held, 150 days for a permit under section 3104 or 30304, or a permit under section 32512 other than a permit described in subparagraph (*iv*).

(*ix*) Ninety days after the close of the review or comment period under section 32604, or if a public hearing is held, 90 days after the date of the public hearing for a permit under section 32603.

(*x*) One hundred twenty days for a permit under section 11509, 11542, 63103a, 63514, or 63704.

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(*xi*) One hundred fifty days for a permit under section 36505. However, if a site inspection or federal approval is required, the 150-day period is tolled pending completion of the inspection or receipt of the federal approval.

(*xii*) For any other permit, 150 days or, if a hearing is held, 90 days after the hearing, whichever is later.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2013, Act 87, Imd. Eff. June 28, 2013;—Am. 2014, Act 215, Eff. Sept. 25, 2014;—Am. 2018, Act 36, Imd. Eff. Feb. 21, 2018;—Am. 2018, Act 268, Imd. Eff. June 29, 2018;—Am. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.1303 Permit application; format; documents.

Sec. 1303. (1) An application for a permit shall be submitted to the department in a format to be developed by the department, except as provided in section 30307 with respect to a state wetland permit.

(2) The department shall, upon request and without charge, provide a person a copy of all of the following:

(a) A list that specifies in detail the information required to complete the permit application.

(b) A blank permit application form.

(c) In concise form, any instructions necessary to complete the application.

(d) A complete, yet concise, explanation of the permit review process.

(3) The department shall post the documents described in subsection (2) on its website.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 246, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.1305 Receipt of permit application; notice of incomplete application; time period; request for new or additional information.

Sec. 1305. (1) After a department receives an application for a permit, the department shall determine whether the application is administratively complete. Unless the department proceeds as provided under subsection (2), the application shall be considered to be administratively complete when the department makes that determination or 30 days after the state receives the application, whichever is first.

(2) If, before the expiration of the 30-day period under subsection (1), the department notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 30-day period under subsection (1) is tolled until the applicant submits to the department the specified information or fee amount due. The notice shall be given in writing or by electronic notification.

(3) Subject to subsection (4), after an application for a permit is considered to be administratively complete under this section, the department shall not request from the applicant any new or additional information that is not specified in the list required under section 1303(2)(a) unless the request includes a detailed explanation of why the information is needed. The applicant is not required to provide the requested information as a condition for approval of the permit.

(4) After an application for a permit is considered to be administratively complete under this section, the department may request the applicant to clarify, amplify, or correct the information required for the application. The applicant shall provide the requested information.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 246, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.1307 Approval or denial of permit application; extension of processing period; tolling of processing period; explanation of reasons for permit denial; failure of department to satisfy requirements of subsection (1); effect; notification to legislative committees.

Sec. 1307. (1) By the processing deadline, the department shall approve or deny an application for a permit.

(2) If requested by the permit applicant, the department shall extend the processing period for a permit by not more than 120 days, as specified by the applicant. If requested by the permit applicant, the department may extend the processing period beyond the additional 120 days. However, a processing period shall not be

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extended under this subsection to a date later than 1 year after the application period ends.

(3) A processing period is tolled from the date that a permit applicant submits a petition under section 1315(1) until the date that a decision of the director is made under section 1315(6). If a permit applicant submits a petition under section 1315(1), the department shall not approve or deny the application for the permit under subsection (1) until after the director issues a decision under section 1315(6).

(4) The approval or denial of an application for a permit shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275.

(5) Approval of an application for a permit may be granted with conditions or modifications necessary to achieve compliance with the part or parts of this act under which the permit is issued.

(6) A denial of an application for a permit or, for a permit under part 301 or 303, an approval with modification of an application for a permit shall document, and any review upholding the denial or modification shall determine, to the extent practical, all of the following:

(a) That the decision is based on specifically cited provisions of this act or rules promulgated under this act.

(b) That the decision is based upon sufficient facts or data, which are recorded in the file.

(c) To the extent applicable, all of the following:

(*i*) That the decision is the product of reliable scientific principles and methods.

(*ii*) That the decision has applied the principles and methods reliably to the facts.

(d) In the case of denial of an application for a permit under part 301 or 303, suggestions on changes to allow the permit to be approved.

(7) Except for permits described in subsection (8), if the department fails to satisfy the requirements of subsection (1) with respect to an application for a permit, the department shall pay the applicant an amount equal to 15% of the greater of the following, as applicable:

(a) The amount of the application fee for that permit.

(b) If an assessment or other fee is charged on an annual or other periodic basis by the department to a person holding the permit for which the application was submitted, the amount of the first periodic charge of that assessment or other fee for that permit.

(8) If the department fails to satisfy the requirements of subsection (1) with respect to a permit required by section 11509, 11512, 30304, or 32603, the application shall be considered to be approved and the department shall be considered to have made any determination required for approval.

(9) The failure of the department to satisfy the requirements of subsection (1) or the fact that the department is required to make a payment under subsection (7) or is considered to have approved a permit under subsection (8) shall not be used by the department as the basis for discriminating against the applicant. If the department is required to make a payment under subsection (7), the application shall be processed in sequence with other applications for the same type of permit, based on the date on which the processing period began, unless the director determines on an application-by-application basis that the public interest is best served by processing in a different order.

(10) If the department fails to satisfy the requirements of subsection (1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the department shall immediately devote resources from that program to eliminate any backlog and satisfy the requirements of subsection (1) with respect to new applications for that type of permit within the next fiscal quarter.

(11) If the department fails to satisfy the requirements of subsection (1), the director shall notify the appropriations committees of the senate and house of representatives of the failure. The notification shall be in writing and shall include both of the following:

(a) An explanation of the reason for the failure.

(b) A statement of the amount the department was required to pay the applicant under subsection (7) or a statement that the department was required to consider the application to be approved under subsection (8), as applicable.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011;—Am. 2011, Act 236, Imd. Eff. Dec. 1, 2011;—Am. 2012, Act 164, Imd. Eff. June 14, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 268, Imd. Eff. June 29, 2018;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

324.1309 Submissions of applications for more than 1 type of permit.

Sec. 1309. If a person submits applications for more than 1 type of permit for a particular development or project, the department or departments shall process the applications in a coordinated fashion to the extent

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feasible given procedural requirements applicable to individual permits and, at the request of an applicant, appoint a primary contact person to assist in communications with the department or departments.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.1311 Report; information.

Sec. 1311. By December 1 each year, the director shall submit a report to the standing committees and appropriations subcommittees of the senate and house of representatives with primary responsibility for issues under the jurisdiction of that department. The department shall post the current report on its website. The report shall include all of the following information for each type of permit for the preceding fiscal year:

(a) The number of applications for permits the department received.

(b) The number of applications approved, the number of applications approved by the processing deadline, the number of applications approved after the processing deadline, and the average times for the department to determine administrative completeness and to approve or disapprove applications.

(c) The number of applications denied, the number of applications denied by the processing deadline, and the number of applications denied after the processing deadline.

(d) The number of applications approved or denied after the processing deadline that, based on the director's determination of the public interest, were not processed in sequence as otherwise required by section 1307(9).

(e) The number of applications that were not administratively complete when received.

(f) The amount of money refunded and discounts granted under section 1307.

(g) The number of applications processed as provided in section 1309.

(h) If a department failed to satisfy the requirements of section 1307(1) with respect to 10% or more of the applications for a particular type of permit received during a quarter of the state fiscal year, the type of permit and percentage of applications for which the requirements were not met, how the department attempted to eliminate any backlog and satisfy the requirements of section 1307(1) with respect to new applications for that type of permit within the next fiscal quarter, and whether the department was successful.

History: Add. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 246, Imd. Eff. Dec. 8, 2011;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1313 Environmental permit review commission; membership; limitations; term; removal; public meeting.

Sec. 1313. (1) The environmental permit review commission is established in the department of environmental quality. The commission shall advise the director on disputes related to permits and permit applications.

(2) The commission shall consist of 15 individuals, appointed by the governor. The governor shall appoint the first commission within 60 days after the effective date of the amendatory act that added this section. Each member of the commission shall meet 1 or more of the following:

(a) Have the equivalent of 6 years of full-time relevant experience as a practicing engineer, geologist, hydrologist, or hydrogeologist.

(b) Have a master's degree from an accredited institution of higher education in a discipline of engineering or science related to air or water and the equivalent of 8 years of full-time relevant experience.

(3) An individual is not eligible to be a member of the commission if any of the following apply:

(a) The individual is a current employee of any office, department, or agency of this state.

(b) The individual is a party to 1 or more contracts with the department of environmental quality and the compensation paid under those contracts in any of the preceding 3 years represented more than 5% of the individual's annual gross income in that preceding year.

(c) The individual is employed by an entity that is a party to 1 or more contracts with the department of environmental quality and the compensation paid to the individual's employer under those contracts in any of the preceding 3 years represented more than 5% of the employer's annual gross revenue in that preceding year.

(d) The individual was employed by the department of environmental quality within the preceding 3 years.

(4) An individual appointed to the commission shall serve for a term of 4 years, except as provided in this subsection, and may be reappointed. However, after serving 2 consecutive terms on the commission, the

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individual is not eligible to serve on the commission for 2 years. The terms for members first appointed shall be staggered so that 5 expire in 2 years, 5 expire in 3 years, and 5 expire in 4 years. A vacancy on the commission shall be filled in the same manner as the original appointment.

(5) The governor may remove a member of the commission for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(6) Individuals appointed to the commission shall serve without compensation. However, members of the commission may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.

(7) The business that the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

History: Add. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1315 Petition for permit review; panel meeting; written recommendation; director's decision; appeal; conflict of interest.

Sec. 1315. (1) A permit applicant may seek review by a panel by submitting a petition to the director before the permit has been approved or denied. The petition shall include the issues in dispute, the relevant facts, and any data, analysis, opinion, and supporting documentation for the petitioner's position. If the director believes that the dispute may be resolved without convening a panel, the director may contact the petitioner regarding the issues in dispute and may negotiate, for a period not to exceed 45 days, a resolution of the dispute.

(2) Unless the dispute is resolved pursuant to subsection (1), the director shall convene a meeting of a panel. The meeting shall be held within 45 days after the director received the petition. The panel shall consist of 3 members of the commission selected by the director on the basis of their relevant expertise. The director may select a replacement for a member who is unable to participate in the review process. To serve as a panel member, a commission member must submit to the director on a form provided by the department an agreement not to accept employment from the petitioner before 1 year after a decision is rendered on the matter if gross income from the employment would exceed 5% of the member's gross income from all sources in any of the preceding 3 years.

(3) The members of the panel shall elect a chairperson. Two members of the panel constitute a quorum. A majority of the votes cast are required for official action of the panel. The business that the panel may perform shall be conducted at a public meeting of the panel held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(4) The director shall provide the panel with a copy of the petition and its supporting documentation and a copy of all supporting documentation from the department. At the meeting of the panel, representatives of the petitioner and the department shall each be given an opportunity to present their positions.

(5) Within 45 days after hearing the petition, the panel shall make a recommendation regarding the petition and provide written notice of the recommendation to the director and the petitioner. The written recommendation shall include the specific rationale for the recommendation. The recommendation may be to adopt, modify, or reverse, in whole or in part, the department's position or decision on the dispute that is the subject of the petition.

(6) Within 60 days after receiving written notice of the panel's recommendation, the director shall issue a decision, in writing, regarding the petition. If the director agrees with the recommendation, the department shall incorporate the recommendation into the terms of the permit. If the director does not agree with the recommendation, the director shall include in the written decision the specific rationale for rejecting the recommendation. If the director fails to make a decision within the time period provided for in this subsection, the recommendation of the panel shall be considered the decision of the director. The decision of the director under this subsection regarding a dispute related to a permit or permit application is not subject to review under this act, the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. However, the decision of the director under this subsection may be included in an appeal to a final permit action. If a permit applicant declines to submit a petition for review under this section, the decision of the department regarding the approval or denial of a permit is final permit action for purposes of any judicial review or other review allowed under this act, the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) A member of the commission shall not participate in a petition review if the member has a conflict of interest. A member has a conflict of interest if any of the following apply:

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(a) The applicant has hired that member or the member's employer on any environmental matter within the preceding 3 years.

(b) The member has been an employee of the applicant within the preceding 3 years.

(c) The member has more than a 1% ownership interest in the applicant.

(8) The director shall select a member of the commission to participate in a petition review in place of a member disqualified under subsection (7).

History: Add. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.1317 Contested case for permit; petition for review; environmental permit panel; staffing; written opinion; final decision and order.

Sec. 1317. (1) In a contested case regarding a permit, an administrative law judge shall preside, make the final decision, and issue the final decision and order for the department. Any party to the contested case, including the department, may, within 21 days after receiving the final decision and order, seek review of the final decision and order by an environmental permit panel by submitting a request to the director and a notice to the hearing officer.

(2) On petition for review of a final decision under subsection (1), the director shall convene an environmental permit panel in the same manner as provided under section 1315(2), except that the director shall not select as a member of the panel an individual who was a member of a panel that previously reviewed any dispute regarding the permit. The panel shall meet and conduct business in the same manner as provided under section 1315(2) and (3). The panel's review of the final decision must be limited to the record established by the administrative law judge.

(3) After an environmental permit panel is convened under subsection (2), a member of the panel shall not communicate, directly or indirectly, in connection with any issue of fact, with any party or other person, or, in connection with any issue of law, with any party or the party's representative, except on notice and opportunity for all parties to participate.

(4) An environmental permit panel may adopt, remand, modify, or reverse, in whole or in part, a final decision and order described in subsection (1). The panel shall issue an opinion that becomes the final decision of the department and is subject to judicial review as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and other applicable law.

(5) The Michigan administrative hearing system shall provide an environmental permit panel with all staff necessary for the panel to perform its duties under this section.

(6) An opinion issued by an environmental permit panel must be in writing and clearly define the legal and technical principles being applied.

(7) If no party timely appeals a final decision and order described in subsection (1) to an environmental permit panel, the final decision and order is the final agency action for purposes of any applicable judicial review.

History: Add. 2018, Act 268, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

PART 14
CLEAN CORPORATE CITIZENS

324.1401 Definitions; A to F.

Sec. 1401. As used in this part:

(a) "Applicable environmental requirement" means an applicable federal environmental requirement, an applicable state environmental requirement, or an environmental requirement established by a local unit of government.

(b) "Applicable federal environmental requirement" means any of the following:

(*i*) The federal water pollution control act, 33 USC 1251 to 1387.

(*ii*) The clean air act, 42 USC 7401 to 7671q.

(*iii*) The resource conservation and recovery act of 1976, 42 USC 6901 to 6992k.

(*iv*) The comprehensive environmental response, compensation, and liability act of 1980, 42 USC 9601 to 9675.

(c) "Applicable state environmental requirement" means any of the following or a rule promulgated or permit, order, or other legally binding document issued under any of the following:

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(*i*) Article II or chapter 1 or 3 of article III.

(*ii*) The safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(*iii*) Part 135 or 138 of the public health code, 1978 PA 368, MCL 333.13501 to 333.13536 and 333.13801 to 333.13831.

(d) "Certified", in reference to a statement, means that the statement includes an attestation signed by an authorized official of the facility that he or she has made reasonable inquiry into the basis for the statement and that it is true and correct to the best of the official's knowledge and belief.

(e) "Clean corporate citizen" means a facility that has demonstrated environmental stewardship and a strong environmental ethic by meeting the criteria in this part.

(f) "Department" means the department of environmental quality.

(g) "Director" means the director of the department or his or her designee.

(h) "Environmental management system" means the part of an overall management system that addresses environmental concerns through allocating resources, assigning responsibilities, and evaluating practices, procedures, and processes to achieve sound environmental performance.

(i) "Environmental policy" means a policy, signed by an authorized official of the facility, that does all of the following:

(*i*) Articulates the facility's environmental mission and values.

(*ii*) Promotes pollution prevention.

(*iii*) Acknowledges the importance of communication with the public with respect to environmental issues.

(*iv*) Expresses the facility's commitment to comply with environmental laws.

(*v*) Emphasizes continuous environmental improvement.

(*vi*) Recognizes that every employee can contribute to environmental improvement.

(j) "Facility" means any of the following that is situated in this state and is subject to an applicable state environmental requirement or applicable federal environmental requirement:

(*i*) A source as defined in section 5501.

(*ii*) A public institution.

(*iii*) A municipal facility.

(*iv*) A commercial, industrial, or other business establishment.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

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324.1403 Definitions; I to W.

Sec. 1403. As used in this part:

(a) "ISO 14001:2004" means the standard adopted by the international organization for standardization in 2004 to prescribe uniform requirements for the purpose of certification or registration of an environmental management system.

(b) "Pollution prevention" means eliminating or minimizing the initial generation of waste at the source, reuse of waste, or utilizing environmentally sound on-site or off-site recycling. Waste treatment, release, or disposal is not pollution prevention.

(c) "RC 2008" means the responsible care program adopted by the American chemistry council in 2008 to provide uniform requirements for the purpose of certification or registration of an environmental management system.

(d) "Supplemental environmental project" means an environmentally beneficial project that an alleged violator agrees to undertake in settlement of an enforcement action, but which the alleged violator is not otherwise legally required to undertake.

(e) "Violation notice" means a written notice or formal enforcement action by the department, the United States environmental protection agency, or the enforcing agency of a local unit of government in response to a violation of an applicable environmental requirement. A voluntary disclosure made under part 148 does not constitute a violation notice.

(f) "Waste" means any environmental pollutant, waste, discharge, or emission, regardless of how it is regulated and regardless of whether it is released to the general environment or the workplace environment.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1405 Clean corporate citizen designation and benefits; qualifications; application.

Sec. 1405. To obtain a clean corporate citizen designation and the benefits described in section 1421, a

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facility shall meet the qualifications set forth in sections 1407 to 1411 and submit an application under section 1413.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1407 Clean corporate citizen designation; disqualification; conduct.

Sec. 1407. (1) To qualify for a clean corporate citizen designation, a facility shall not have been the subject of any of the following at any time within the preceding 3 years:

(a) A conviction for a criminal violation of an applicable state environmental requirement.

(b) An assessment by a court of appropriate jurisdiction, of a civil fine, penalty, or damages of $10,000.00 or more for violation of an applicable state environmental requirement.

(c) A determination, by a court of appropriate jurisdiction, of responsibility for an illegal action that substantially endangered the public health, safety, or welfare or the environment.

(d) A departmental assessment, a judicial consent decree, or an administrative consent order, imposing a fine or damages of $32,500.00 or more, excluding the cost of any supplemental environmental project used to offset a fine, for a violation of an applicable state environmental requirement.

(2) A facility does not qualify for a clean corporate citizen designation if the department determines that the facility was responsible for a pattern of illegal actions, at any time within the preceding 3 years, that endangered the public health, safety, or welfare or the environment.

(3) To qualify for a clean corporate citizen designation, a facility shall address any outstanding violation that is cited in a violation notice that, as determined by the department, substantially endangers the public health, safety, or welfare or the environment, by doing 1 or more of the following:

(a) Promptly resolving the violation.

(b) Demonstrating to the department, the United States environmental protection agency, or the local enforcing agency that issued the violation notice that the violation did not occur.

(c) Adhering to a compliance schedule that is acceptable to the department, the United States environmental protection agency, or the local enforcing agency that issued the violation notice, to correct the violation.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1409 Clean corporate citizen designation; requirements.

Sec. 1409. To qualify for a clean corporate citizen designation, a facility shall meet 1 of the following requirements:

(a) Obtain and operate in accordance with requirements for registration or certification under an environmental management standard, such as ISO 14001:2004, or, for the chemical industry, RC 2008, that is approved by the director.

(b) Adopt and maintain an environmental management system that is set forth in writing and is consistent with the requirements of ISO 14001:2004, or, for the chemical industry, RC 2008, and appropriate for the nature, scale, and potential environmental impact of the operation at the facility.

(c) Adopt and maintain an environmental management system that is set forth in writing, approved by the director, and applicable to a specific group or classification of facilities including that facility. The environmental management system shall be consistent with the requirements of ISO 14001:2004, or, for the chemical industry, RC 2008, and be appropriate for the nature, scale, and potential environmental impact of the operation.

(d) For a facility with 100 or fewer employees, adopt and maintain the following elements of an environmental management system, which shall be set forth in writing:

(*i*) An environmental policy.

(*ii*) The environmental aspects.

(*iii*) The objectives and targets of operations.

(*iv*) The roles and responsibilities.

(*v*) The procedures for internal and external communication.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

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324.1411 Duties of facility.

Sec. 1411. (1) To qualify for a clean corporate citizen designation, a facility shall do all of the following:

(a) Adopt and maintain a written environmental policy.

(b) Establish and maintain a program specific for that facility under which the operator does all of the following:

(*i*) Posts at the facility the environmental policy required in subdivision (a).

(*ii*) Conducts periodic assessments that identify opportunities for pollution prevention.

(*iii*) Establishes goals for reducing or preventing pollution, indicating the types of pollution; whether each pollutant would affect the air, water, or land; the pollution prevention measures to be undertaken; and the projected time frames.

(*iv*) Prepares and maintains reports to demonstrate progress toward attaining the goals established under subparagraph (*iii*).

(2) Facilities are encouraged, as part of the program under subsection (1)(b), to do all of the following:

(a) Initiate community-based activities.

(b) Provide for the exchange of information concerning pollution prevention activities, such as the following:

(*i*) Attend or sponsor workshops.

(*ii*) Assist in developing and disseminating case studies.

(*iii*) Establish pollution prevention supplier networks.

(*iv*) Provide the department with pollution prevention information for possible publication.

(*v*) Provide the department with access to electronic copies of the facility's emergency response plan, pollution incident plan, stormwater pollution prevention plan, and other plans as appropriate.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1413 Application; form; additional information; determination of completed application; publication and posting; approval or disapproval by director; time limitation; reapplication upon disapproval; withdrawal; incorporation by reference.

Sec. 1413. (1) To obtain a clean corporate citizen designation, a facility shall submit an application to the department. The application shall be submitted on a form provided by the department, together with all of the following:

(a) A list of any criminal convictions or any civil fines, penalties, or damages assessed relative to applicable federal environmental requirements arising out of operations at the facility during the past 3 years.

(b) A certified statement that the applicant meets the requirements of sections 1407, 1409, and 1411.

(c) Information demonstrating the applicant's compliance with section 1409, including a detailed summary of each required element of an environmental management system.

(d) Information demonstrating the applicant's compliance with section 1411, including a copy of the applicant's environmental policy.

(e) A list of significant goals established in the environmental management system and the environmental policy.

(f) If the facility is already designated as a clean corporate citizen with respect to that facility when the application is filed, the latest annual report required under section 1419.

(2) The department shall determine whether the application is administratively complete within 14 days after receipt of the application.

(3) If the application is administratively complete, the department shall publish in the department calendar and post on its website a notice of receipt of the application and related documentation and of the availability of the application and related documentation for public review and comment. The notice shall include the department's electronic mail and postal mailing addresses for receipt of comments. Comments shall be received for a period of at least 30 days after notice is given under this subsection.

(4) Within 90 days after receipt of an administratively complete application for a clean corporate citizen designation, unless an extension of time is requested by the applicant, the director shall approve or disapprove the application and notify the applicant. The director shall approve the application if the application meets the requirements of this part. Otherwise, the director shall disapprove the application. A notification of disapproval shall include the specific reasons for the disapproval.

(5) If the application is disapproved, the unsuccessful applicant may reapply for a clean corporate citizen designation at any time. In addition, an applicant may withdraw an application without prejudice at any time.

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(6) If a document otherwise required to be submitted to the department with an application under this section or an annual report under section 1419 is already in the possession of the department, the application or annual report may incorporate the document by reference without including a copy of the document.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1415 Clean corporate citizen designation; term.

Sec. 1415. The term of a clean corporate citizen designation is 5 years.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1417 Clean corporate citizen designation; termination.

Sec. 1417. (1) The director shall terminate a clean corporate citizen designation if the director determines that the facility does not meet applicable requirements of section 1407, 1409, or 1411.

(2) The director shall notify a facility of the director's intent to terminate the facility's clean corporate citizen designation and the specific reason for the termination not less than 30 days before terminating the designation.

(3) A facility whose designation is terminated may reapply for a clean corporate citizen designation at any time.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1419 Annual report.

Sec. 1419. A clean corporate citizen shall submit an annual report not later than 60 days before the annual anniversary date of the current clean corporate citizen designation. The annual report shall do all of the following:

(a) Summarize the activities undertaken over the past year to do the following:

(*i*) Identify and report on implementation of standardized pollution prevention measures consistent with the program established under section 1411, on a form provided by the department.

(*ii*) Set, revise, and attain objectives and implement measures in the clean corporate citizen's environmental management system and pollution prevention programs.

(b) Include a certified statement that the clean corporate citizen is in compliance with sections 1407, 1409, and 1411.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1421 Benefits.

Sec. 1421. (1) Upon request, a clean corporate citizen is entitled to each of the following benefits:

(a) The department shall give the facility priority over persons that are not clean corporate citizens in all of the following:

(*i*) Compliance assistance programs applicable to the facility, such as the retired engineers technical assistance program created in section 14511.

(*ii*) Processing permit or operating license renewal applications for the facility.

(b) The department shall provide employees of the facility with free training on performing environmental audits under part 148.

(c) The term of a permit issued by the department for the facility shall be twice the term that would otherwise apply.

(d) The facility shall receive a preference for state purchases as provided in section 261 of the management and budget act, 1984 PA 431, MCL 18.1261.

(e) The facility qualifies for any additional clean corporate citizen benefits for the facilty set forth in rules promulgated under any of the following:

(*i*) Article II or chapter 1 or 3 of article III.

(*ii*) The safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(*iii*) Part 135 or 138 of the public health code, 1978 PA 368, MCL 333.13501 to 333.13536 and 333.13801

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to 333.13831.

(f) The department shall conduct routine inspections of the facilty half as frequently as the inspections would be conducted if the facility were not a clean corporate citizen.

(g) The department shall give the operator of the facility at least 72 hours' advance notice of any routine inspection of the facility.

(h) Subject to subsection (2), the facility is not subject to a civil fine for a violation of applicable state environmental requirements if all of the following conditions are met:

(*i*) The facility acted promptly to correct the violation after discovery.

(*ii*) The facility reported the violation to the department within 24 hours after the discovery or within any shorter time period otherwise required by law.

(2) Subsection (1)(h) does not apply if 1 or more of the following are established by clear and convincing evidence:

(a) The actions of the facility pose or posed a substantial endangerment to the public health, safety, or welfare.

(b) The violation was intentional or occurred as the result of the operator's gross negligence.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1423 Termination of benefits.

Sec. 1423. Upon termination of a clean corporate citizen designation, all benefits provided to that facility under section 1421 terminate.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1425 Availability of documents for inspection; purchase; website of facilities designated as clean corporate citizens.

Sec. 1425. (1) The department shall maintain a copy of ISO 14001:2004 and RC 2008 available for inspection at the department's headquarters in Lansing. Upon request, the department shall provide information on how to purchase a copy of ISO 14001:2004 from the American national standards institute and RC 2008 from the American chemistry council.

(2) The department shall maintain on its website a list of facilities currently designated as clean corporate citizens.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1427 Conflict with state law or federal law or regulation.

Sec. 1427. This part shall not be construed in a manner that conflicts with or authorizes any violation of state law or federal regulation or law.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.1429 Rescission of R 324.1501 to R 324.1511.

Sec. 1429. The clean corporate citizen program rules, R 324.1501 to 324.1511 of the Michigan administrative code, are rescinded.

History: Add. 2012, Act 554, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

PART 15
ENFORCEMENT

324.1501 Conservation officers as peace officers; powers, privileges, prerogatives, and immunities.

Sec. 1501. Conservation officers appointed by the department and trained and certified pursuant to the

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Michigan law enforcement officers training council act of 1965, Act No. 203 of the Public Acts of 1965, being sections 28.601 to 28.616 of the Michigan Compiled Laws, are peace officers, and except as otherwise provided by law, are vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers as provided in this act, in Act No. 109 of the Public Acts of 1986, being sections 300.21 to 300.22 of the Michigan Compiled Laws, and in the general laws of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1502 Service and execution of criminal process; fees.

Sec. 1502. Except as otherwise provided by law, conservation officers appointed by the department have the same power to serve criminal process and to require aid in executing criminal process as sheriffs, and are entitled to the same fees as sheriffs in performing those duties under this act, under Act No. 109 of the Public Acts of 1986, being sections 300.21 to 300.22 of the Michigan Compiled Laws, and under the general laws of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1505 Inspection; sampling process; exceptions; report; explanation and reasons; opportunity to provide comments; "department" defined.

Sec. 1505. (1) The department shall use a fair and equitable sampling process to select persons whose operations or facilities will be inspected.

(2) Subsection (1) does not apply to any of the following:

(a) An inspection performed in response to a complaint from a third party.

(b) An inspection performed because the department has evidence that a violation has occurred.

(c) A follow-up inspection to determine whether violations identified in a previous inspection have been corrected.

(d) An inspection required for the issuance of a permit.

(e) Any inspection otherwise required under state or federal law.

(3) The department shall annually submit to the legislature a report on all of the following:

(a) The methods used to comply with this section.

(b) The number of inspections subject to subsection (1) and the number of inspections described in subsection (2) that were performed by the department during the prior year.

(4) Before conducting an inspection under this act, the department shall provide the person whose operation or facility will be inspected with both of the following:

(a) An explanation of the person's rights and responsibilities with respect to the inspection.

(b) The reasons for conducting the inspection.

(5) After conducting an inspection under this act, the department shall give the person whose operation or facility was inspected an opportunity to provide comments to the department on the quality of the inspection and the professionalism of the inspector.

(6) As used in this section, "department" means the department of environmental quality.

History: Add. 2011, Act 235, Imd. Eff. Dec. 1, 2011.

Popular name: Act 451

Popular name: NREPA

324.1511 Written list of violations; meeting to discuss potential civil enforcement action and potential resolution; requirement; exception; definitions.

Sec. 1511. (1) Subject to subsection (2) and notwithstanding any other provision of this act, before initiating a civil enforcement action under this act against a person, the department shall do both of the following:

(a) Beginning May 1, 2019, provide the person in writing a list of each specific provision of statute, rule, or permit that the person is alleged to have violated and a statement of the facts constituting the violation.

(b) Contact the person and extend an offer for staff of the department to meet with the person to discuss the potential civil enforcement action and potential resolution of the issue. If the person agrees to meet with the department, the department shall not initiate a civil enforcement action until after the meeting is held, unless the meeting is not held within a reasonable time of not less than 60 days.

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(2) Subsection (1) does not apply under any of the following circumstances:

(a) The civil enforcement action is a civil infraction action.

(b) The department determines that the violation that is the subject of the potential civil enforcement action constitutes an imminent and substantial endangerment of the public health, safety, or welfare or of the environment.

(3) As used in this section:

(a) "Department" means the department, agency, or officer authorized by this act to approve or deny an application for a permit.

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

History: Add. 2011, Act 237, Imd. Eff. Dec. 1, 2011;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

PART 16

ENFORCEMENT OF LAWS FOR PROTECTION OF WILD BIRDS, WILD ANIMALS, AND FISH

324.1601 Duties of department and appointed officers.

Sec. 1601. The department and any officer appointed by the department shall do all of the following:

(a) Enforce the statutes and laws of this state for the protection, propagation, or preservation of wild birds, wild animals, and fish.

(b) Enforce all other laws of this state that pertain to the powers and duties of the department or the commission.

(c) Bring or cause to be brought or prosecute or cause to be prosecuted actions and proceedings in the name of the people of this state for the purpose of punishing any person for the violation of statutes or laws described in this section.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1602 Department or officer; prosecution; search without warrant; private property; definition; common carrier not liable; issuance of warrant; seizures; probable cause.

Sec. 1602. (1) The department, or an officer appointed by the department, may file a complaint and commence proceedings against any person for a violation of any of the laws or statutes described in section 1601, without the sanction of the prosecuting attorney of the county in which the proceedings are commenced. In such a case, the officer is not obliged to furnish security for costs. The department, or an officer appointed by the department, may appear for the people in any court of competent jurisdiction in any cases for violation of any of the statutes or laws described in section 1601, may prosecute the cases in the same manner and with the same authority as the prosecuting attorney of any county in which the proceedings are commenced, and may sign vouchers for the payment of jurors' or witnesses' fees in those cases in the same manner and with the same authority as prosecuting attorneys in criminal cases. Whenever an officer appointed by the department has probable cause to believe that any of the statutes or laws mentioned in section 1601 have been or are being violated by any particular person, the officer has the power to search, without warrant, any boat, conveyance, vehicle, automobile, fish box, fish basket, game bag, game coat, or any other receptacle or place, except dwellings or dwelling houses, or within the curtilage of any dwelling house, in which nets, hunting or fishing apparatuses or appliances, wild birds, wild animals, or fish may be possessed, kept, or carried by the person, and an officer appointed by the department may enter into or upon any private or public property for that purpose or for the purpose of patrolling, investigating, or examining when he or she has probable cause for believing that any of the statutes or laws described in section 1601 have been or are being violated on that property. The term "private property" as used in this part does not include dwellings or dwelling houses or that which is within the curtilage of any dwelling house. An officer appointed by the department shall at any and all times seize and take possession of any and all nets, hunting or fishing apparatuses or appliances, or other property, wild birds, wild animals, or fish, or any part or parts thereof, which have been caught, taken, killed, shipped, or had in possession or under control, at a time, in a manner, or for a purpose, contrary to any of the statutes or laws described in section 1601, and the seizure may be made without a warrant. A common carrier is not responsible for damages or otherwise to any owner, shipper, or consignee by reason of any such seizure. When a complaint is made on oath to any magistrate authorized to issue warrants in criminal cases that any wild birds, wild animals, or fish, any part or parts of wild birds, wild animals, or fish, or any nets, hunting or fishing apparatuses or appliances, or other property have been or are

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being killed, taken, caught, had in possession or under control, or shipped, contrary to the statutes or laws described in section 1601, and that the complainant believes the property to be stored, kept, or concealed in any particular house or place, the magistrate, if he or she is satisfied that there is probable cause for the belief, shall issue a warrant to search for the property. The warrant shall be directed to the department, or an officer appointed by the department, or to any other peace officer. All wild birds, wild animals, fish, nets, boats, fishing or hunting appliances or apparatuses, or automobiles or other property of any kind seized by an officer shall be turned over to the department to be held by the department subject to the order of the court as provided in this part.

(2) For the purposes of this part, "probable cause" or "probable cause to believe" is present on the part of a peace officer if there are facts that would induce any fair-minded person of average intelligence and judgment to believe that a law or statute had been violated or was being violated contrary to any of the statutes or laws described in section 1601.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1603 Confiscation of seized property; jurisdiction; venue.

Sec. 1603. (1) The following courts have jurisdiction to determine whether seized property shall be confiscated as provided in section 1604:

(a) The district court, if the property is seized within this state, other than in a city having a municipal court or in a village served by a municipal court, and if the property is not appraised by the officer seizing the property at more than $25,000.00 in value.

(b) A municipal court, if the property is seized in a city having a municipal court or in a village served by a municipal court and if the property is not appraised by the officer seizing the property at more than $1,500.00 in value or $3,000.00 in value if the city in which the municipal court is located has increased the jurisdictional amount under section 22 of the Michigan uniform municipal court act, 1956 PA 5, MCL 730.522.

(c) The circuit court, if the property is seized within this state and if the property exceeds the value specified in subdivision (a) or (b) as appraised by the officer seizing the property.

(2) If the circuit court has jurisdiction under subsection (1), the proceeding shall be commenced in the county in which the property is seized.

(3) If the district court has jurisdiction under subsection (1), venue for a proceeding shall be as follows:

(a) In the county in which the property is seized, if the property is seized in a district of the first class.

(b) In the district in which the property is seized, if the property is seized in a district of the second or third class.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1999, Act 13, Eff. June 1, 1999.

Popular name: Act 451

Popular name: NREPA

324.1604 Complaint; filing; contents; order to show cause; service; notice; hearing; condemnation and confiscation; sale or other disposal; disposition of proceeds; signing property release; return of property.

Sec. 1604. (1) The officer seizing the property shall file a verified complaint in the court having jurisdiction and venue over the seizure of the property pursuant to section 1603. The complaint shall set forth the kind of property seized, the time and place of the seizure, the reasons for the seizure, and a demand for the property's condemnation and confiscation. Upon the filing of the complaint, an order shall be issued requiring the owner to show cause why the property should not be confiscated. The substance of the complaint shall be stated in the order. The order to show cause shall fix the time for service of the order and for the hearing on the proposed condemnation and confiscation.

(2) The order to show cause shall be served on the owner of the property as soon as possible, but not less than 7 days before the complaint is to be heard. The court, for cause shown, may hear the complaint on shorter notice. If the owner is not known or cannot be found, notice may be served in 1 or more of the following ways:

(a) By posting a copy of the order in 3 public places for 3 consecutive weeks in the county in which the seizure was made and by sending a copy of the order by registered mail to the last known address of the owner. If the last known address of the owner is not known, mailing a copy of the order is not required.

(b) By publishing a copy of the order in a newspaper once each week for 3 consecutive weeks in the

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county where the seizure was made and by sending a copy of the order by registered mail to the last known address of the owner. If the last known address of the owner is not known, mailing a copy of the order is not required.

(c) In such a manner as the court directs.

(3) Upon the hearing of the complaint, if the court determines that the property mentioned in the petition was caught, killed, possessed, shipped, or used contrary to law, either by the owner or by a person lawfully in possession of the property under an agreement with the owner, an order may be made condemning and confiscating the property and directing its sale or other disposal by the department, the proceeds from which shall be paid into the state treasury and credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010. If the owner or person lawfully in possession of the property seized signs a property release, a court proceeding is not necessary. At the hearing, if the court determines that the property was not caught, killed, possessed, shipped, or used contrary to law, the court shall order the department to return the property immediately to its owner.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.1605 Review or certiorari; procedure; bond.

Sec. 1605. The proceedings for the condemnation and confiscation of any property under this part are subject to review or certiorari as provided in this part. A writ of certiorari may be issued within 10 days after final judgment and determination in any condemnation proceeding for the purpose of reviewing any error in the proceeding. Notice of the certiorari shall be served upon the department within 10 days after the date of issue, in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by a justice of the peace, and the writ shall be issued and served and bond given and approved in the same manner as is required for reviewing judgments by justices of the peace.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1606 Department and conservation officer or peace officer; powers and duties; fees; park and recreation officers; enforcement of rules, orders, and laws; powers, privileges, and immunities; arrest powers; issuance of civil infraction citation; appearances; "minor offense" defined.

Sec. 1606. (1) The department and conservation officers appointed by the department are peace officers vested with all the powers, privileges, prerogatives, and immunities conferred upon peace officers by the general laws of this state; have the same power to serve criminal process as sheriffs; have the same right as sheriffs to require aid in executing process; and are entitled to the same fees as sheriffs in performing those duties.

(2) The department may commission park and recreation officers to enforce, on property regulated under part 741 or 781, rules promulgated by the department and orders issued by the department that are authorized in those rules, including, but not limited to, rules promulgated or orders issued under section 504, and any laws of this state specified in those rules as enforceable by commissioned park and recreation officers. In performing those enforcement activities, commissioned park and recreation officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of this state. However, a park and recreation officer enforcing rules, orders, or laws described in this subsection on property regulated under part 781 may arrest an individual only for a minor offense committed in the officer's presence and shall issue an appearance ticket as provided in subsection (6).

(3) In addition to the limited arrest authority granted in subsection (2), on property regulated under part 741, a commissioned park and recreation officer may arrest an individual without a warrant if 1 or more of the following circumstances exist:

(a) In the presence of the park and recreation officer, the individual commits an assault or an assault and battery in violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a.

(b) The park and recreation officer has reasonable cause to believe that a felony has been committed and reasonable cause to believe that the individual has committed it.

(c) The park and recreation officer has received affirmative written or verbal notice from a law

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enforcement officer or agency that a peace officer possesses a warrant for the individual's arrest.

(d) The person violates section 625(1), (3), or (6) or 626 of the Michigan vehicle code, 1949 PA 300, MCL 257.625 and 257.626.

(e) The person violates part 741, 811, or 821 or section 80198b.

(f) The person violates section 11(7) or 19 of the personal watercraft safety act, 1998 PA 116, MCL 281.1411 and 281.1419.

(4) In addition to the limited arrest authority granted in subsection (2), on property regulated under part 781, a commissioned park and recreation officer may arrest an individual without a warrant for a minor offense listed in subsection (3) committed in the officer's presence and shall issue an appearance ticket as provided in subsection (6).

(5) A commissioned park and recreation officer under subsection (2) may issue a civil infraction citation to an individual who violates section 626b or 627 of the Michigan vehicle code, 1949 PA 300, MCL 257.626b and 257.627.

(6) If a conservation officer or a park and recreation officer commissioned under subsection (2) arrests a person without warrant for a minor offense committed in the officer's presence, instead of immediately bringing the person for arraignment by the court having jurisdiction, the officer may issue to and serve upon the person an appearance ticket as authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g. However, if a park and recreation officer commissioned under subsection (2) arrests a person without a warrant for a minor offense committed on property regulated under part 781 in the officer's presence, the park and recreation officer shall issue and serve upon the person such an appearance ticket.

(7) An appearance pursuant to an appearance ticket may be made in person, by representation, or by mail. If appearance is made by representation or mail, a district judge or a municipal judge may accept a plea of guilty and payment of a fine and costs on or before the definite court date indicated on the appearance ticket, or may accept a plea of not guilty for purposes of arraignment, both with the same effect as though the person personally appeared before the court. If appearance is made by representation or mail, a district court magistrate may accept a plea of guilty upon an appearance ticket and payment of a fine and costs on or before the definite court date indicated on the appearance ticket for those offenses within the magistrate's jurisdiction, as prescribed by section 8511 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8511, or may accept a plea of not guilty for purposes of arraignment, if authorized to do so by the judge of the district court district, with the same effect as though the person personally appeared before the court. The court, by giving not less than 5 days' notice of the date of appearance, may require appearance in person at the place designated in the appearance ticket.

(8) This section does not prevent the execution of a warrant for the arrest of the person as in other cases of misdemeanors if necessary.

(9) If a person fails to appear, the court, in addition to the fine assessed if the person is found guilty for the offense committed, may add to the fine and costs levied against the person additional costs incurred in compelling the appearance of the person, which additional costs shall be returned to the general fund of the unit of government incurring the costs.

(10) As used in this section, "minor offense" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 414, Eff. Mar. 28, 2001.

Popular name: Act 451

Popular name: NREPA

324.1607 Volunteer conservation officers.

Sec. 1607. (1) The department may appoint persons to function as volunteer conservation officers. A volunteer conservation officer shall be appointed to assist a conservation officer in the performance of the conservation officer's duties. While a volunteer conservation officer is assisting a conservation officer, the volunteer conservation officer has the same immunity from civil liability as a conservation officer, and shall be treated in the same manner as an officer or employee under section 8 of Act No. 170 of the Public Acts of 1964, being section 691.1408 of the Michigan Compiled Laws. The volunteer conservation officer shall not carry a firearm while functioning as a volunteer conservation officer.

(2) As used in this section, "volunteer" means a person who provides his or her service as a conservation officer without pay.

(3) To qualify as a volunteer conservation officer, a person shall meet all of the following qualifications:

(a) Have no felony convictions. In determining whether the person has a felony conviction, the person shall

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present documentation to the department that a criminal record check through the law enforcement information network has been conducted by a law enforcement agency.

(b) Have completed 10 hours of training conducted by the law enforcement division of the department.

(4) Upon compliance with subsection (3) and upon recommendation by the department, a person may be appointed as a volunteer conservation officer. An appointment shall be valid for 3 years. At the completion of the 3 years, the volunteer conservation officer shall comply with the requirements of this section in order to be reappointed as a volunteer conservation officer.

(5) A volunteer conservation officer's appointment is valid only if the volunteer conservation officer is on assignment with, and in the company of, a conservation officer.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1608 Obstructing, resisting, or opposing officers as misdemeanor; penalty.

Sec. 1608. A person who knowingly or willfully obstructs, resists, or opposes the department, an officer appointed by the department, or any other peace officer in the performance of the duties and execution of the powers prescribed in this part or in any statute or law, in making an arrest or search as provided in this part, or in serving or attempting to serve or execute any process or warrant issued by lawful authority, or who obstructs, resists, opposes, assaults, beats, or wounds the department, any officer appointed by the department, or any other peace officer while the department or officer is lawfully making an arrest or search, lawfully serving or attempting to serve or execute any such process or warrant, or lawfully executing or attempting to execute or lawfully performing or attempting to perform any of the powers and duties provided for in the statutes or laws described in section 1601, is guilty of a misdemeanor, punishable as provided in section 479 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.479 of the Michigan Compiled Laws. In making an arrest or search as provided in this part, or in serving or attempting to serve or execute any process or warrant, the department, any officer appointed by the department, or any other peace officer shall identify himself or herself by uniform, badge, insignia, or official credentials.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1609 Judgment fee.

Sec. 1609. In all prosecutions for violation of the law for the protection of game and fish, the sentencing court shall assess, as costs, the sum of $10.00, to be known as the judgment fee. When collected, the judgment fee shall be paid into the state treasury to the credit of the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.1615 Wildlife violator compact.

Sec. 1615. The governor of this state may enter into a compact on behalf of this state with any of the other states of the United States legally joining in the compact in the form substantially as follows:

ARTICLE I

FINDINGS, DECLARATION OF POLICY, AND PURPOSE

(a) The participating states find that:

(1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.

(2) The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, state laws, state regulations, state ordinances, and state administrative rules relating to the management of such resources.

(3) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.

(4) Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances,

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and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than his home state:

(*i*) Is required to post collateral or a bond to secure appearance for a trial at a later date; or

(*ii*) Is taken into custody until the collateral or bond is posted; or

(*iii*) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices set forth in paragraph (7) of this article is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation.

(10) The practices described in paragraph (7) of this article cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine, and thus is compelled to remain in custody until some alternative arrangement is made.

(11) The enforcement practices described in paragraph (7) of this article consume an undue amount of law enforcement time.

(b) It is the policy of the participating states to:

(1) Promote compliance with the state statutes, state laws, state ordinances, state regulations, and state administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and treat such suspension as if it had occurred in their state.

(3) Allow a violator, except as provided in paragraph (b) of article III, to accept a wildlife citation and, without delay, proceed on his way, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in paragraph (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation which contains an order requiring the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.

(d) "Conviction" means a conviction, including any court conviction, for any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, state law, state regulation, state ordinance, or state administrative rule, and such conviction shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere and the

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imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the participating state which issues a wildlife citation to the violator.

(h) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by state statute, state law, state regulation, state ordinance, or state administrative rule of a participating state.

(i) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.

(*l*) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Provinces of Canada, and other countries.

(m) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by state statute, state law, state regulation, state ordinance, or state administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on state law.

(p) "Wildlife law" means any state statute, state law, state regulation, state ordinance, or state administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(q) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a state statute, state law, state regulation, state ordinance, or state administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE III

PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require such person to post collateral to secure appearance, subject to the exceptions noted in paragraph (b) of this article, if the officer receives the recognizance of such person that he will comply with the terms of the citation.

(b) Personal recognizance is acceptable (1) if not prohibited by state law or the compact manual and (2) if the violator provides adequate proof of identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance pursuant to paragraph (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in the form and with the content as prescribed in the compact manual.

ARTICLE IV

PROCEDURE FOR HOME STATE

(a) Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards shall be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

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(c) The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE V

RECIPROCAL RECOGNITION OF SUSPENSION

(a) All participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and would have been the basis for a mandatory suspension of license privileges in their state.

(b) Each participating state shall communicate suspension information to other participating states in the form and with the content as contained in the compact manual.

ARTICLE VI

APPLICABILITY OF OTHER LAWS

(a) Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE VII

COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of 1 representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to 1 vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the participating states are represented.

(c) The board shall elect annually from its membership a chairman and vice-chairman.

(d) The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of moneys, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize and dispose of the donations and grants.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

ARTICLE VIII

ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective at such time as it is adopted in a substantially similar form by 2 or more states.

(b) (1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairman of the board.

(2) The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(*i*) A citation of the authority from which the state is empowered to become a party to this compact;

(*ii*) An agreement of compliance with the terms and provisions of this compact; and

(*iii*) An agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.

(3) The effective date of entry shall be specified by the applying state but shall not be less than 60 days after notice has been given, (a) by the chairman of the board of the compact administrators or (b) by the secretariat of the board to each participating state, that the resolution from the applying state has been received.

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(c) A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal shall not become effective until 90 days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal of any state shall affect the validity of this compact as to the remaining participating states.

ARTICLE IX

AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

(b) Adoption of an amendment shall require endorsement by all participating states and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a participating state to respond to the compact chairman within 120 days after receipt of a proposed amendment shall constitute endorsement thereof.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of this compact shall not be affected thereby. If this compact is held contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

ARTICLE XI

TITLE

This compact shall be known as the "wildlife violator compact".

History: Add. 2004, Act 235, Imd. Eff. July 21, 2004.

Popular name: Act 451

Popular name: NREPA

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324.1616 Interstate wildlife violator compact; enforcement; duties and powers of department; suspension of license privileges; surrender of license; hearing; limitations; failure to surrender license as misdemeanor; penalty; "compact" defined.

Sec. 1616. (1) The department shall enforce the compact and shall do all things within the department's jurisdiction that are appropriate in order to effectuate the purposes and the intent of the compact.

(2) On behalf of this state, the department may do either of the following:

(a) Withdraw from the compact under article VIII of the compact.

(b) Adopt amendments to the compact under article IX of the compact.

(3) Pursuant to article IV(a) of the compact, if the department receives notice from the licensing authority of an issuing state that a resident of this state has failed to comply with the terms of a citation, the department shall suspend the license privileges of the resident.

(4) Pursuant to article IV(b) of the compact, if the department receives notice of conviction of a resident of this state from the licensing authority of an issuing state, the department shall suspend the license privileges of the resident if the conviction would have resulted in mandatory suspension of the license had it occurred in this state. The department may suspend the license privileges if the conviction could have resulted in discretionary suspension of the license had the conviction occurred in this state.

(5) Pursuant to article V(a) of the compact, if the department receives notice of the suspension of any person's license privileges by a participating state, the department shall determine whether the violation leading to the suspension would have led to the suspension of license privileges under this state's law in accordance with the compact manual. If the department determines that the person's license privileges would have been suspended, the department may suspend the person's license privileges for the same period as imposed by the participating state, but not to exceed the maximum period allowed by the law of this state.

(6) If the department suspends a person's license privileges pursuant to the compact, the department shall provide the person with an opportunity for an evidentiary hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, limited to the following grounds:

(a) Whether, under article IV(a) of the compact, the person failed to comply with the terms of a citation in another participating state.

(b) Whether, under article IV(b) of the compact, there was a conviction in another participating state and the conviction would have led to the suspension of license privileges under this state's law, the conviction is

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on appeal in the participating state, or the alleged violator is not the proper party.

(c) Whether, under article V of the compact, a participating state suspended the person's license privileges and the violation leading to the suspension would have led to the forfeiture of privileges under this state's law, the conviction is on appeal in the participating state, or the alleged violator is not the proper party.

(7) An evidentiary hearing shall be requested within 20 days after the department sends the person notice of the suspension. The person shall surrender to the department any licenses issued under part 435 to the person within 10 days after notice of the suspension is sent. The department shall, by first-class mail, send to any resident of this state at his or her last known address notice of the suspension, of the opportunity for an evidentiary hearing, and of the obligation to surrender licenses.

(8) A person who fails to surrender a license under subsection (7) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $25.00 or more than $250.00, or both.

(9) As used in this section, "compact" means the interstate wildlife violator compact provided for in section 1615. If a term defined in article II of the compact is used in this section, the definitions in article II of the compact apply to that term as used in this section.

History: Add. 2013, Act 37, Imd. Eff. May 28, 2013.

Popular name: Act 451

Popular name: NREPA

PART 17
MICHIGAN ENVIRONMENTAL PROTECTION ACT

324.1701 Actions for declaratory and equitable relief for environmental protection; parties; standards; judicial action.

Sec. 1701. (1) The attorney general or any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.

(2) In granting relief provided by subsection (1), if there is a standard for pollution or for an antipollution device or procedure, fixed by rule or otherwise, by the state or an instrumentality, agency, or political subdivision of the state, the court may:

(a) Determine the validity, applicability, and reasonableness of the standard.

(b) If a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.1702 Payment of costs or judgment; posting surety bond or cash; amount.

Sec. 1702. If the court has reasonable grounds to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment that might be rendered against him or her in an action brought under this part, the court may order the plaintiff to post a surety bond or cash in an amount of not more than $500.00.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1703 Rebuttal evidence; affirmative defense; burden of proof; referee; costs.

Sec. 1703. (1) When the plaintiff in the action has made a prima facie showing that the conduct of the defendant has polluted, impaired, or destroyed or is likely to pollute, impair, or destroy the air, water, or other natural resources or the public trust in these resources, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative to defendant's conduct and that his or her conduct is consistent with the promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. Except as to the affirmative defense, the principles of burden of proof and weight of the evidence generally applicable in civil actions in the circuit courts apply to actions brought under this part.

(2) The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his or her findings to the court in the action.

(3) Costs may be apportioned to the parties if the interests of justice require.

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History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1704 Granting of relief; administrative, licensing, or other proceedings; adjudication; judicial review.

Sec. 1704. (1) The court may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect the air, water, and other natural resources or the public trust in these resources from pollution, impairment, or destruction.

(2) If administrative, licensing, or other proceedings are required or available to determine the legality of the defendant's conduct, the court may direct the parties to seek relief in such proceedings. Proceedings described in this subsection shall be conducted in accordance with and subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. If the court directs parties to seek relief as provided in this section, the court may grant temporary equitable relief if necessary for the protection of the air, water, and other natural resources or the public trust in these resources from pollution, impairment, or destruction. In addition, the court retains jurisdiction of the action pending completion of the action to determine whether adequate protection from pollution, impairment, or destruction is afforded.

(3) Upon completion of proceedings described in this section, the court shall adjudicate the impact of the defendant's conduct on the air, water, or other natural resources, and on the public trust in these resources, in accordance with this part. In adjudicating an action, the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in this part.

(4) If judicial review of an administrative, licensing, or other proceeding is available, notwithstanding the contrary provisions of Act No. 306 of the Public Acts of 1969 pertaining to judicial review, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1705 Administrative, licensing, or other proceedings; intervenors; determinations; doctrines applicable.

Sec. 1705. (1) If administrative, licensing, or other proceedings and judicial review of such proceedings are available by law, the agency or the court may permit the attorney general or any other person to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct that has, or is likely to have, the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public trust in these resources.

(2) In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

(3) The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.1706 Part as supplement.

Sec. 1706. This part is supplementary to existing administrative and regulatory procedures provided by law.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 18
UNIFORM TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS

324.1801 “Reciprocating jurisdiction” defined.

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Sec. 1801. As used in this part:

(a) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States of America that has enacted a law identical to this part or provides access to its courts and administrative agencies that is substantially equivalent to the access provided in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1802 Action or other proceeding for injury caused by pollution.

Sec. 1802. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state may be brought in this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1803 Injury caused by pollution in reciprocating jurisdiction; rights to relief.

Sec. 1803. A person who suffers, or is threatened with, injury to his or her person or property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in this state as if the injury or threatened injury occurred in this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1804 Applicable law.

Sec. 1804. The law to be applied in an action or other proceeding brought pursuant to this part, including what constitutes "pollution," is the law of this state, excluding choice of law rules.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1805 Superior rights not accorded.

Sec. 1805. This part does not accord a person injured or threatened with injury in a jurisdiction outside of this state any rights superior to those that the person would have if injured or threatened with injury in this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1806 Additional right provided.

Sec. 1806. Any right provided in this part is in addition to and not in derogation of any other rights.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1807 Defense of sovereign immunity.

Sec. 1807. The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this part only to the extent that it would apply to a person injured or threatened with injury in this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1808 Application and construction of part.

Sec. 1808. This part shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this part among jurisdictions enacting it.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 19
NATURAL RESOURCES TRUST FUND

324.1901 Definitions.

Sec. 1901. As used in this part:

(a) "Board" means the Michigan natural resources trust fund board established in section 1905.

(b) "Local unit of government or public authority" means a county, city, township, village, school district, the Huron-Clinton metropolitan authority, or any authority composed of counties, cities, townships, villages, or school districts, or any combination of these entities, and legally constituted to provide public recreation.

(c) "Michigan state parks endowment fund" means the Michigan state parks endowment fund established in section 35a of article IX of the state constitution of 1963 and provided for in section 74119.

(d) "Trust fund" means the Michigan natural resources trust fund established in section 35 of article IX of the state constitution of 1963.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 238, Eff. Sept. 25, 2018;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.1902 Michigan natural resources trust fund; establishment; contents; receipts; investment; report on accounting of revenues and expenditures.

Sec. 1902. (1) In accordance with section 35 of article IX of the state constitution of 1963, the Michigan natural resources trust fund is established in the state treasury. Subject to section 1904, the trust fund shall consist of all bonuses, rentals, delayed rentals, and royalties collected or reserved by the state under provisions of leases for the extraction of nonrenewable resources from state-owned lands. However, the trust fund shall not include bonuses, rentals, delayed rentals, and royalties collected or reserved by the state from the following sources:

(a) State-owned lands acquired with money appropriated from the former game and fish protection fund or the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(b) State-owned lands acquired with money appropriated from the subfund account created by former section 4 of former 1976 PA 204.

(c) State-owned lands acquired with money appropriated from related federal funds made available to the state under the Pittman-Robertson wildlife restoration act, 16 USC 669 to 669i, or the Dingell-Johnson sport fish restoration act, 16 USC 777 to 777m.

(d) Money received by the state from net proceeds allocable to the nonconventional source production credit contained in section 45k of the internal revenue code of 1986, 26 USC 45k, as provided for in section 503.

(2) In addition to the revenues described in subsection (1), the trust fund may receive appropriations, money, or other things of value.

(3) The state treasurer shall direct the investment of the trust fund. The state treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1141.

(4) The department shall annually prepare a report containing an accounting of revenues and expenditures from the trust fund. This report shall identify the interest and earnings of the trust fund from the previous year, the cumulative total amount of unexpended interest and earnings held by the trust fund, the investment performance of the trust fund during the previous year, and the total amount of appropriations from the trust fund during the previous year. This report shall be provided to the senate and house of representatives appropriations committees and the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to natural resources and the environment.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 134, Imd. Eff. Mar. 19, 1996;—Am. 2002, Act 52, Eff. Sept. 21, 2002;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2012, Act 619, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 166, Imd. Eff. June 4, 2018;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.1903 Expenditures; applicability of MCL 324.2132a.

Sec. 1903. (1) Subject to the limitations of this part and of section 35 of article IX of the state constitution of 1963, the interest and earnings of the trust fund in any 1 state fiscal year may be expended in subsequent state fiscal years only for the following purposes:

(a) Acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty.

(b) Development, renovation, and redevelopment of public recreation facilities.

(c) Administration of the trust fund, including payments in lieu of taxes on state-owned land purchased through the trust fund. The legislature shall make appropriations from the trust fund each state fiscal year to make full payments in lieu of taxes on state-owned land purchased through the trust fund, as provided in section 2154.

(2) An expenditure from the trust fund may be made in the form of a grant to a local unit of government or public authority, subject to all of the following conditions:

(a) The grant is used for the purposes described in subsection (1).

(b) The grant is matched by the local unit or public authority with at least 25% of the total cost of the project.

(3) Not less than 25% of the money made available for expenditure from the trust fund from any state fiscal year shall be expended for acquisition of land and rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty, and not less than 25% of the money made available for expenditure from the trust fund from any state fiscal year shall be expended for development, renovation, and redevelopment of public recreation facilities.

(4) If property that was acquired with money from the trust fund is subsequently sold or transferred by this state to a nongovernmental entity, this state shall forward to the state treasurer for deposit into the trust fund an amount of money equal to the following:

(a) If the property was acquired solely with trust fund money, the greatest of the following:

(*i*) The net proceeds of the sale.

(*ii*) The fair market value of the property at the time of the sale or transfer.

(*iii*) The amount of money that was expended from the trust fund to acquire the property.

(b) If the property was acquired with a combination of trust fund money and other restricted funding sources governed by federal or state law, an amount equal to the percentage of the funds contributed by the trust fund for the acquisition of the property multiplied by the greatest of the amounts under subdivision (a)(*i*), (*ii*), and (*iii*).

(5) This part is subject to section 2132a.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2002, Act 52, Eff. Sept. 21, 2002;—Am. 2011, Act 117, Imd. Eff. July 20, 2011;—Am. 2018, Act 166, Imd. Eff. June 4, 2018;—Am. 2018, Act 238, Eff. Sept. 25, 2018;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

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324.1904 Limitation on amount accumulated in trust fund; deposit and distribution of amount.

Sec. 1904. Until the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00, the amount accumulated in the trust fund shall not exceed $500,000,000.00, exclusive of interest and earnings and amounts authorized for expenditure under this part. Any amount of money that would be a part of the trust fund but for the limitation stated in this section shall be deposited in the Michigan state parks endowment fund created in section 74119, until the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00. After the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00, the accumulated principal limit for the trust fund provided in this section no longer applies and the revenues from bonuses, rentals, delayed rentals, and royalties described in section 1902 shall be deposited into the trust fund for expenditure as provided in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2002, Act 52, Eff. Sept. 21, 2002;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.1905 Michigan natural resources trust fund board; establishment; powers and duties of transferred agency; cooperation, aid, offices, and equipment; appointment and terms of members; removal; vacancies; expenses; compensation.

Sec. 1905. (1) The Michigan natural resources trust fund board is established within the department. The board shall have the powers and duties of an agency transferred under a type I transfer pursuant to section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103. The board shall be administered under the supervision department and the department shall offer its cooperation and aid to the board and shall provide suitable offices and equipment for the board.

(2) The board shall consist of 5 members. The members shall include the director or a member of the commission as determined by the commission, and 4 residents of the state to be appointed by the governor with the advice and consent of the senate.

(3) The terms of the appointive members shall be 4 years, except that of those first appointed, 1 shall be appointed for 1 year, 1 shall be appointed for 2 years, 1 shall be appointed for 3 years, and 1 shall be appointed for 4 years.

(4) The appointive members may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

(5) Vacancies on the board shall be filled for the unexpired term in the same manner as the original appointments.

(6) The board may incur expenses necessary to carry out its powers and duties under this part and shall compensate its members for actual expenses incurred in carrying out their official duties.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2012, Act 619, Imd. Eff. Jan. 9, 2013.

Compiler's note: For transfer of powers and duties of Michigan natural resources trust fund board from department of natural resources to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of Michigan natural resources trust fund board from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.1906 Board; election of chairperson; administrative procedures; conducting business at public meeting; notice; meetings of board; availability of writings to public; reports.

Sec. 1906. (1) The board shall elect a chairperson and establish its administrative procedures. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The board shall meet not less than bimonthly and shall record its proceedings. A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of

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information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Before January 16 of each year, the board shall report to the governor and to the legislature detailing the operations of the board for the preceding 1-year period. The board shall also make special reports as requested by the governor or the legislature.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.1907 List of lands, rights in land, and public recreation facilities to be acquired or developed; estimates of total costs; guidelines; legislative approval; "qualified conservation organization" defined.

Sec. 1907. (1) The board shall determine which lands and rights in land within this state should be acquired for recreational uses or protection of land because of its environmental importance or its scenic beauty and which public recreation facilities should be developed, renovated, and redeveloped with money from the trust fund and shall submit to the legislature in January of each year a list of those lands and rights in land and those public recreation facilities that the board has determined should be acquired or developed, renovated, and redeveloped with trust fund money, compiled in order of priority. The list prepared under this subsection shall be based upon the accounting of revenues available for expenditure as described in the report prepared under section 1902(4) and upon consideration of any consensus recommendation submitted under subsection (2) that is consistent with section 35 of article 9 of the state constitution of 1963.

(2) By December 1 of each year, the governor or his or her designee, the state treasurer or his or her designee, the senate majority leader or his or her designee, and the speaker of the house of representatives or his or her designee, and 1 member of the board selected by the board, shall meet and develop a consensus recommendation to be submitted to the board on the amount of money that should be made available to fund each of the following:

(a) Acquisitions under section 1903(1)(a).

(b) Development, renovation, and redevelopment projects under section 1903(1)(b).

(c) Administration of the trust fund under section 1903(1)(c).

(d) If there is additional money available after funding recommendations are made for subdivisions (a), (b), and (c), an amount that should be retained by the trust fund to mitigate potential future investment return fluctuations.

(3) In preparing the list under subsection (1), the board shall do all of the following:

(a) Give a preference to the following:

(*i*) A project or acquisition that is located within a city, village, township, or county that has adopted a resolution in support of the project or acquisition.

(*ii*) The acquisition of land and rights in land for recreational trails that intersect the downtown areas of cities and villages.

(b) Identify each parcel of land that is recommended for acquisition by legal description and include the estimated cost of acquisition and assessed value.

(c) Provide a scoring of each parcel of land recommended for acquisition individually.

(d) Give consideration to an acquisition that meets either or both of the following:

(*i*) Is located within a county that contains 50% or more privately owned land.

(*ii*) Allows motorized recreational use.

(4) In preparing the list of lands to be acquired or developed under subsection (1), the following apply:

(a) The board shall not include an acquisition of land or rights in land on the list if the board determines that the seller was harassed, intimidated, or coerced into selling his or her land or rights in land by the department, a local unit of government, or a qualified conservation organization.

(b) A project or acquisition may be named in honor or memory of an individual or organization.

(5) The list prepared under subsection (1) shall be accompanied by estimates of total costs for the proposed acquisitions and developments.

(6) The board shall supply with the lists prepared under subsection (1) a statement of the guidelines used in listing and assigning the priority of these proposed acquisitions and developments, renovations, and redevelopments.

(7) The legislature shall approve by law the lands and rights in land to be acquired and the public recreation facilities to be developed, renovated, or redeveloped each year with money from the trust fund.

(8) As used in this section, "qualified conservation organization" means that term as it is defined in section

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7o of the general property tax act, 1893 PA 206, MCL 211.7o.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2008, Act 229, Imd. Eff. July 17, 2008;—Am. 2012, Act 619, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 166, Imd. Eff. June 4, 2018;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.1907a Project status; report; "changes significantly" defined.

Sec. 1907a. (1) If within 2 years after a parcel of property that is approved for acquisition or development, renovation, or redevelopment by the legislature has not been acquired or developed, renovated, or redeveloped in the manner determined by the board and is not open for public use, the board shall report to the standing committees of the senate and the house of representatives with jurisdiction over issues related to natural resources and the environment on the status of the project and the reason why the property has not been purchased or developed, renovated, or redeveloped in the manner determined by the board. The department shall post on its website a bimonthly report of project status containing information described in this subsection.

(2) Following the appropriation of money from the trust fund, if the public recreation project changes significantly, the board shall submit the changes to the joint capital outlay subcommittee of the legislature to review whether the proposed changed project is consistent with the purpose of the appropriation. As used in this subsection, "changes significantly" means changes to a project such that the project would not have been funded had the change been in place during the evaluation of the project.

History: Add. 2002, Act 52, Eff. Sept. 21, 2002;—Am. 2012, Act 619, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.1908 Repealed. 2018, Act 597, Eff. Dec. 19, 2020.

Compiler's note: The repealed section pertained to adopting decisions made by the state recreational land acquisition trust fund board of trustees under former 1976 PA 204.

324.1909, 324.1910 Repealed. 2010, Act 32, Eff. Oct. 1, 2010.

Compiler's note: The repealed sections pertained to duties of state treasurer and transfer of writings or documents by department of natural resources and department of treasury.

324.1911 Local public recreation facilities fund.

Sec. 1911. (1) The local public recreation facilities fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the local public recreation facilities fund. The state treasurer shall direct the investment of the local public recreation facilities fund. The state treasurer shall credit to the local public recreation facilities fund interest and earnings from local public recreation facilities fund investments.

(3) Money in the local public recreation facilities fund at the close of the fiscal year shall remain in the local public recreation facilities fund and shall not lapse to the general fund.

(4) The department of natural resources shall be the administrator of the local public recreation facilities fund for auditing purposes.

(5) The department of natural resources shall expend money from the local public recreation facilities fund, upon appropriation, only for grants to local units of government for the development, renovation, and redevelopment of public recreation facilities pursuant to the same procedures of the board and guidelines as apply under section 1907.

History: Add. 2010, Act 32, Eff. Oct. 1, 2010;—Am. 2018, Act 597, Eff. Dec. 19, 2020.

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Compiler's note: Enacting section 3 of Act 597 of 2018 provides:

"Enacting section 3. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

PART 20
MICHIGAN CONSERVATION AND RECREATION LEGACY FUND

324.2001 Definitions.

Sec. 2001. As used in this part:

(a) "Forest recreation account" means the forest recreation account of the legacy fund provided for in section 2005.

(b) "Game and fish protection account" means the game and fish protection account of the legacy fund provided for in section 2010.

(c) "Legacy fund" means the Michigan conservation and recreation legacy fund established in section 40 of article IX of the state constitution of 1963 and provided for in section 2002.

(d) "Off-road vehicle account" means the off-road vehicle account of the legacy fund provided for in section 2015.

(e) "Recreation improvement account" means the recreation improvement account of the legacy fund provided for in section 2020.

(f) "Recreation passport fee" means a state park and state-operated public boating access site recreation passport fee paid under section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805, or under rules promulgated under section 74120(2).

(g) "Snowmobile account" means the snowmobile account of the legacy fund provided for in section 2025.

(h) "State park improvement account" means the state park improvement account of the legacy fund provided for in section 2030.

(i) "Waterways account" means the waterways account of the legacy fund provided for in section 2035.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 32, Eff. Oct. 1, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2002 Michigan conservation and recreation legacy fund.

Sec. 2002. (1) In accordance with section 40 of article IX of the state constitution of 1963, the Michigan conservation and recreation legacy fund is established in the state treasury.

(2) The state treasurer shall direct the investment of the legacy fund. The state treasurer shall establish within the legacy fund restricted accounts as authorized by this part. Interest and earnings from each account shall be credited to that account. The state treasurer may accept gifts, grants, bequests, or assets from any source for deposit into a particular account or subaccount.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2005 Forest recreation account.

Sec. 2005. (1) The forest recreation account is established as an account within the legacy fund.

(2) The forest recreation account shall consist of both of the following:

(a) All money in the forest recreation fund, formerly created in section 83104, immediately prior to the effective date of the amendatory act that added this section, which money is hereby transferred to the forest recreation account.

(b) Revenue from the following sources:

(*i*) Revenue derived from concessions, leases, contracts, and fees from recreational activities on state

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forestlands.

(*ii*) Other revenues as authorized by law.

(3) Money in the forest recreation account shall be expended, upon appropriation, only as provided in section 2045 and part 831 and for the administration of the forest recreation account.

(4) Money in the forest recreation account may be expended pursuant to subsection (3) for grants to state colleges and universities to implement programs funded by the forest recreation account.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 32, Eff. Oct. 1, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2010 Game and fish protection account.

Sec. 2010. (1) The game and fish protection account is established as an account within the legacy fund.

(2) The game and fish protection account shall consist of all of the following:

(a) Revenue derived from hunting and fishing licenses, passbooks, permits, fees, concessions, leases, contracts, and activities.

(b) Damages paid for the illegal taking of game and fish.

(c) Revenue derived from fees, licenses, and permits related to game, game areas, and game fish.

(d) Other revenues as authorized by law.

(3) Money in the game and fish protection account shall be expended, upon appropriation, only as provided in part 435 and for the administration of the game and fish protection account, which may include payments in lieu of taxes on state-owned land purchased through the game and fish protection account or through the former game and fish protection fund. The department shall manage land acquired with money from the game and fish protection account or the former game and fish protection fund through the use of scientific game species management for the primary purpose of managing habitat and thereby enhancing recreational hunting opportunities. Unless the department can demonstrate that the expenditure is for that primary purpose, and benefits to nongame species are a result of that primary purpose, both of the following apply:

(a) Money in the game and fish protection account shall not be expended for management of nongame species.

(b) Forest treatments on lands acquired with money from the game and fish protection account or the former game and fish protection fund shall not be undertaken to benefit nongame species.

(4) Money in the game and fish protection account may be expended pursuant to subsection (3) for grants to state colleges and universities to implement programs funded by the game and fish protection account if the department does not have the appropriate staff or other resources to implement the programs itself.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2015 Off-road vehicle account.

Sec. 2015. (1) The off-road vehicle account is established as an account within the legacy fund.

(2) The off-road vehicle account shall consist of both of the following:

(a) All money in the trail improvement fund, formerly created in section 81117, and the safety education fund, formerly created in section 81118, immediately prior to the effective date of the amendatory act that added this section, which money is hereby transferred to the off-road vehicle account.

(b) Revenue deriving from either of the following sources:

(*i*) Revenue from fees imposed upon the use or registration of off-road vehicles.

(*ii*) Other revenues as authorized by law.

(3) Money in the off-road vehicle account shall be expended, upon appropriation, only as provided in part 811 and for the administration of the off-road vehicle account.

(4) Money in the off-road vehicle account may be expended pursuant to subsection (3) for grants to state colleges and universities to implement programs funded by the off-road vehicle account.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect

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unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2020 Recreation improvement account.

Sec. 2020. (1) The recreation improvement account is established as an account within the legacy fund.

(2) The recreation improvement account shall consist of both of the following:

(a) All money in the recreation improvement fund, formerly created in section 71105, immediately prior to the effective date of the amendatory act that added this section, which money is hereby transferred to the recreation improvement account.

(b) Revenue from the following sources:

(*i*) Two percent of the gasoline sold in this state for consumption in internal combustion engines.

(*ii*) Other revenues as provided by law.

(3) Money in the recreation improvement account shall be used only as provided for in part 711 and for the administration of the recreation improvement account.

(4) Money in the recreation improvement account may be expended pursuant to subsection (3) for grants to state colleges and universities to implement programs funded by the recreation improvement account.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2025 Snowmobile account.

Sec. 2025. (1) The snowmobile account is established as an account within the legacy fund.

(2) The snowmobile account shall consist of both of the following:

(a) All money in the recreational snowmobile trail improvement fund, formerly created in section 82110, and the snowmobile registration fee fund, formerly created in section 82111, immediately prior to the effective date of the amendatory act that added this section, which money is hereby transferred to the snowmobile account.

(b) Revenue deriving from the following sources:

(*i*) Revenue from fees imposed for the registration or use of snowmobiles.

(*ii*) Revenues derived from the use of snowmobile trails.

(*iii*) Transfers from the recreation improvement account.

(*iv*) Other revenues as authorized by law.

(3) Money in the snowmobile account shall be expended, upon appropriation, only as provided in part 821 and for the administration of the snowmobile account, which may include payments in lieu of taxes on state owned land purchased through the snowmobile account or the former snowmobile trail improvement fund.

(4) Money in the snowmobile account may be expended pursuant to subsection (3) for grants to state colleges and universities to implement programs funded by the snowmobile account.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2030 State park improvement account.

Sec. 2030. (1) The state park improvement account is established as an account within the legacy fund.

(2) The state park improvement account shall consist of both of the following:

(a) All money in the state park improvement fund, formerly created in section 74108, immediately prior to the effective date of the amendatory act that added this section, which money is hereby transferred to the state park improvement account.

(b) Revenue from the following sources:

(*i*) Revenue derived from concessions, leases, contracts, fees, and permits from activities in or entry into state parks and recreation areas.

(*ii*) Unless otherwise provided by law, damages paid for illegal activities in state parks and recreation

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areas.

(*iii*) Other revenues as authorized by law.

(3) Money in the state park improvement account shall be expended, upon appropriation, only as provided in section 2045 and part 741 and for the administration of the state park improvement account.

(4) Money in the state park improvement account may be expended pursuant to subsection (3) for grants to state colleges and universities to implement programs funded by the state park improvement account.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 32, Eff. Oct. 1, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2035 Waterways account.

Sec. 2035. (1) The waterways account is established as an account within the legacy fund.

(2) The waterways account shall consist of both of the following:

(a) All money in the Michigan state waterways fund, formerly created in section 78110, the Michigan harbor development fund, formerly created in section 78110, and the marine safety fund, formerly created in section 80115, immediately prior to the effective date of the amendatory act that added this section, which money is hereby transferred to the waterways account.

(b) Revenue from the following sources:

(*i*) All revenue generated from watercraft registration fees assessed on the ownership or operation of watercraft in the state, of which not less than 49% shall be provided for law enforcement and education.

(*ii*) All revenues derived from fees charged for the moorage of watercraft at state-operated mooring facilities.

(*iii*) All revenues derived from fees charged for the use of state-operated public access sites.

(*iv*) Transfers from the recreation improvement account.

(*v*) All tax revenue derived from the sale of diesel fuel in this state that is used to generate power for the operation or propulsion of vessels on the waterways of this state.

(*vi*) Other revenues as authorized by law.

(3) Money in the waterways account shall be expended, upon appropriation, only as provided in parts 445, 781, 791, and 801 and for the administration of the waterways account, which may include payments in lieu of taxes on state owned lands purchased through the waterways account or through the former Michigan state waterways fund.

History: Add. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2012, Act 249, Imd. Eff. July 2, 2012.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.2045 Recreation passport fee revenue.

Sec. 2045. (1) The department shall distribute recreation passport fee revenue as follows:

(a) First, for necessary expenses incurred by the secretary of state each state fiscal year in administration and implementation of section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805. Funds appropriated for necessary expenses shall be based upon an established cost allocation methodology that reflects actual costs. Appropriations under this subdivision in a state fiscal year shall not exceed $1,000,000.00.

(b) The next $10,700,000.00 received each fiscal year shall be deposited in the state park improvement account.

(c) The next $1,030,000.00 received each fiscal year shall be deposited in the waterways account.

(d) The remaining revenue shall be deposited as follows:

(*i*) 50% in the state park improvement account to be used for capital improvements at state parks, including state recreation areas.

(*ii*) 30% in the state park improvement account to be used for operations and maintenance at state parks, including state recreation areas.

(*iii*) 2.75% in the state park improvement account to be used for operations, maintenance, and capital improvements of state park cultural and historic resources.

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(*iv*) 0.25% in the state park improvement account to be used to do all of the following:

(A) Promote, in concert with other state agencies, the use of state parks, state-operated public boating access sites, state forest campgrounds, and state forest nonmotorized trails and pathways.

(B) Promote the use of the internet for state park camping reservations and for payment of the recreation passport fee in conjunction with motor vehicle registration.

(*v*) 10% in the local public recreation facilities fund created in section 1911, to be used for development of public recreation facilities for local units of government.

(*vi*) 7% in the forest recreation account to be used for operating, maintaining, and making capital improvements to state forest campgrounds and the state forest system of pathways and nonmotorized trails, including, but not limited to, equestrian trails.

(2) For each state fiscal year, beginning with the 2011-2012 state fiscal year, the state treasurer shall adjust the amounts set forth in subsection (1)(b) and (c) by an amount determined by the state treasurer to reflect the cumulative percentage change in the consumer price index for the most recent 1-year period for which data are available. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.

(3) By January 15 of each year, the department, in consultation with the department of state, shall estimate the amount of additional revenue that would have been collected as recreation passport fees during the immediately preceding state fiscal year if owners of resident motor vehicles described in sections 74116(4)(c) and 78119(4)(b) were not exempt under those provisions from paying the recreation passport fee. The department shall estimate the amount as follows:

(a) Determine the total number of resident motor vehicles described in sections 74116(4)(c) and 78119(4)(b).

(b) Multiply the number under subdivision (a) by the percentage of resident motor vehicles with single-year registrations for which a recreation passport fee was paid during the preceding state fiscal year.

(c) Subtract from the result under subdivision (b) the number of resident motor vehicles described in sections 74116(4)(c) and 78119(4)(b) for which a recreation passport fee was paid during the preceding state fiscal year under rules promulgated under section 74120(3).

(d) Multiply the result under subdivision (c) by the current amount of the recreation passport fee during the preceding state fiscal year.

(4) The legislature shall annually appropriate from the general fund a sum equal to the amount estimated under subsection (3). The sum appropriated shall be distributed as provided in subsection (1)(d).

(5) The department shall submit a report to the standing committees and appropriations subcommittees of the legislature with jurisdiction over issues pertaining to natural resources and the environment by February 1 each year. The report shall provide information on all of the following for the preceding state fiscal year:

(a) The total amount of recreation passport fee revenue received by the department and the amounts allocated under subsection (1).

(b) The total amount of annual and daily state park motor vehicle permit fee revenue received by the department under section 74117.

(c) The total amount of seasonal or daily state-operated public boating access site revenue received by the department under section 78105(3).

(d) Details on the specific uses of the revenue described in subdivisions (a), (b), and (c) and the amounts expended for each specific use.

(e) The amount of revenue received during the preceding state fiscal year under subsection (4).

(f) The adequacy of the revenue described in subdivisions (a) and (e) for each of the purposes for which it is allocated under subsection (1).

(g) The impact of the state park revenue stream described in subdivisions (a), (b), and (d) on the Michigan state parks endowment fund created in section 35a of article IX of the state constitution of 1963 and provided for in section 74119.

(h) Other relevant issues that affect funding needs for the state park system.

(6) By February 1, 2012 and every 2 years thereafter, the department shall submit a report to the standing committees and appropriations subcommittees of the legislature with jurisdiction over issues pertaining to natural resources and the environment. The report shall provide information on how frequently motor vehicles for which the registrant declined to pay the recreation passport fee entered state parks and state-operated public boating access sites designated under section 78105 during the registration period. The information shall be based on random audits conducted by the department. A report under this subsection may be combined with a report required under subsection (5).

(7) The department may prepare a list of frequently asked questions and answers concerning the recreation

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passport fee. The department and the department of state may post the information on their websites. The department of state may provide the information with any applications for registration of motor vehicles that are mailed by the department of state.

History: Add. 2010, Act 32, Eff. Oct. 1, 2010;—Am. 2013, Act 81, Eff. May 1, 2014.

Popular name: Act 451

Popular name: NREPA

PART 21
GENERAL REAL ESTATE POWERS

SUBPART 1
SALE OR LEASE OF STATE LANDS FOR PUBLIC PURPOSES

324.2101 State lands; sale or transfer for public purpose; transfer of jurisdiction to other state agencies; reverter clause.

Sec. 2101. (1) The department may sell tax reverted state lands under its control to school districts, to churches and other religious organizations, to public educational institutions for public purposes, to the United States, and to governmental units of this state and agencies thereof. The lands shall be sold at a price determined by an appraisal, subject to section 2132a. The department may transfer jurisdiction of tax reverted state lands for public purposes to any department, board, or commission of this state. The application for the purchase or transfer of tax reverted state lands shall be made by the proper officers of a school district, church or other religious organization, public educational institution, the United States, or governmental unit or agency thereof upon forms prepared and furnished by the department for that purpose.

(2) The department may sell tax reverted lands to any entity described in subsection (1), and the transfer of the lands is not subject to a reverter clause. If a conveyance or transfer of lands is made to a governmental unit without a reverter clause, the department may convey or transfer the lands at a price determined by an appraisal, subject to section 2132a, or at a nominal fee that includes any amount paid by the department for maintaining the lands in a condition that is protective of the public health and safety. If lands are conveyed or transferred for a nominal fee and are subsequently sold by the governmental unit for a valuable consideration, the proceeds from such a sale, after deducting the fee and any amount paid by the local governmental units for maintaining the lands in a condition that is protective of the public health and safety, shall be paid to the state, county, township, and school district in which the lands are situated pro rata according to their several interests in the lands arising from the nonpayment of taxes and special assessments on the lands as the interest appears in the offices of the state treasurer or county, city, or village treasurer.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2102 Conveyance of tax reverted land to public agency without monetary consideration; reverter.

Sec. 2102. Notwithstanding section 2101, the department may convey tax reverted land to a public agency described in section 2101 without monetary consideration but subject to a reverter to this state upon termination of the use of the land for which the conveyance was approved by the department or upon any use of the land other than the use for which the conveyance was approved.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2102a Sale or transfer of trail or trailway; retention of rail interest and easement.

Sec. 2102a. If the state sells or transfers land containing a Michigan trailway established under part 721, an off-road vehicle trail established under part 811, or a snowmobile trail established under part 821, the state shall retain an easement for the continued use of the trail or trailway. If the trail or trailway at issue is subject to an interest by which the trail or trailway could be transformed into or reactivated as a railroad, then the sale or transfer of the trail or trailway is subject to the rail interest and any easement retained by the state on the trail or trailway is also subject to the rail interest.

History: Add. 1998, Act 17, Imd. Eff. Mar. 9, 1998.

Popular name: Act 451

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Popular name: NREPA

SUBPART 2
DELINQUENT TAXES ON PART-PAID LANDS

324.2103 Unpaid tax list; lands patented after assessment; preparation; supervisors to reassess; collection; return.

Sec. 2103. (1) On October 1 of each year, the department shall prepare lists showing the descriptions of lands upon which taxes have been assessed for the current year while the lands were part-paid, but which had been patented by the state, and upon which taxes have not been paid, and shall forward the lists to the supervisor of the township where the lands are located.

(2) The supervisor of the township receiving a list described in subsection (1) shall reassess the taxes reported in the list for the same land.

(3) The township treasurer shall collect and return the taxes in the same manner as provided for the collection and return of other taxes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 3
EXCHANGE OF STATE LANDS

324.2104 Exchange of lands; authorization; refund of application fee; approval or denial of application; application fee.

Sec. 2104. (1) Any of the lands under the control of the department, the title to which is in this state, and which may be sold and conveyed may be exchanged for lands of equal area or approximately equal value belonging to the United States or owned by private individuals if it is in the interest of this state to do so.

(2) If the department charged an application fee for a proposed sale of land under this part and the state land proposed for sale is instead sold to another party within 3 years after the date a completed application was received by the department from the prior applicant, the department shall refund the application fee in full to the prior applicant if the prior applicant has informed the department of his or her current address.

(3) Effective 60 days after the department receives an application from a private individual to exchange that individual's land for surplus state land, the application shall be considered to be complete unless the department proceeds as provided under subsection (4).

(4) If, before the expiration of the 60-day period under subsection (3), the department notifies the applicant, in writing, that the application is not complete, specifying the information necessary to make the application complete, or that the fee required under subsection (6) has not been paid, specifying the amount due, the running of the 60-day period under subsection (3) is tolled until the applicant submits to the department the specified information or fee amount due, at which time the application shall be considered to be complete.

(5) Within 210 days after the application is complete, or a later date agreed to by the applicant and the department, the department shall approve or deny the application and notify the applicant in writing. If the department denies the application, the notice shall set forth the specific reasons for the denial.

(6) The department shall charge a fee for an application for the exchange of state land. The fee shall be $300.00 plus, if the state land is more than 300 acres in size, the actual reasonable cost of processing the application.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 28, Imd. Eff. Mar. 18, 1998;—Am. 2018, Act 238, Eff. Sept. 25, 2018;—Am. 2022, Act 2, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.2105 Exchange of lands with United States; description; maintenance; conveyance; validity.

Sec. 2105. If the department determines that it is in the best interests of the state to relinquish or convey to the United States under the laws of the United States any part or portion of the lands described in section 2104 in exchange for other lands of equal area or approximately equal value to be selected by the department from the unappropriated public lands in this state that belong to the United States and that may be relinquished or conveyed to the state by the United States under the laws of the United States, the department shall maintain a

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description of the lands belonging to the state that are to be relinquished or conveyed to the United States, and, upon making arrangements with the proper authorities of the United States, the department shall execute the proper conveyance to the United States of the lands to be relinquished or conveyed. This conveyance shall be void if the lands of an equal area or approximately equal value are not relinquished or conveyed by the United States to the state in lieu of the lands and in accordance with selections made by the department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2106 Availability of writings; exchange of lands with private individuals; description; maintenance; conveyance by individual; title; certification by attorney general; conveyance by state.

Sec. 2106. (1) The department shall maintain on its website and make available in writing to persons seeking to purchase land from, sell land to, or exchange land with the department under this part information about relevant requirements and procedures under this part and section 503(11) and (12).

(2) If it is in the interests of this state to exchange any of the lands described in section 2104 for lands of an equal area or of approximately equal value belonging to private individuals, the department shall maintain a description of the lands to be conveyed and a description of the lands belonging to individuals to be deeded to this state.

(3) Before any of the lands are deeded to an individual as provided in this subpart, the person or persons owning any lands to be deeded to this state shall execute a conveyance of those lands to this state. The department shall accept delivery of the deed. The attorney general shall examine the title to the lands deeded to this state and certify to the department whether or not the conveyance is sufficient to vest in this state a good and sufficient title to the land free from any liens or encumbrances. If the attorney general certifies that the deed vests in this state a good and sufficient title to the deeded lands free from any liens or encumbrances, the department shall within 30 days execute a deed to the individual of the lands to be conveyed by this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 240, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2107 Acquired lands; classification; control; application by private individual for exchange.

Sec. 2107. If the state acquires lands under this subpart, under former Act No. 193 of the Public Acts of 1911, or pursuant to the laws of the United States providing for an exchange of lands between the United States and the state, the lands acquired by the state shall become a part or portion of that class of lands to which the lands relinquished in lieu of the lands formerly belonged, and shall be subject to the same supervision and control and laws of the state to which the lands relinquished or conveyed by the state would have been subject had they remained the property of the state. However, an application from private individuals for the exchange of their lands for lands proposed to be acquired by the state from the United States under section 2104 shall not be received, filed, or in any manner considered or acted upon until after the state has received conveyance of the lands from the United States, and then applications from private individuals for the exchange of their lands shall be filed, considered, and acted upon only in the order in which they are received.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2108 Conveyance to United States pursuant to property rights acquisition act.

Sec. 2108. Any land that is exchanged, relinquished, or otherwise conveyed to the United States under this subpart shall be conveyed pursuant to the property rights acquisition act, Act No. 201 of the Public Acts of 1986, being sections 3.251 to 3.262 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 4
RECORD OF DEEDS FOR TAX HOMESTEAD LANDS

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324.2109 Tax homestead lands; legal records; certified copies as evidence.

Sec. 2109. The department shall record, in a suitable book or books kept for that purpose, true copies of all deeds issued by the department for tax homestead lands under the laws of this state providing for the disposal of tax homestead lands, and these copies of deeds issued and deeds which may hereafter be issued are legal records. These legal records, or a transcript of the records, duly certified by the department or other officer having custody of the records, may be read in evidence in all courts of this state, with the same force and effect as the original tax homestead deed.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2110 Tax homestead lands; record of copy of deed.

Sec. 2110. The registers of deeds in the several counties of this state shall receive and record all copies of tax homestead deeds, duly certified to by the department or other officer having the custody of the records, and the record of the certified copy has the same force and effect as the record of the original deed.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2111 Records; certified copy; fee; recording conditions; perjury.

Sec. 2111. The department or other officer having charge of the records described in this subpart shall, upon application from any person, make a certified copy of any tax homestead deed, as provided in this subpart, upon the payment by the applicant of $1.50 for each certified copy. As a condition precedent to the recording of a copy of the deed, there shall be attached to the certified copy a sworn statement of the grantee named in the deed, or his or her assign, heir, trustee, or grantee, that the original deed has been lost or is not available for record, and any person swearing falsely under this subpart is subject to the penalties of perjury.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBPART 6
SALE AND RECLAMATION OF SWAMP LANDS

324.2120 Swamp lands; adoption of notes of surveys on file; sale; restrictions; procurement of records.

Sec. 2120. (1) The department shall adopt the notes of the surveys on file in the surveyor general's office as the basis upon which they will receive the swamp lands granted to the state by an act of congress of September 28, 1850.

(2) Swamp lands described in subsection (1) shall only be sold in the same legal subdivisions in which they are received by the state, and none of the lands are subject to private entry until the lands have been offered for sale at public auction as provided in former Act No. 187 of the Public Acts of 1851.

(3) The department may procure all necessary books, maps, or plats of swamp lands as required for the speedy and systematic transaction of the business of the department, and all proper charges for the books, maps, or plats shall be paid out of funds received from the sale of lands under former Act No. 187 of the Public Acts of 1851.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2120a Conveyance of certain land in Calhoun County; legislative findings; identification of current de facto owner; reimbursement for expenses; conveyance to adjacent de facto owner; legal description as approximate; legal effect of interest, right, or obligation; cause of action not created; quitclaim deed; "de facto owner" defined.

Sec. 2120a. (1) This section applies and sections 2120 and 2121 do not apply to the receipt of the following lands by patent or otherwise from the United States or to the conveyance of those lands by the department as provided in this section:

Property located in Clarence Township, Calhoun County, Township 1 South, Range 4 West, Michigan

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Meridian:

(a) Government lots 1 to 10 in section 23.

(b) Government lots 1 to 3 in section 24.

(c) Government lot 1 in section 25.

(d) Government lots 1 to 7 and 10 to 13 in section 26.

(e) Government lots 1 to 4 in section 27.

(f) Government lot 1 in section 35.

(2) The legislature finds all of the following:

(a) Under statutes of the United States enacted in 1850 and subsequently, the governor of this state has had the power to request the conveyance of swamplands from the United States to this state.

(b) Some conveyances described in subdivision (a) have been requested and made to this state in the past.

(c) However, although the property described in subsection (1) has been eligible for a request and conveyance as described in subdivision (a), no such request and conveyance has ever been made.

(d) A number of citizens of this state are occupants and de facto owners under color of title of portions of the property described in subsection (1). These individuals have made improvements to, maintained, and paid taxes on those portions of the property held under color of title.

(e) It is the intent of the legislature, through this section, to obtain title from the United States to the property described in subsection (1) and to convey the property to the appropriate citizens.

(3) If the governor applies to the bureau of land management of the department of the interior of the United States, or to any other official or agency of the United States that the governor determines is appropriate, for the conveyance of the lands described in subsection (1) to this state, by patent or otherwise, under an 1850 act of congress, chapter 84, 9 Stat. 519, under 43 USC 981 to 986, or under any other applicable law, and if the lands are conveyed to this state, the department shall use its best efforts to determine the identity of the current de facto owners of the lands. In making the determination required by this subsection, the department shall consult with the department of the attorney general.

(4) The department may require a person claiming to be a de facto owner of any of the lands to reimburse the department, in advance of the conveyance of the property if the department determines necessary, for any expense incurred by the department or the department of the attorney general in making the determination under subsection (3) and in conveying the property under subsection (6).

(5) The department is not required to take any steps to make a determination under subsection (3) other than the steps that the department, in its discretion, determines are reasonably necessary. If the department is unable to determine a de facto owner for a portion of the land or is unable to determine which of 1 or more potential de facto owners has the most legitimate claim to a portion of the land, the department is not required to bring or actively participate in a quiet title action or any other legal action with respect to the property. If the department determines that there is no de facto owner for a portion of the property, the department, in its sole discretion, may convey the portion to an adjacent de facto owner.

(6) After making a determination under subsection (3), the department shall convey a portion or portions of the property described in subsection (1) to a de facto owner as determined under subsections (3) and (5).

(7) The legal description in subsection (1) is approximate for purposes of this section. If the department determines that there is a discrepancy between the legal description in subsection (1) and the legal description of property received by this state under this section, the department, as directed by the department of attorney general, may adjust the description accordingly in any deeds prepared under this section.

(8) The department is not responsible for recording a deed prepared under this section or any costs or fees for or associated with the recording.

(9) Any interests or rights in, or obligations connected to, land conveyed under subsection (6) created before the conveyance under subsection (6) have the same legal effect as if the conveyance under subsection (6) preceded the creation of the interest, right, or obligation, including, but not limited to, any of the following:

(a) A street or highway right of way.

(b) A utility, drain, or other easement.

(c) A mortgage.

(d) A leasehold.

(e) Mineral rights.

(f) A construction lien.

(g) An interest resulting from an attachment, execution, or other judicial process.

(h) A tax or tax lien, whether federal, state, or local.

(i) A special assessment.

(j) Any other governmental lien.

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(k) Any other lien.

(10) Subsection (9) is intended to affirm title to real property and does not create a cause of action for or otherwise constitute a basis for a tax refund or a property tax appeal.

(11) The department shall make a conveyance under subsection (6) by quitclaim deed, approved by the department of attorney general.

(12) As used in this section, "de facto owner" means a person that could reasonably be considered the owner of the land despite not having good legal title, as indicated by 1 or more of the following:

(a) A purported chain of title that would show marketable title in the person if a valid governmental patent or other conveyance had been given to the appropriate predecessor in the chain of title.

(b) Payment of property taxes on the land by the person.

(c) Possession of and improvement to or maintenance of the land by the person.

(d) Any other similar factor that the department in its discretion determines should be considered.

History: Add. 2015, Act 18, Imd. Eff. Apr. 29, 2015.

Popular name: Act 451

Popular name: NREPA

SUBPART 7

RECEIPT OF MONEY FROM SALE OF SWAMP LANDS

324.2121 Swamp lands; interest of state; release.

Sec. 2121. The state treasurer may receive from the United States any money that may have been received, or that may hereafter be received, for any of the swamp lands donated to this state, and the department may take an assignment of all bounty land warrants received for any swamp lands sold in this state since the act of congress approved September 28, 1850, and release the interest of the state in any lands sold or entered with the warrants to purchasers or their assigns.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBPART 8

EASEMENTS OVER STATE OWNED LANDS

324.2123 Granting easement over state-owned land under jurisdiction of department to individual; conditions; 30-day period to consider application; notification of incomplete application; tolling of time period; time period for approval or denial of application.

Sec. 2123. (1) Subject to sections 2123a and 2124, the department may grant or otherwise provide for an easement for a road over state-owned land under the jurisdiction of the department to an individual if all of the following conditions are met:

(a) The individual applies for the easement on a form provided by the department.

(b) The individual does not have other legal access to the individual's land.

(c) The easement does not conflict with any of the following:

(*i*) An existing program or management as described in an existing plan of the department.

(*ii*) A local ordinance.

(d) The road for which the easement is granted is open to public access and not for the exclusive use of the grantee.

(e) The easement provides the logical and most feasible access to the individual's land.

(f) The width of the road is restricted to the minimum consistent with the quality of the road required.

(g) The individual agrees to construct, if necessary, and maintain the road.

(h) The individual offers a similar road easement to the department to provide public access to state-owned land across the individual's land to which the easement is to be granted by the department, where applicable. The department shall not accept a road easement under this subdivision if the road easement would end at a body of water.

(i) The individual does all of the following:

(*i*) Pays the cost of a survey.

(*ii*) Pays the department the fair market value of the easement. The fair market value of the easement granted by the department shall be offset by the fair market value of any easement granted to the department under subdivision (h).

(2) Effective 30 days after the department receives an application for an easement, the application shall be

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considered to be complete unless the department proceeds as provided under subsection (3).

(3) If, before the expiration of the 30-day period under subsection (1), the department notifies the applicant, in writing, that the request is not complete, specifying the information necessary to make the request complete, the running of the 30-day period under subsection (2) is tolled until the applicant submits to the department the specified information, at which time the request shall be considered to be complete.

(4) Within 90 days after the application is considered to be complete, the department shall grant or deny the application for the easement and notify the applicant in writing. If the department denies the application, the notice shall set forth the reasons for the denial.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2011, Act 323, Imd. Eff. Dec. 27, 2011.

Popular name: Act 451

Popular name: NREPA

324.2123a Granting easement over state-owned land under jurisdiction of department to individual; conditions; 30-day period to consider application; notification of incomplete application; tolling of time period; time period for approval or denial of application.

Sec. 2123a. (1) Subject to section 2124 and notwithstanding section 2123, the department shall grant or otherwise provide for an easement for a road over state-owned land under the jurisdiction of the department to an individual if all of the following conditions are met:

(a) The individual applies for the easement on a form provided by the department.

(b) The individual does not have other legal access to the individual's land.

(c) The easement does not conflict with any of the following:

(*i*) With an existing program or management as described in an existing plan of the department.

(*ii*) If the land was acquired using revenue from hunting and fishing license fees, federal funds from a wildlife or sport fish restoration program, or other state or federal program funds, with state or federal laws governing the use of lands acquired through the respective program.

(*iii*) With a local ordinance.

(d) The easement does not cross an environmentally sensitive area, including, but not limited to, a wetland as defined in section 30301 or a critical dune area as defined in section 35301.

(e) The individual offers a similar road easement to the department to provide public access to state-owned land across the individual's land to which the easement is to be granted by the department, where applicable. The department shall not accept a road easement under this subdivision if the road easement would end at a body of water.

(f) The individual does all of the following:

(*i*) Pays the cost of a survey.

(*ii*) Pays to the department the fair market value of the easement. The fair market value of the easement granted by the department shall be offset by the fair market value of any easement granted to the department under subdivision (e).

(2) Effective 30 days after the department receives an application for an easement, the application shall be considered to be complete unless the department proceeds as provided under subsection (3).

(3) If, before the expiration of the 30-day period under subsection (1), the department notifies the applicant, in writing, that the request is not complete, specifying the information necessary to make the request complete, the running of the 30-day period under subsection (2) is tolled until the applicant submits to the department the specified information, at which time the request shall be considered to be complete.

(4) Within 90 days after the application is considered to be complete, the department shall grant or deny the application for the easement and notify the applicant in writing. If the department denies the application, the notice shall set forth the reasons for the denial.

(5) The department may impose conditions on an easement granted under this section.

History: Add. 2011, Act 323, Imd. Eff. Dec. 27, 2011.

Popular name: Act 451

Popular name: NREPA

324.2124 Granting easement over state-owned land under jurisdiction of department prohibited.

Sec. 2124. The department shall not grant an easement over state-owned land under the jurisdiction of the department if any of the following apply:

(a) The proposed easement is over land designated as a wilderness area, wild area, or natural area under part 351.

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(b) The proposed easement is over land in an area closed to vehicular traffic pursuant to management as described in an existing plan of the department.

(c) The construction or use of the new or existing road will result in unreasonable damage to or destruction of the surface, soil, animal life, fish or other aquatic life, or property.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2011, Act 323, Imd. Eff. Dec. 27, 2011.

Popular name: Act 451

Popular name: NREPA

324.2125 Granting easement over state owned land under jurisdiction of department to individual; interest in land required; "interest" defined; construction of words and phrases used to define interest.

Sec. 2125. (1) The department shall not grant an easement over state owned land under the jurisdiction of the department to an individual unless that individual has an interest, as that term is defined in this section, in the land to which the easement is to provide access.

(2) As used in this section, "interest" means an estate in possession other than a chattel interest, which may be in severalty, joint tenancy, tenancy by the entireties, or tenancy in common.

(3) The words and phrases used in subsection (2) to define interest shall be construed pursuant to chapter 62 of the Revised Statutes of 1846, being sections 554.1 to 554.46 of the Michigan Compiled Laws; Act No. 126 of the Public Acts of 1925, being section 557.81 of the Michigan Compiled Laws; and Act No. 210 of the Public Acts of 1927, being sections 557.101 to 557.102 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2126 Payment of charges by individual applying for easement; application fee.

Sec. 2126. Before the department grants an easement under this subpart, the individual applying for the easement shall pay charges as required by the department. The charges shall be the same as those charges required for the granting of an easement under subpart 9. However, the department may charge a fee for an application for the grant of an easement under this subpart. The fee shall not exceed the actual reasonable cost of processing an application for an easement or $300.00, whichever is less.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2011, Act 323, Imd. Eff. Dec. 27, 2011;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2127 Disposition of revenues.

Sec. 2127. The revenues received from the charges levied under section 2126, less amounts necessary to pay the expenses of administering this subpart, shall be credited to the state fund from which the revenue is appropriated for the payment in lieu of taxes on the land crossed.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2128 Termination of easement; hearing.

Sec. 2128. (1) If the land to which an easement is granted by the department pursuant to this subpart or former Act No. 421 of the Public Acts of 1982 is subsequently subdivided, as this term is defined by section 102 of the subdivision control act, Act No. 288 of the Public Acts of 1967, being section 560.102 of the Michigan Compiled Laws, the easement shall terminate.

(2) If an individual who obtains an easement pursuant to this subpart violates the terms of the easement, the easement shall terminate, and any rights in the easement shall terminate, after opportunity for a hearing under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, is provided.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 9

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324.2129 Easements for public utilities over state lands; disposition of revenue.

Sec. 2129. The department may grant easements, upon terms and conditions the department determines just and reasonable, for state and county roads and for the purpose of constructing, erecting, laying, maintaining, and operating pipelines, electric lines, telecommunication systems, and facilities for the intake, transportation, and discharge of water, including pipes, conduits, tubes, and structures usable in connection with the lines, telecommunication systems, and facilities, over, through, under, and upon any and all lands belonging to the state which are under the jurisdiction of the department and over, through, under, and upon any and all of the unpatented overflowed lands, made lands, and lake bottomlands belonging to or held in trust by this state. Except as otherwise specifically provided by law, revenue received as the result of the granting of an easement shall be deposited in the state fund from which revenues are appropriated for the payment in lieu of taxes required to be paid in relation to state land under subpart 14.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 10
LAND EXCHANGE FACILITATION FUND

324.2130 Definitions.

Sec. 2130. As used in this subpart:

(a) "Board" means the Michigan natural resources trust fund board established in section 1905.

(b) "Fund", unless the context implies otherwise, means the land exchange facilitation and management fund created in section 2134.

(c) "Land" includes lands, tenements, and real estate and rights to and interests in lands, tenements, and real estate.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

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324.2131 Designation and sale of surplus land; restrictions.

Sec. 2131. (1) Subject to subsection (2), the department may designate as surplus land any state-owned land that is under the control of the department and may, on behalf of this state, sell that land if the sale is not otherwise prohibited by law and the department has considered all of the following:

(a) Whether the sale will not materially diminish the quality or utility of other state-owned land adjoining the land to be sold.

(b) Whether the sale is in the best interests of this state, giving due regard to the variety, use, and quantity of lands then under the control of the department.

(c) Whether the sale will resolve an inadvertent trespass.

(d) Whether the sale will promote the development of the forestry or forest products industry or the mineral extraction and utilization industry or other economic activity in this state.

(2) Except as provided in section 74102b, the department shall not designate as surplus land any land within a state park, state recreation area, state fish hatchery, state game area, or state public boating access site.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2001, Act 174, Imd. Eff. Dec. 11, 2001;—Am. 2006, Act 308, Imd. Eff. July 20, 2006;—Am. 2012, Act 622, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2132 Sale of surplus land; price; methods; sale to highest bidder; condition to acceptance of bid; application for negotiated sale; application fee; notice; disposition of proceeds; quitclaim deed; consideration of application; local preference.

Sec. 2132. (1) Subject to subsection (2), the department may sell surplus land at a price established using the method that the department determines to be most appropriate, such as any of the following:

(a) Appraisal, subject to section 2132a.

(b) Appraisal consulting.

(c) A schedule adopted by the department for pricing property with uniform characteristics and low utility.

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(d) The true cash value of nearby land as determined by the local assessor.

(2) If the department offers tax reverted land for sale and the land is not sold within 9 months, the department may sell the land to a qualified buyer who submits an offer that represents a reasonable price for the property as determined by the department.

(3) The sale of surplus land shall be conducted by the department through 1 of the following methods:

(a) A public auction sale.

(b) A negotiated sale.

(4) Subject to subsection (1), the sale of surplus land through a public auction sale shall be to the highest bidder.

(5) Effective 60 days after the department receives an application to purchase surplus land through a negotiated sale, the application shall be considered to be complete unless the department proceeds as provided under subsection (6).

(6) If, before the expiration of the 60-day period under subsection (5), the department notifies the applicant, in writing, that the application is not complete, specifying the information necessary to make the application complete, or that the fee required under subsection (8) has not been paid, specifying the amount due, the running of the 60-day period under subsection (5) is tolled until the applicant submits to the department the specified information or fee amount due, at which time the application shall be considered to be complete. Notice under this subsection shall include a statement of the requirements of subsection (12).

(7) Within 210 days after the application is considered to be complete, or a later date agreed to by the applicant and the department, the department shall approve or deny the application and notify the applicant in writing. If the department denies the application, the notice shall set forth the specific reasons for the denial.

(8) The department shall charge a fee for an application for the purchase of surplus land. The fee shall be $300.00 plus, if the surplus land is more than 300 acres in size, the actual reasonable cost of processing the application.

(9) A notice of the proposed sale of surplus land shall be given as provided in section 2165.

(10) The proceeds from the sale of surplus land shall be deposited into the fund.

(11) Surplus land that is sold under this subpart shall be conveyed by quitclaim deed approved by the attorney general.

(12) Each application, as may be later amended or supplemented, submitted by a private person under subsection (3)(b) for the purchase of land shall be considered and acted upon by the department to final decision before any other application submitted at a later date by a different private person for the purchase or exchange of the same land. However, if an application is not completed or the fee under subsection (8) is not paid within 60 days after the department notifies the applicant under subsection (6) that the application is incomplete or that the fee has not been paid, the department shall consider and act upon to final decision an application submitted at a later date that is completed and for which the fee has been paid before that previously submitted application.

(13) In a land transaction, the department may give preference to a local unit of government but shall not give preference to any other person.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 117, Imd. Eff. June 9, 1998;—Am. 2012, Act 240, Imd. Eff. July 2, 2012;—Am. 2012, Act 622, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 238, Eff. Sept. 25, 2018;—Am. 2022, Act 2, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.2132a Purchase or sale based on appraised value.

Sec. 2132a. If land is proposed for purchase or sale by or exchange with the department under this act based on its appraised value, if 2 or more appraisals of the land that meet department standards are made on behalf of the parties to the proposed transaction, and if the high appraisal is less than 10% higher than the low appraisal, the accepted value for purposes of the purchase, sale, or exchange shall be the average of all the appraised values. If the high appraisal is at least 10% higher than the low appraisal, the parties may agree upon a new appraiser, whose appraisal, or determination based on review of the existing appraisals, shall be the accepted value for purposes of the purchase, sale, or exchange. The department is responsible for the new appraiser's fee.

History: Add. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2133 List of surplus lands.

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Sec. 2133. (1) Upon request, the department shall furnish a list of surplus lands being offered for sale at public auction. The surplus land sale list shall include all of the following:

(a) The date, time, and place of sale.

(b) Descriptions of surplus lands being offered.

(c) The conditions of sale.

(2) Upon request, the department shall furnish a list of surplus lands being offered in a negotiated sale. The surplus land negotiated sale list shall include both of the following:

(a) The date, time, and place that the department will meet to authorize the sale.

(b) Descriptions of surplus lands being offered.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 240, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2134 Land exchange facilitation and management fund; creation; deposit of money or other assets; investment; administration; money carried over.

Sec. 2134. (1) A land exchange facilitation and management fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) The fund shall be administered by the department and shall be used only as provided in section 2135.

(4) Any money, including interest earned by the fund, remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall not lapse to the general fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 239, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2135 Land exchange facilitation and management fund; use of money; purchase of land identified in recommendation; report.

Sec. 2135. (1) Money from the fund shall be used by the department only for the following purposes:

(a) The purchase of land for natural resources management if the land meets the needs outlined in the strategic plan most recently approved by the legislature under section 503.

(b) The costs of advertising, appraisals, negotiations, surveys, and closings incurred by the department in the sale of surplus land.

(c) The costs of environmental assessments, appraisals, negotiations, surveys, and closings incurred by the department in the purchase of land authorized by this subpart.

(d) The costs of managing the natural resources for public recreation activities and public recreation development projects on department-managed land.

(2) The report required by section 506 shall include a summary of all the disbursements of money from the fund for the purposes listed in subsection (1).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 239, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2136 Construction of subpart.

Sec. 2136. This subpart does not limit the authority of the department to exchange land as provided in subpart 3.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2137 Sale or exchange of land not designated as surplus land; exclusions.

Sec. 2137. (1) Upon request, the department shall consider selling or exchanging land that is not designated as surplus land. The sale or exchange of the land is subject to the same procedures as apply to the sale of land that is designated as surplus land under this subpart.

(2) Subsection (1) does not apply to land in a state park, state recreation area, state fish hatchery, state game area, or state public boating access site. Subsection (1) does not apply to a request to sell land if the request meets the requirements of section 2138.

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History: Add. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.2138 Sale or lease of certain land; notice of proposed sale or lease; disposition of proceeds.

Sec. 2138. (1) Upon request, the department shall consider selling or leasing land if both of the following requirements are met:

(a) The prospective buyer or lessee is an existing business located adjacent to state land and is limited from expansion because of adjacent state land.

(b) The sale or lease will result in a net economic benefit or other benefit for a local unit of government or region.

(2) The department shall give notice of the proposed sale or lease of the land as provided in section 2165.

(3) In making its decision on the request under subsection (1), the department shall consider both of the following:

(a) Any comments on the proposed sale or lease from local units of government or other persons.

(b) The impact on natural resources and outdoor recreation in this state, giving due regard to the variety, use, and quantity of lands then under control of the department.

(4) The price for sale of the land shall be established using a method determined appropriate by the department and agreed to by the applicant, such as those listed in section 2132(1).

(5) Proceeds from sale of the land shall be deposited in the fund that provided the revenue for the acquisition of the land by the department. If there is more than 1 such fund, the revenue shall be deposited in the funds in amounts proportionate to their respective contributions for the department's acquisition of the land. To the extent that the land was in whole or in part acquired other than with restricted fund revenue, a proportionate amount of proceeds of the sale of the land shall be deposited in the land exchange facilitation and management fund created in section 2134.

History: Add. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

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SUBPART 11
CONSERVATION AND HISTORIC PRESERVATION EASEMENT

324.2140 Definitions.

Sec. 2140. As used in this subpart:

(a) "Conservation easement" means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

(b) "Historic preservation easement" means an interest in land that provides a limitation on the use of a structure or site that is listed as a national historic landmark under chapter 593, 49 Stat. 593, 16 U.S.C. 461 to 467, commonly known as the historic sites, buildings, and antiquities act; is listed on the national register of historic places pursuant to the national historic preservation act of 1966, Public Law 89-665, 16 U.S.C. 470 to 470a, 470b, and 470c to 470x-6; is listed on the state register of historic sites pursuant to Act No. 10 of the Public Acts of 1955, being sections 399.151 to 399.152 of the Michigan Compiled Laws; or is recognized under a locally established historic district created pursuant to the local historic districts act, Act No. 169 of the Public Acts of 1970, being sections 399.201 to 399.215 of the Michigan Compiled Laws, or requires or prohibits certain acts on or with respect to the structure or site, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the structure or site or in an order of taking, if the interest is appropriate to the preservation or restoration of the structure or site.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.2141 Conservation easement; enforcement; recordation.

Sec. 2141. A conservation easement granted to a governmental entity or to a charitable or educational association, corporation, trust, or other legal entity is enforceable against the owner of the land or body of water subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to particular land or a body of water, or the fact that the benefit may be assigned to another governmental entity or legal entity, including a conservation easement executed before March 31, 1981. The easement shall be recorded with the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value without actual notice.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2142 Historic preservation easement; enforcement; recordation.

Sec. 2142. A historic preservation easement granted to a governmental entity or to a charitable or educational association, corporation, trust, or other legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b) is enforceable against the owner of the structure or site subject to the easement despite a lack of privity of estate or contract, a lack of benefit running to the particular structure or site, or the fact that the benefit may be assigned to another governmental entity or legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b), including a historic preservation easement executed before March 31, 1981. The easement shall be recorded with the register of deeds in the county in which the land is located to be effective against a bona fide purchaser for value without actual notice.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2143 Enforceability of restriction, easement, covenant, or condition.

Sec. 2143. This subpart does not render unenforceable a restriction, easement, covenant, or condition that does not have the benefit of this subpart.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2144 Conservation easement or historic preservation easement as interest in real estate; document creating easement as conveyance; recordation; enforcement; assignment.

Sec. 2144. (1) A conservation easement or historic preservation easement is an interest in real estate, and a document creating 1 of those easements shall be considered a conveyance of real estate and shall be recorded in accord with Act No. 103 of the Public Acts of 1937, being sections 565.201 to 565.203 of the Michigan Compiled Laws, in relation to the execution and recording of instruments. The easement shall be enforced either by an action at law or by an injunction or other equitable proceedings.

(2) A conservation easement may be assigned to a governmental or other legal entity, which shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

(3) A historic preservation easement may be assigned to a governmental or other legal entity whose purposes include the preservation or restoration of structures or sites described in section 2140(b), and the governmental or legal entity shall acquire that interest in the same manner as the governmental entity or legal entity acquires an interest in land.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 12
ACQUISITION OF SURFACE LANDS FOR WATER QUALITY CONTROL

324.2145 Iron ore mining; public interest; acquisition of property; conditions.

Sec. 2145. The business of mining and beneficiating low-grade iron ore, as defined in Act No. 77 of the Public Acts of 1951, being sections 211.621 to 211.626 of the Michigan Compiled Laws, and the business of the beneficiating and agglomerating of underground iron ore as defined in Act No. 68 of the Public Acts of

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1963, being sections 207.271 to 207.279 of the Michigan Compiled Laws, are declared to be in the public interest and necessary to the public welfare, and the acquisition of private property for development of an adequate water supply, for development of the necessary storage, and for processing and treatment of liquid and solid wastes or other nonmarketable products resulting from the business is declared to be for a public purpose. The department may acquire by condemnation parcels of land that are needed for the establishment of areas, settling ponds, and basins for the storage, processing, and treatment of the wastes or other products, together with the necessary appurtenant canals, pipelines, power lines, sluiceways, roadways, dams, and dikes. The department shall lease, convey, or exchange such parcels of land to any person engaged in or proposing to engage in the business of mining and beneficiating low-grade iron ore or beneficiating and agglomerating underground iron ore, or both, upon a showing to the satisfaction of the department that the person has acquired at least 75% of the necessary land and that the person has been unable to purchase the remaining necessary parcels at a fair market value, and upon the further showing to the satisfaction of the department that the remaining parcels are necessary for the development and operation of the water supply areas, settling ponds, and basins to prevent the unlawful pollution of waters of the state or to comply with the requirements of other public agencies of the state. This subpart does not authorize the taking of any property owned by a political subdivision of the state or devoted to or used for a public or railroad purpose or the taking of any private property lying within the limits of any incorporated city or village or lands within a recorded plat in an unincorporated village.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2146 Condemnation of land; compensation to owners.

Sec. 2146. The department shall provide adequate compensation for any owner-occupied residences of owner-occupied or owner-operated farmland that it condemns pursuant to this subpart to enable the owners of the property to purchase like property suitable to their needs and in standard condition from the proceeds of the compensation, which shall at a minimum be equal to the valuation of the housing or agricultural land as of the date when proceedings for the condemnation were initiated by the department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2147 Lease or conveyance of land; conditions for issuance.

Sec. 2147. The department shall require as a condition for the issuance of any lease or conveyance authorized by this subpart the payment by the lessee of the full amount of compensation made or to be made by the department of the lands it has condemned. The lease shall contain provisions that protect the ownership of materials that are deposited upon the lands.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 13

TAX ON TAX REVERTED, RECREATION, AND FOREST LANDS

324.2150 Tax on tax reverted, recreation, and forest, or other lands; exemption; detailed statement of account; descriptions of lands; warrant; distribution; payment of tax from general fund; payment in full.

Sec. 2150. (1) Except as otherwise provided in subsection (2), on December 1 of each year the department of treasury shall pay into the treasury of each county in which are located tax reverted, recreation, forest, or other lands under the control and supervision of the department a tax in the following amount:

(a) Before December 1, 1994, $2.50 per acre or major portion of an acre.

(b) After November 30, 1994 and before January 1, 2014, $2.00 per acre or major portion of an acre.

(c) After December 31, 2013 and before January 1, 2015, $3.00 per acre or major portion of an acre.

(d) After December 31, 2014, $4.00 per acre or major portion of an acre, adjusted annually by 5% or the inflation rate, whichever is less, which shall be distributed as provided in subsection (5). As used in this subdivision, "inflation rate" means that term as defined in section 34d of the general property tax act, 1893 PA 206, MCL 211.34d.

(2) The tax levied under subsection (1) does not apply to the following:

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(a) Lands purchased after January 1, 1933 for natural resource purposes.

(b) State lands on which payments in lieu of taxes are made pursuant to subpart 14.

(3) The tax levied under this section is in lieu of all other taxes and special assessments levied against the state lands under any existing law.

(4) The department of treasury shall make a detailed statement of account between this state and each county in which lands subject to the tax levied under this section are located. The statement shall include a description of the lands. The department of treasury shall submit the detailed statement of account to the county treasurer of the county. The department of treasury shall cause a warrant to be drawn payable to the county for the amount indicated on the detailed statement of account.

(5) The county treasurer of each county shall immediately make a detailed statement of account between the county and each township and school district in the county, distributing the amount received by the county proportionally based on the number of acres of the lands located in each township and school district. For disbursements made before December 1, 1994, the distribution shall be 40% to the county general fund, 40% to the township general fund, and 20% to the school operating fund. For disbursements made after November 30, 1994 and before December 1, 2022, the distribution shall be 50% to the county general fund and 50% to the township general fund. For a disbursement made on or after December 1, 2022, distributions to county boards for special assessments for lake level controls that were levied under part 307 against land described in subsection (1) but that have not been paid under this section shall receive priority. For the remaining amount of the disbursement, the distribution shall be 50% to the county general fund and 50% to the township general fund. The county treasurer shall immediately issue a warrant to each of the units consistent with the detailed statement of account.

(6) The tax on tax reverted, recreation, forest, or other lands under the control of the department on which payments are made under this subpart shall be paid from the general fund. This state shall make payment in full for the amount indicated in the statement of account prepared under subsection (4).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2012, Act 603, Imd. Eff. Jan. 9, 2013;—Am. 2022, Act 1, Imd. Eff. Feb. 1, 2022.

Popular name: Act 451

Popular name: NREPA

324.2151 Tax on certain state lands; duty of department; record; warrant.

Sec. 2151. The department shall enter upon its records against each description of the land the amounts provided by this subpart and shall certify the amounts to the department of treasury, which shall draw a warrant on the state treasurer for those amounts, the tax on tax reverted, recreation, forest lands, or other lands under the control of the department to be paid out of any money in the general fund not otherwise appropriated. The amounts shall be forwarded by the department of treasury to the county treasurers.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 14
PAYMENT IN LIEU OF TAXES ON CERTAIN STATE LANDS

324.2152 List of certain real property owned by state and controlled by department; furnishing list to state tax commission.

Sec. 2152. For the purpose of this subpart, the department shall furnish the state tax commission with a list of all real property owned by the state and controlled by the department that was or is acquired on or after January 1, 1933 by purchase from the owner or owners of the real property and the Mason game farm, showing all descriptions.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2153 Valuation of real property; report to assessing district; entering description upon assessment rolls; exemption; "local taxing unit" defined; adjustment; valuation established.

Sec. 2153. (1) For purposes of this subpart, the state tax commission shall determine the valuation of real property described in section 2152 before February 1 of each year. The state tax commission shall determine the valuation of real property as provided in subsection (7).

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(2) Not later than February 15 of each year, the state tax commission shall make a report to the assessing districts of this state in which the real property is located, giving a description of the real property in the assessing district held by the state and the valuation as fixed by the state tax commission pursuant to subsection (7).

(3) Except as otherwise provided in subsection (7), the state tax commission shall furnish a valuation to the assessing officers that shall be at the same value as other real property is assessed in the assessment district. In fixing the valuation, the state tax commission shall not include improvements made to or placed upon that real property.

(4) Upon receipt of the valuation under subsection (3), the assessing officer shall enter upon the assessment rolls of each municipality or assessing district the respective descriptions of the real property and the fixed valuation and, except as otherwise provided in subsection (5), shall assess that real property for the purposes of this subpart at the same rate as other real property in the assessing district. A local taxing unit may by resolution permanently exempt that real property from any tax levied by that local taxing unit. As used in this subsection, "local taxing unit" means a city, village, township, county, school district, intermediate school district, community college, authority, or any other entity authorized by law to levy a tax on real property.

(5) Except as limited in subsection (6) and as otherwise provided in subsection (7), the assessing officer may adjust the valuation determined by the state tax commission. If an adjustment to the valuation certified by the state tax commission is made, the assessing officer shall certify all of the following to the department, not later than the first Wednesday after the first Monday in March:

(a) The amount and percentage of any general adjustment of assessed valuation of property located in the assessing district other than property described in section 2152.

(b) The amount and percentage of any change in the assessment roll.

(c) The relation of the total valuation to that reported by the state tax commission.

(d) The adjusted total of conservation land.

(6) The following shall not be included in an adjustment under subsection (5):

(a) Any general adjustment of assessed valuation of property located in the assessing district.

(b) The tax levied under the state education tax act, 1993 PA 331, MCL 211.901 to 211.906.

(7) Before 2012, property valuations shall be established as follows:

(a) For property valuations established under this subpart in 2004, the 2004 valuation shall be the valuation of the property in 2004 through 2008.

(b) In 2009 and each year after 2009, the valuation of property shall not increase each year by more than the increase in the immediately preceding year in the general price level or 5%, whichever is less. As used in this subdivision, "general price level" means that term as defined in section 33 of article IX of the state constitution of 1963.

(c) If property is acquired after 2004, the initial property valuation determined under this section shall be the valuation for each subsequent year until the next adjustment under subdivision (b) occurs.

(8) Beginning in 2013, property valuations shall be the greater of the following:

(a) The value of the property calculated under subsection (7).

(b) The taxable value of the property calculated under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 513, Imd. Eff. Jan. 3, 2005;—Am. 2012, Act 603, Imd. Eff. Jan. 9, 2013.

Popular name: Act 451

Popular name: NREPA

324.2154 Statement of assessment; review; payment; aggregate charges; failure of state to make payment; "Michigan natural resources trust fund" defined.

Sec. 2154. (1) The treasurer or other officer charged with the collection of taxes for an assessing district shall annually forward a single statement of the assessment of all property for which payment is claimed under this subpart to the respective county by December 1. The statement shall include an itemization of the valuation and assessment for each individual parcel for which payment is claimed under this subpart. The county shall annually forward the statements received from all affected assessing districts in the county to the Lansing office of the department by December 15. The Lansing office of the department shall review each statement. Subject to subsection (2), if the assessment has been determined according to this subpart, the department shall authorize the state treasurer to pay the amount of the assessment by warrant on the state treasury. Beginning in 2014, if an assessing district does not submit a statement under this subsection by January 1, the amount payable to that assessing district shall be reduced by 5% for each month or portion of a month after January 1 that the statement is late. The state treasurer shall annually forward a separate payment

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in the amount of the assessment to each affected assessing district in the county by February 14 for any assessing district that has submitted a statement as provided in this subsection.

(2) The aggregate amount for all payments to all assessing districts under section 2153 shall be charged as follows:

(a) If property for which payment is claimed was not purchased with funds from the Michigan natural resources trust fund, payments shall be charged as follows:

(*i*) That portion of the payment that represents an assessment by a local school district, intermediate school district, or community college district shall be charged against the state school aid fund established in section 11 of article IX of the state constitution of 1963.

(*ii*) The balance of any payment remaining after the charge made in subparagraph (*i*) shall be charged as follows:

(A) Not more than 50% from restricted revenue sources of the department of natural resources.

(B) The remaining balance after the charge under sub-subparagraph (A), from the general fund.

(b) If the property for which payment is claimed was purchased with funds from the Michigan natural resources trust fund, the payment shall be charged against the Michigan natural resources trust fund.

(3) Beginning 2013, this state shall make payment in full to all local assessing districts under this section. Beginning 2014, if this state does not make payment in full to all local assessing districts, the delinquent amount that this state failed to pay is subject to penalty and interest as for delinquent taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(4) As used in this section, "Michigan natural resources trust fund" means the Michigan natural resources trust fund established in section 35 of article IX of the state constitution of 1963 and provided for in section 1902.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 513, Imd. Eff. Jan. 3, 2005;—Am. 2010, Act 31, Imd. Eff. Mar. 26, 2010;—Am. 2011, Act 118, Imd. Eff. July 20, 2011;—Am. 2012, Act 604, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 239, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

SUBPART 15

PROTECTION OF STATE OWNED LANDS

324.2155 “Damages” defined.

Sec. 2155. As used in this subpart, "damages" means the fair market value on the stump or at the mill, whichever is greater of a forest product cut or removed, or the fair and actual value of any other property removed or damaged in trespass, plus any other damages caused before, during, or after the cutting or removal.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2156 Removal of forest products or property from state owned land; accepting or receiving property in violation of subsection (1).

Sec. 2156. (1) Unless a person has the written permission of the department or is acting as authorized in R 299.321 or R 299.331 of the Michigan administrative code, a person shall not enter upon, or induce or direct any person to enter upon, any state owned land and cut, or induce or direct to be cut, or remove, or induce or direct to be removed, any logs, posts, poles, ties, shrubs, or trees, or any other forest product. In addition, a person shall not injure or remove, or induce or direct any other person to injure or remove, any buildings, fences, improvements, sand, gravel, marl or other minerals, or other property belonging to or appertaining to state owned land.

(2) A person shall not accept or receive by purchase or otherwise a forest product, improvement, or other property unlawfully cut or removed, or both, knowing the property to have been unlawfully cut or removed, or both, in violation of subsection (1).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2157 Violation; penalties; determination of total value; prior convictions; prohibition.

Sec. 2157. (1) A person who violates section 2156 is guilty of a crime as follows:

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(a) If the damages are less than $200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or 3 times the aggregate value of the forest product, improvement, or property involved, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00 or 3 times the value of the forest product, improvement, or property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The value of the forest product, improvement, or property involved is $200.00 or more but less than $1,000.00.

(*ii*) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under section 2156.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00 or 3 times the value of the forest product, improvement, or property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The value of the forest product, improvement, or property involved is $1,000.00 or more but less than $20,000.00.

(*ii*) The person violates subdivision (b)(*i*) and has 1 or more prior convictions for violating or attempting to violate section 2156. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(*ii*).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00 or 3 times the value of the forest product, improvement, or property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The forest product, improvement, or property involved has a value of $20,000.00 or more.

(*ii*) The person violates subdivision (c)(*i*) and has 2 or more prior convictions for committing or attempting to commit an offense under section 2156. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(*ii*).

(2) The values of the forest product, improvement, or property involved in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the forest products, improvements, or property involved.

(3) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2001, Act 155, Eff. Jan. 1, 2002.

Popular name: Act 451

Popular name: NREPA

324.2158 Violation; additional penalties.

Sec. 2158. (1) In addition to the penalties provided for in section 2157, a person convicted of violating this subpart shall forfeit in a civil action filed by the state a sum of up to 3 times the actual damages, but not less than $50.00, that were caused by the unlawful act, and court costs and attorney fees. In addition, the material or other property cut or removed shall be seized by the state, and title to the property shall be in the state. In addition, equipment used to violate this subpart may be seized and disposed of to the best advantage of the state as determined by the department as required under sections 1603 and 1604.

(2) A court in which a conviction for a violation of this subpart is obtained shall order the defendant to forfeit to the state a sum as set forth in subsection (1). If 2 or more defendants are convicted of a violation of this subpart, the forfeiture shall be declared against them jointly.

(3) If a defendant fails to pay upon conviction the sum ordered by the court to be forfeited, the court shall either impose a sentence and require the defendant, as a condition of the sentence, to satisfy the forfeiture in

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the amount prescribed and fix the manner and time of payment, or make a written order permitting the defendant to pay the sum to be forfeited in installments at those times and in those amounts that in the opinion of the court the defendant is able to pay.

(4) If a defendant defaults in payment of the sum forfeited or of an installment of that sum, the court on motion of the department or upon its own motion may require the defendant to show cause why the default should not be treated as a civil contempt, and the court may issue a summons or warrant of arrest for his or her appearance. Unless the defendant shows that the default was not due to an intentional refusal to obey the order of the court or a failure to make a good faith effort to obtain the funds required for the payment, the court shall find that the default constitutes a civil contempt.

(5) If in the opinion of the court the defendant's default in the payment of the forfeiture does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the forfeiture or of each installment, or revoking the forfeiture or the unpaid portion of the forfeiture, in whole or in part.

(6) A default in the payment of the forfeiture or an installment payment may be collected by any means authorized for the enforcement of a judgment under chapter 60 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.6001 to 600.6098 of the Michigan Compiled Laws.

(7) A court receiving forfeiture damages shall remit the damages with an abstract or register of actions to the department, which shall deposit the damages with the state treasurer, who shall deposit the damages in the fund that was used to purchase the land on which the violation occurred.

(8) All money received by the disposal of seized property under this subpart shall be deposited with the state treasurer, who shall deposit the money in the fund that was used to purchase the land on which the violation occurred.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 16

CERTIFIED COPIES OF FIELD NOTES, MAPS, RECORDS, AND PAPERS

324.2160 Delivery of records as to land titles and surveys; certified copies admissible as evidence.

Sec. 2160. Upon receipt of an application of any person, and payment by the applicant of the fees provided for in this part, the department shall make and deliver to the applicant a true copy of any field notes, maps, records, or papers possessed by the department appertaining to land titles or to the original surveys of any of the lands in this state. Such a true copy, when certified to by the department under its seal, or the record thereof when recorded in the office of the register of deeds of the proper county, may be admitted in evidence in all courts and places in which the title or boundary of any land is in question, and shall have the same force and effect, as evidence, as though chapter XXXVI, 5 Stat. 384, had named the department as the officer to whom the surveyor general should deliver all the field notes, maps, records, and other papers appertaining to land titles.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2161 Prices and charges; schedule.

Sec. 2161. The following schedule of prices and charges shall be observed by the department:

(a) For field and meander notes, per survey township, $8.00.

(b) For each official certificate with seal, $1.00.

(c) For township plats showing vacant state lands only, each, 25 cents.

(d) For township plats showing vacant state lands with streams, each, 50 cents.

(e) For copies of all records and papers that the department may be required to furnish by law, for each 100 words, 15 cents.

(f) For tax statements on each description of land, per year, 6 cents.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2162 Disposition of fees.

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Sec. 2162. The fees received for all services under this part shall be paid into the state treasury and credited to the general fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 17
NOTICE

324.2165 Notice of acquisition, disposal, lease or development of land; requirements; public meeting; exclusions; definitions.

Sec. 2165. (1) At least 30 days before acquiring, or making a decision to dispose of, lease, or develop, lands that are more than 80 acres in size, the department shall do all of the following:

(a) Provide notice in writing to the legislative bodies of the local units of government where the land is located.

(b) Post the notice on its website.

(c) Publish the notice in a newspaper of general circulation in the county where the land is located.

(2) The notice under subsection (1) shall contain all of the following information:

(a) The acreage, the location by address or by distance and direction from specified roads or highways, and the legal description of the land.

(b) The proposed timing of the land transaction.

(c) The proposed use for the land.

(d) The opportunity for the legislative body of a local unit of government where the land is located, or 5 or more residents of or owners of land in the county where the land is located, to request a general public meeting on the proposed transaction and the date by which the request must be received by the department under subsection (3).

(e) A website address where additional information on the proposed transaction can be found.

(f) For persons who wish to comment on or ask questions about the proposed transaction, the name, telephone number, electronic mail address, and mailing address of a department contact person.

(g) For the website notice, the following additional information:

(*i*) For the acquisition, lease from another person, or development of land, the fund source that will be used.

(*ii*) For the acquisition of land, the estimated annual payments in lieu of taxes.

(*iii*) The effect the proposal is expected to have on achieving the strategic performance goals set forth in the strategic plan pursuant to section 503(7).

(3) If the legislative body of a local unit of government where the land is located or 5 or more residents of or owners of land in the county where the land is located request a general public meeting and the department receives the necessary request or requests within 15 days after providing notice under subsection (1), the department shall meet with the general public in the county where the land is located to discuss the proposed disposition, acquisition, lease, or development. The department shall send a representative to the meeting who is familiar with the proposal.

(4) The department shall provide notice of a meeting under subsection (3) by all of the following means:

(a) Written notice to the legislative body of each local unit of government where the land is located.

(b) Written notice to each resident or owner of land that requested the meeting under subsection (3).

(c) Posting of the notice on the department's website.

(5) The department shall provide an opportunity for representatives of all local units of government where the land is located to meet in person with a department representative who is familiar with the proposed disposition, acquisition, lease, or development to discuss the proposal.

(6) Subsections (1) to (5) do not apply to either of the following:

(a) A lease with a term of 10 years or less.

(b) A lease limited to exploration for and production of oil and gas.

(7) As used in this section:

(a) "Development" means development that would significantly change or impact the current use of the land subject to development. "Developing" has a corresponding meaning. The removal of a berm, gate, or other human-made barrier under section 504 is not development.

(b) "Newspaper" means that term as defined in section 1461 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1461.

History: Add. 2018, Act 240, Eff. Sept. 25, 2018;—Am. 2022, Act 2, Eff. Mar. 29, 2023.

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Popular name: Act 451

Popular name: NREPA

PART 23.
AGRICULTURE AND THE ENVIRONMENT

324.2301 Definitions.

Sec. 2301. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Director" means the director of the department.

(c) "Roundtable" means the agriculture and rural communities roundtable convened under section 2303.

(d) "Rural county" means a county with a population of less than 70,000.

(e) "Standing committees" means the committees of the senate and house of representatives with primary responsibility for agriculture.

History: Add. 2005, Act 47, Imd. Eff. June 16, 2005.

Popular name: Act 451

Popular name: NREPA

324.2303 Agriculture and rural communities roundtable; participants; consultation.

Sec. 2303. (1) The director shall convene an agriculture and rural communities roundtable to discuss how the laws, rules and policies administered by the department affect farmers, food processors, agribusiness, rural counties, and cities, villages, and townships in rural counties.

(2) The director shall invite at least all of the following to participate in the roundtable:

(a) Two individuals from an association representing farmers.

(b) Two individuals from an association representing food processors.

(c) Two individuals from an association representing agribusiness.

(d) One individual representing a township in a rural county.

(e) One individual representing a city or village in a rural county.

(f) One individual representing a rural county.

(3) Before extending invitations to participate in the roundtable, the director shall consult with the chairpersons of standing committees.

History: Add. 2005, Act 47, Imd. Eff. June 16, 2005.

Compiler's note: For abolishment of the agriculture and rural communities roundtable and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-9, compiled at MCL 324.99909.

Popular name: Act 451

Popular name: NREPA

324.2305 Meetings.

Sec. 2305. (1) The first meeting of the roundtable shall be convened by the director within 90 days after the effective date of the amendatory act that added this section.

(2) The director shall convene the roundtable at least twice each calendar year, except that if the amendatory act that added this section takes effect after September 30, the roundtable shall convene at least once the first calendar year. The roundtable may advise the director on the need for a more frequent meeting schedule.

(3) The meetings of the roundtable shall be open to the general public and shall be held in a place available to the general public.

(4) The department shall provide notice of each meeting of the roundtable by posting on the department website and such other means as the department determines appropriate.

(5) At least 1 meeting of the roundtable each year shall be held in a rural community. At such a meeting, the public shall be provided an opportunity to address the roundtable on issues within its purview.

(6) The department shall prepare a summary of each meeting of the roundtable including a department response to issues raised during the roundtable meeting. The department shall do both of the following:

(a) Post the summary on its website.

(b) Provide a copy of the summary to the members of the roundtable, any member of the public requesting a copy, and to the standing committees.

History: Add. 2005, Act 47, Imd. Eff. June 16, 2005.

Compiler's note: For abolishment of the agriculture and rural communities roundtable and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-9, compiled at MCL 324.99909.

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Popular name: Act 451

Popular name: NREPA

PART 25
ENVIRONMENTAL EDUCATION

324.2501 Purpose of part.

Sec. 2501. The purpose of this part is to facilitate an understanding by citizens of this state of the natural environment including an understanding of basic sciences, ecological sciences, and of the connection between human beings, air, land, water, and other living things, as well as how these systems relate to the global environment, thus making it possible for human beings to make informed decisions regarding protection and conservation of the environment and utilization of the natural resources in a wise and prudent fashion.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2502 Definitions.

Sec. 2502. As used in this part:

(a) "Coordinator" means the coordinator of environmental education provided for in section 2503.

(b) "Environmental education" means the teaching of factual information regarding the natural environment, including basic sciences, ecological sciences, agricultural sciences, and other relevant subject matter, and the interdisciplinary process of developing a citizenry that is knowledgeable about the total environment and has the capacity and the commitment to engage in inquiry, problem solving, decision making, and action that will assure environmental quality.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2503 Coordinator of environmental education; appointment; responsibilities.

Sec. 2503. The department shall appoint a coordinator of environmental education within the department of natural resources. The coordinator's primary responsibilities shall be to do the following:

(a) Coordinate the efforts of the department related to environmental education.

(b) Work with the department of education and with local education institutions, not-for-profit educational and environmental organizations, broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities to increase understanding of the basic sciences and of natural resources and the environment.

(c) Provide technical assistance to school districts, schools, and educators wishing to undertake projects including, but not limited to, water quality, air quality monitoring, or habitat protection.

(d) If an environmental education advisory committee is established pursuant to section 2504, coordinate with the department in staffing the advisory committee.

(e) Provide assistance to the commission in implementing statewide environmental education strategies developed by the department and the department of education.

(f) Assist in identifying grants or other sources of funding for innovative educators and students of environmental education.

(g) Recommend the appropriate mechanism for establishment of a clearinghouse of environmental education materials, which would make environmental education materials available to educators throughout the state.

(h) Provide or support existing training and professional development programs for educators.

(i) Assist in the incorporation of environmental education into curriculum objectives for the state's elementary and secondary schools and develop appropriate assessment mechanisms.

(j) Promote awareness of section 1171a of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1171a of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.2504 Repealed. 2008, Act 397, Imd. Eff. Jan. 6, 2009.

Compiler's note: The repealed section pertained to establishment of environmental education advisory committee.

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324.2505 Environmental education fund; creation; disposition of assets; appropriation of civil fines to fund; money to remain in fund; administrator of fund for auditing purposes; establishment and operation of clearinghouse of environmental education materials.

Sec. 2505. (1) The environmental education fund is created within the state treasury.

(2) The state treasurer shall direct the investment of the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. Interest and earnings from fund investments shall be credited to the fund.

(3) Twenty-five percent of the civil fines collected annually under the following parts or their predecessor acts, but not more than $250,000.00 in any fiscal year, shall be appropriated to the fund:

(a) Part 31.

(b) Part 111.

(c) Part 115.

(4) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(5) The department shall be the administrator of the fund for auditing purposes.

(6) Money in the fund shall be used to implement this part and may be used for the establishment and operation of a clearinghouse of environmental education materials, which would make environmental education materials available to educators throughout the state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2008, Act 397, Imd. Eff. Jan. 6, 2009.

Popular name: Act 451

Popular name: NREPA

324.2511 Designation as "green school"; environmental stewardship designation; criteria; approval or rejection of application.

Sec. 2511. (1) A public or private school in this state may apply to be designated as a "green school" by submitting an application to the entity designated under subsection (4) by the county in which the school is located. A school is eligible to receive a green school, emerald school, or evergreen school environmental stewardship designation under this section if the school or students perform the required number of activities, with a minimum of 2 activities from each of the categories described in subsection (2), as follows:

(a) Green school - 10.

(b) Emerald school - 15.

(c) Evergreen school - 20.

(2) The activities in the following 4 categories qualify toward an environmental stewardship designation under this section:

(a) Recycling category, which includes the following activities:

(*i*) Coordinating a program for recycling at least 2 of the following: office paper, plastic, metal cans, printer cartridges, newspapers and magazines, cellular telephones, cardboard, fabric and clothing, compact discs and digital video discs, or glass.

(*ii*) Composting food and organic wastes.

(*iii*) Conducting a waste-free lunch program.

(*iv*) Implementing a policy to buy recycled, biodegradable, locally produced, or less toxic food and school supplies.

(b) Energy category, which includes the following activities:

(*i*) Offering at least 1 teaching unit on alternative energy.

(*ii*) Using alternative energy, renewable fuels, or specialized energy-efficient technology in school operations.

(*iii*) Implementing a school energy-saving program.

(*iv*) Performing energy audits at student homes and educating student families and the community.

(*v*) Taking part in a project or event to promote improved vehicle fuel efficiency.

(*vi*) Sponsoring an alternative energy presentation, project, or event.

(c) Environmental protection category, which includes the following activities:

(*i*) Participating in activities promoting the health of the Great Lakes watershed.

(*ii*) Offering a teaching unit on environmental issues facing this state.

(*iii*) Establishing or maintaining a natural Michigan garden project with native plants.

(*iv*) Establishing or maintaining an animal habitat project.

(*v*) Participating in a local community environmental issue by activities such as letter-writing, attending public hearings, raising funds, or community outreach.

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(d) Miscellaneous category, which includes the following activities:

(*i*) Adopting an endangered or threatened species and publicizing the activity.

(*ii*) Hosting an environmental or energy speaker, event, or field trip.

(*iii*) Establishing a student organization that participates in environmental activities.

(*iv*) Observing earth day by participating in an earth day event in April.

(*v*) Maintaining an updated bulletin board or kiosk with information on environmental concerns and the school's actions in addressing those concerns.

(*vi*) Establishing an eco-reading program.

(*vii*) Updating the school's media center environmental materials.

(*viii*) Visiting internet sites that educate about the environment and support endangered ecosystems.

(3) In addition to the activities described in subsection (2), a school may design and propose another activity, which may qualify toward an environmental stewardship designation under this section if the entity designated under subsection (4) approves the activity by December 1 of the applicable school year.

(4) A county shall designate a department of the county or the intermediate school district of the county to accept, consider, and approve or reject an application under subsection (1).

History: Add. 2006, Act 146, Imd. Eff. May 22, 2006;—Am. 2010, Act 301, Imd. Eff. Dec. 16, 2010.

Popular name: Act 451

Popular name: NREPA

324.2521 Repealed. 2018, Act 237, Eff. Sept. 25, 2018.

Compiler's note: The repealed section pertained to a status and assessment report.

Popular name: Act 451

Popular name: NREPA

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PART 26.
ENVIRONMENTAL SCIENCE ADVISORY BOARD

324.2601 "Board" defined.

Sec. 2601. As used in this part, "board" means the environmental science board created in section 2603.

History: Add. 2018, Act 269, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.2603 Environmental science advisory board; creation; membership; eligibility.

Sec. 2603. (1) The environmental science advisory board is created in the department of technology, management, and budget.

(2) The board shall consist of 9 individuals appointed by the governor who have expertise in 1 or more of the following areas:

(a) Engineering.

(b) Environmental science.

(c) Economics.

(d) Chemistry.

(e) Geology.

(f) Physics.

(g) Biology.

(h) Human medicine.

(i) Statistics.

(j) Risk assessment.

(k) Other disciplines that the governor considers appropriate.

(3) A current legislator or a current employee of any office, department, or agency of this state or of the federal government is not eligible to serve as a member of the board.

History: Add. 2018, Act 269, Imd. Eff. June 29, 2018.

Compiler's note: For a type III transfer of the environmental science advisory board from the department of technology, management, and budget to the department of environment, Great Lakes, and energy, and abolishment of the environmental science advisory board, see E.R.O. 2019-1, compiled at 324.99923.

Popular name: Act 451

Popular name: NREPA

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324.2605 Terms of members; removal; vacancies; compensation; conducting business at public meeting; availability of writings to public; expenses.

Sec. 2605. (1) A member of the board shall serve for a term of 3 years, except that of the members first appointed, 3 shall serve for a term of 2 years and 3 shall serve for a term of 1 year.

(2) A member of the board serves at the pleasure of the governor. The governor may remove a member at any time, with or without cause, and with or without prior notice. The governor shall fill any vacancies on the board.

(3) If a vacancy occurs on the board, the governor shall make an appointment for the unexpired term.

(4) The governor shall appoint a member of the board as chairperson. The governor may appoint other members of the board to other board offices. Officers of the board serve at the pleasure of the governor.

(5) Members of the board shall serve without compensation but may be reimbursed by this state for actual and necessary expenses incurred in the performance of their official duties as members.

(6) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members of the board present and serving are required for official action of the board.

(7) The business that the board may perform shall be conducted at a public meeting of the board, respectively, held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(8) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) The board may adopt operating procedures that are consistent with this part.

(10) The board may incur expenses necessary to carry out its duties under this part.

History: Add. 2018, Act 269, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.2607 Administrative, technical, or legal staff.

Sec. 2607. If requested by the board, a department, agency, or office of state government may provide administrative, technical, or legal staff to assist the board in the performance of its duties.

History: Add. 2018, Act 269, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.2609 Board duties and responsibilities; advice to governor.

Sec. 2609. (1) The board shall advise the governor and any state office, agency, or department specified by the governor on issues affecting the protection of the environment or the management of natural resources of this state. The board's duty to provide advice is limited to the specific advice requested from time to time by the governor. Any advice provided by the board is not legally binding on or enforceable against any individual, governmental entity, private entity, or other person.

(2) The board shall not review or advise on any application, recommendation, or decision regarding a permit, license, or environmental impact statement.

(3) Advice provided by the board shall be based on the following factors:

(a) Objective reasoning.

(b) Sound science.

(c) All of the following factors to the extent the governor specifies in the request under section 2611 that these factors are relevant to the decision for which the board's advice is sought:

(*i*) Relative and realistic risk to human health and the environment.

(*ii*) Analogous practices used or positions taken by the federal government and regulatory bodies in other states.

(*iii*) Economic reasonableness.

(d) Other relevant factors as specified by the governor in the request.

History: Add. 2018, Act 269, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

324.2611 Request from governor; written advice; deliberations.

Sec. 2611. (1) Upon receipt of a request from the governor to provide advice on a particular issue, the chairperson of the board shall convene a committee of the board consisting of members with relevant

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expertise. The committee shall develop a plan for formulating recommendations and make recommendations on the issue to the board.

(2) The board shall deliberate on the recommendations made under subsection (1) and provide written advice to the governor regarding the governor's request.

(3) The board or any committee of the board may make inquiries, develop studies, hold hearings, receive comments from the public, and call upon experts who are not members of the board to assist the board in its deliberations under this part.

(4) All departments, agencies, offices, officers, employees, or contractors of this state, or any political subdivision of this state, may cooperate with the board or any committee of the board, including, but not limited to, the following as requested by the board or a committee of the board:

(a) Participating in meetings.

(b) Participating in inquiries or hearings.

(c) Providing any information.

(d) Providing access to documents, books, records, databases, or other information.

(e) Any other assistance reasonably necessary and related to the board's deliberations and duties under this part.

History: Add. 2018, Act 269, Imd. Eff. June 29, 2018.

Popular name: Act 451

Popular name: NREPA

PART 27

PROGRAM REVIEW

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324.2701 Definitions.

Sec. 2701. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Program" means a permit program or regulatory program administered by the department under this act.

History: Add. 2011, Act 248, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.2703 Process improvement.

Sec. 2703. (1) The department shall complete process improvement of 1 major program by February 1, 2012 and 2 major programs each year thereafter until the department has completed process improvement for all major programs. This subsection does not require the department to repeat process improvement for a program if process improvement for that program was completed before the effective date of the amendatory act that added this section.

(2) Process improvement under subsection (1) shall meet all of the following requirements:

(a) Utilize process mapping.

(b) Be conducted by a team that includes at least all of the following:

(*i*) Two certified facilitators, who shall administer the process improvement.

(*ii*) A representative of persons regulated by the program.

(*iii*) A representative of members of the general public affected by the program.

(3) The department shall consider using peer reviews by other EPA region 5 states and benchmark analyses as part of process improvement under subsection (1).

(4) The department shall post on its website a description of the process improvements made for each major program.

History: Add. 2011, Act 248, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.2705 Metrics.

Sec. 2705. (1) The department shall develop metrics for all of the following:

(a) Environmental impacts.

(b) Process performance. For a permit program, process performance shall include all of the following:

(*i*) A calculation of the department's per-permit cost to administer the program.

(*ii*) A review of the timeliness of the permit process from receipt to approval or denial of a permit

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application.

(c) A review of service practices affecting regulated persons and the general public.

(2) The department shall post on its website the metrics developed for the purposes of subsection (1).

History: Add. 2011, Act 248, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.2707 Survey.

Sec. 2707. For each division of the department, the department shall survey persons regulated by that division and the general public concerning the division's service practices. By February 1, 2012, the department shall complete the surveys and post aggregate survey results for each division on the department's website. The department shall not post on its website information identifying a survey respondent.

History: Add. 2011, Act 248, Imd. Eff. Dec. 8, 2011.

Popular name: Act 451

Popular name: NREPA

ARTICLE II
POLLUTION CONTROL

CHAPTER 1
POINT SOURCE POLLUTION CONTROL

PART 31
WATER RESOURCES PROTECTION

CAUTION! This document is from an archive and may contain outdated information.

324.3101 Definitions.

Sec. 3101. As used in this part:

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

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

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

(*i*) Filtration.

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

(*iii*) Thermal methods.

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

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

(e) "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the United States Department of Labor, Bureau of Labor Statistics.

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

(g) "Great Lakes" means the Great Lakes and their connecting waters, including Lake St. Clair.

(h) "Group 1 facility" means a facility whose discharge is described by R 323.2218 of the Michigan administrative code.

(i) "Group 2 facility" means a facility whose discharge is described by R 323.2210(y), R 323.2215, or R 323.2216 of the Michigan administrative code. Group 2 facility does not include a Group 2a facility.

(j) "Group 2a facility" means a facility whose discharge is described by R 323.2210(y) or R 323.2215 of the Michigan administrative code and that meets 1 or more of the following:

(*i*) The facility's discharge is from a coin-operated laundromat.

(*ii*) The facility's discharge is from a car wash or vehicle wash open to the public.

(*iii*) The facility's discharge is a subsurface sanitary discharge of fewer than 10,000 gallons per day that does not meet the terms for authorization under R 323.2211(a) of the Michigan administrative code.

(*iv*) The facility's discharge is a seasonal sanitary discharge from a public park, public or private recreational vehicle park or campground, or recreational or vacation camp.

(k) "Group 3 facility" means a facility whose discharge is described by R 323.2211 or R 323.2213 of the Michigan administrative code.

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

(m) "Local unit" means a county, city, village, or township or an agency or instrumentality of any of these entities.

(n) "Municipality" means this state, a county, city, village, or township, or an agency or instrumentality of any of these entities.

(o) "National response center" means the National Communications Center established under the clean water act, 33 USC 1251 to 1387, located in Washington, DC, that receives and relays notice of oil discharge or releases of hazardous substances to appropriate federal officials.

(p) "Nonoceangoing vessel" means a vessel that is not an oceangoing vessel.

(q) "Oceangoing vessel" means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in waters outside of the Great Lakes or the St. Lawrence waterway.

(r) "Open water disposal of contaminated dredge materials" means the placement of dredge materials contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code into the open waters of the waters of the state but does not include the siting or use of a confined disposal facility designated by the United States Army Corps of Engineers or beach nourishment activities utilizing uncontaminated materials.

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

(t) "Sediments" means any matter settled out of ballast water within a vessel.

(u) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(v) "Sewage sludge derivative" means a product for land application derived from sewage sludge that does not include solid waste or other waste regulated under this act.

(w) "Sewage sludge generator" means a person who generates sewage sludge that is applied to land.

(x) "Sewage sludge distributor" means a person who applies, markets, or distributes, except at retail, a sewage sludge derivative.

(y) "St. Lawrence waterway" means the St. Lawrence River, the St. Lawrence Seaway, and the Gulf of St. Lawrence.

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

(aa) "Waters of the state" means groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1997, Act 29, Imd. Eff. June 18, 1997;—Am. 2001, Act 114, Imd. Eff. Aug. 6, 2001;—Am. 2004, Act 90, Imd. Eff. Apr. 22, 2004;—Am. 2004, Act 142, Imd. Eff. June 15, 2004;—Am. 2006, Act 97, Imd. Eff. Apr. 4, 2006;—Am. 2015, Act 247, Imd. Eff. Dec. 22, 2015.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.3102 Implementation of part.

Sec. 3102. The director shall implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For creation of the office of administrative hearings within the department of natural resources and transfer of authority to make decisions regarding administrative appeals of surface water discharge permit applications from the commission of natural resources to the office of administrative hearings, see E.R.O. No. 1995-3, compiled at MCL 299.911 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of the Office of Administrative Hearings, including but not limited to authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.3103 Department of environmental quality; powers and duties generally; rules; other

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actions.

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

(2) The department shall enforce this part and may promulgate rules as it considers necessary to carry out its duties under this part. However, notwithstanding any rule-promulgation authority that is provided in this part, except for rules authorized under section 3112(6), the department shall not promulgate any additional rules under this part after December 31, 2006.

(3) The department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act, 33 USC 1251 to 1387, and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution. This part shall not be construed as authorizing the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2005, Act 33, Imd. Eff. June 6, 2005.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. and R 323.2101 et seq. of the Michigan Administrative Code.

324.3103a Legislative findings; duties of department; vessel owner or operator ineligible for new grant, loan, or award.

Sec. 3103a. (1) The legislature finds both of the following:

(a) It is a goal of this state to prevent the introduction of and minimize the spread of aquatic nuisance species within the Great Lakes.

(b) That, to achieve the goal stated in subdivision (a), this state shall cooperate with the United States and Canadian authorities, other states and provinces, and the maritime industry.

(2) By March 1, 2002, the department shall do all of the following:

(a) Determine whether the ballast water management practices that were proposed by the shipping federation of Canada to the department on June 7, 2000 are being complied with by all oceangoing vessels operating on the Great Lakes and the St. Lawrence waterway. Upon request by the department, the owner or operator of an oceangoing vessel shall provide, on a form developed by the department and the shipping federation of Canada, confirmation of whether or not the vessel is complying with the ballast water management practices described in this subdivision.

(b) Determine whether the ballast water management practices that were proposed jointly by the lake carriers' association and the Canadian shipowners' association to the department on January 26, 2001 are being complied with by all nonoceangoing vessels operating on the Great Lakes and the St. Lawrence waterway. Upon request by the department, the owner or operator of a nonoceangoing vessel shall provide, on a form developed by the department and the lake carriers' association and the Canadian shipowners' association, confirmation of whether or not the vessel is complying with the ballast water management practices described in this subdivision. For a nonoceangoing vessel that is a ferry used to transport motor vehicles across Lake Michigan, if the configuration of the vessel would prohibit compliance with 1 or more of the ballast water management practices described in this section, the department shall establish alternative

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ballast water management practices for the vessel and shall determine whether those practices are being complied with.

(c) Determine whether either or both of the ballast water management practices described in subdivisions (a) and (b) have been made conditions of passage on the St. Lawrence seaway by the St. Lawrence seaway management corporation and the Saint Lawrence seaway development corporation.

(d) Determine the following:

(*i*) Whether 1 or more ballast water treatment methods, which protect the safety of the vessel, its crew, and its passengers, could be used by oceangoing vessels to prevent the introduction of aquatic nuisance species into the Great Lakes.

(*ii*) A time period after which 1 or more ballast water treatment methods identified under subparagraph (*i*) could be used by all oceangoing vessels operating on the Great Lakes.

(*iii*) If the department determines under subparagraph (*i*) that a ballast water treatment method is not available, the actions needed to be taken for 1 or more ballast water treatment methods that would meet the requirements of subparagraph (*i*) to be developed, tested, and made available to vessel owners and operators and a time period after which the ballast water treatment method or methods could be used by all oceangoing vessels operating on the Great Lakes. Subsequently, if at any time the department determines that 1 or more ballast water treatment methods that meet the requirements of subparagraph (*i*) could be used by oceangoing vessels operating on the Great Lakes, the department shall determine a date after which the ballast water treatment method or methods could be used by all oceangoing vessels operating on the Great Lakes.

(e) Submit to the governor and the standing committees of the legislature with jurisdiction primarily over issues pertaining to natural resources and the environment a letter of determination that outlines the determinations made by the department under this subsection.

(3) By March 1, 2003, the department shall do all of the following:

(a) Determine whether all oceangoing vessels that are operating on the Great Lakes are using a ballast water treatment method, identified by the department under subsection (2)(d)(*i*) or (*iii*), to prevent the introduction of aquatic nuisance species into the Great Lakes. Upon request by the department, the owner or operator of an oceangoing vessel shall provide, on a form developed by the department and the shipping federation of Canada, confirmation of whether or not the vessel is using a ballast water treatment method identified by the department under subsection (2)(d)(*i*) or (*iii*). If the department determines that all oceangoing vessels that are operating on the Great Lakes are not using a ballast water treatment method by the dates identified in subsection (2)(d)(*ii*) or (*iii*), the department shall determine what the reasons are for not doing so.

(b) Determine whether the use of a ballast water treatment method has been made a condition of passage on the St. Lawrence seaway by the St. Lawrence seaway management corporation and the Saint Lawrence seaway development corporation.

(c) Submit to the governor and the standing committees of the legislature with jurisdiction primarily over issues pertaining to natural resources and the environment a letter of determination that outlines the determinations made by the department under this subsection.

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

(a) By March 1, 2002, compile and maintain a list of all oceangoing vessels and nonoceangoing vessels that it determines have complied with the ballast water management practices described in subsection (2)(a) or (b), as appropriate, during the previous 12 months. This list shall be continually updated and maintained on the department's website.

(b) By March 1, 2003, if the department has determined under subsection (2)(d)(*i*), or if the department subsequently determines under subsection (2)(d)(*iii*), that 1 or more ballast water treatment methods could be used by oceangoing vessels to prevent the introduction of aquatic nuisance species into the Great Lakes, compile and maintain a list of all oceangoing vessels that, after the date specified in subsection (2)(d)(*ii*) or the date identified by the department under subsection (2)(d)(*iii*), as appropriate, have been using 1 of these ballast water treatment methods during the previous 12 months.

(c) Continually update and post the lists provided for in subdivisions (a) and (b) on the department's website.

(d) Annually distribute a copy of the lists prepared under subdivisions (a) and (b) to persons in the state who have contracts with oceangoing or nonoceangoing vessel operators for the transportation of cargo.

(e) Provide to the governor and the standing committees of the legislature with jurisdiction primarily over issues pertaining to natural resources and the environment copies of the initial lists prepared under subdivisions (a) and (b) and the annual list distributed under subdivision (d).

(5) The owner or operator of an oceangoing vessel or a nonoceangoing vessel that is not on an applicable list prepared under subsection (4) and any persons in the state who have contracts for the transportation of

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cargo with an oceangoing or nonoceangoing vessel operator that is not on an applicable list prepared under subsection (4) are not eligible for a new grant, loan, or award administered by the department.

History: Add. 2001, Act 114, Imd. Eff. Aug. 6, 2001.

Popular name: Act 451

Popular name: NREPA

324.3104 Cooperation and negotiation with other governments as to water resources; alteration of watercourses; federal assistance; formation of Great Lakes aquatic nuisance species coalition; report; requests for appropriations; recommendations; permit to alter floodplain; application; fees; disposition of fees; public hearing; minor floodplain projects; other parts subject to single highest permit fee.

Sec. 3104. (1) The department is designated the state agency to cooperate and negotiate with other governments, governmental units, and governmental agencies in matters concerning the water resources of this state, including, but not limited to, flood control, beach erosion control, water quality control planning, development, and management, and the control of aquatic nuisance species. The department shall have control over the alterations of natural or present watercourses of all rivers and streams in this state to ensure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undue restriction of the capacity of the floodway. The department may take steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part, including the water resources planning act, 42 USC 1962 to 1962d-3, and the federal water pollution control act, 33 USC 1251 to 1388.

(2) To address discharges of aquatic nuisance species from oceangoing vessels that damage water quality, aquatic habitat, or fish or wildlife, the department shall facilitate the formation of a Great Lakes aquatic nuisance species coalition. The Great Lakes aquatic nuisance species coalition must be formed through an agreement entered into with other states in the Great Lakes basin to implement on a basin-wide basis water pollution laws that prohibit the discharge of aquatic nuisance species into the Great Lakes from oceangoing vessels. Upon entering into the agreement, the department shall notify the Canadian Great Lakes provinces of the terms of the agreement. The department shall seek funding from the Great Lakes protection fund authorized under part 331 to implement the Great Lakes aquatic nuisance species coalition.

(3) The department shall report to the governor and the legislature at least annually on any plans or projects being implemented or considered for implementation. The report must include requests for legislation needed to implement any proposed projects or agreements made necessary as a result of a plan or project, together with any requests for appropriations. The department may make recommendations to the governor on the designation of areawide water quality planning regions and organizations relative to the governor's responsibilities under the federal water pollution control act, 33 USC 1251 to 1388.

(4) A person shall not alter a floodplain except as authorized by a floodplain permit issued by the department under part 13. An application for a floodplain permit must include information required by the department to assess the proposed alteration's impact on the floodplain. If an alteration includes activities at multiple locations in a floodplain, 1 application may be filed for combined activities.

(5) Except as otherwise provided in this section, until October 1, 2025, an application for a floodplain permit must be accompanied by a fee of $500.00. Until October 1, 2025, if the department determines that engineering computations are required to assess the impact of a proposed floodplain alteration on flood stage or discharge characteristics, the department shall assess the applicant an additional $1,500.00 to cover the department's cost of review.

(6) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities within floodplains and floodplain projects that are similar in nature, have minimal potential for causing harmful interference when performed separately, and will have only minimal cumulative adverse effects on the environment. All other provisions of this part, except provisions applicable only to floodplain general permits, are applicable to a minor project. A minor project category must not be valid for more than 5 years, but may be re-established. Until October 1, 2025, an application for a floodplain permit for a minor project category must be accompanied by a fee of $100.00.

(7) The department, after notice and an opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for floodplain projects that are similar in nature, have minimal potential for causing harmful interference when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit category must not be valid for more than 5 years, but may be re-established. Until October 1, 2025, an application for a floodplain permit for a general permit category must be accompanied by a fee of $50.00.

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(8) By December 31, 2019, the department shall propose new minor project and general project categories as authorized under subsections (6) and (7).

(9) The department may issue, deny, or impose conditions on project activities authorized under a floodplain permit for a minor project category or a general permit category if the conditions are designed to remove an impairment to a river and its floodplain, or to mitigate the effects of the project. The department may also establish a reasonable time when the proposed project is to be completed or terminated.

(10) If the department determines that activity in a proposed project, although within a floodplain minor project category or a floodplain general permit category, is likely to cause more than minimal adverse environmental effects, the department may require that the application be processed according to subsection (5).

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

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

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Part 325.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 169, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2005, Act 33, Imd. Eff. June 6, 2005;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2018, Act 518, Eff. Mar. 28, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. of the Michigan Administrative Code.

324.3105 Entering property for inspections and investigations; assistance.

Sec. 3105. The department may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state and the obstruction of the floodways of the rivers and streams of this state. The department may call upon any officer, board, department, school, university, or other state institution and the officers or employees thereof for any assistance considered necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3106 Establishment of pollution standards; permits; determination of volume of water and high and low water marks; rules; orders; pollution prevention.

Sec. 3106. The department shall establish pollution standards for lakes, rivers, streams, and other waters of the state in relation to the public use to which they are or may be put, as it considers necessary. The department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state. The department may set permit restrictions that will assure compliance with applicable federal law and regulations. The department may ascertain and determine for record and in making its order what volume of water actually flows in all streams, and the high and low water marks of lakes and other waters of the state, affected by the waste disposal or pollution of any persons. The department may promulgate rules and issue orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake, river, stream, or other waters of the state. The department shall take all appropriate steps to prevent any pollution the department considers to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream, or other waters of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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Administrative rules: R 323.1001 et seq. and R 323.2101 et seq. of the Michigan Administrative Code.

324.3106a Satisfaction of remedial obligations.

Sec. 3106a. Corrective action measures conducted pursuant to part 213 satisfy remedial obligations under this part.

History: Add. 1995, Act 15, Imd. Eff. Apr. 12, 1995.

Popular name: Act 451

Popular name: NREPA

324.3107 Harmful interference with streams; rules; orders; determinations for record.

Sec. 3107. The department may promulgate rules and issue orders for the prevention of harmful interference with the discharge and stage characteristics of streams. The department may ascertain and determine for record and in making its order the location and extent of floodplains, stream beds, and channels and the discharge and stage characteristics of streams at various times and circumstances.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. of the Michigan Administrative Code.

324.3108 Unlawful occupation, filling, or grading of floodplain, stream bed, or channel of stream; exceptions; construction of building with basement.

Sec. 3108. (1) A person shall not occupy or permit the occupation of land for residential, commercial, or industrial purposes or fill or grade or permit the filling or grading for a purpose other than agricultural of land in a floodplain, stream bed, or channel of a stream, as ascertained and determined for the record by the department, or undertake or engage in an activity on or with respect to land that is determined by the department to interfere harmfully with the discharge or stage characteristics of a stream, unless the occupation, filling, grading, or other activity is permitted under this part.

(2) A person may construct or cause the construction of a building that includes a basement in a floodplain that has been properly filled above the 100-year flood elevation under permit if 1 or more of the following apply:

(a) The lowest floor, including the basement, will be constructed above the 100-year flood elevation.

(b) A licensed professional engineer schooled in the science of soil mechanics certifies that the building site has been filled with soil of a type and in a manner that hydrostatic pressures are not exerted upon the basement walls or floor while the watercourse is at or below the 100-year flood elevation, that the placement of the fill will prevent settling of the building or buckling of floors or walls, and that the building is equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building.

(c) A licensed professional engineer or architect certifies that the basement walls and floors are designed to be watertight and to withstand hydrostatic pressure from a water level equal to the 100-year flood elevation and that the building is properly anchored or weighted to prevent flotation and is equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building.

(3) If the community within which a building described in subsection (2) is located is a participant in the national flood insurance program authorized under the national flood insurance act of 1968, title XIII of the housing and urban development act of 1968, Public Law 90-448, 82 Stat. 572, 42 U.S.C. 4001, 4011 to 4012, 4013 to 4020, 4022 to 4102, 4104 to 4104d, 4121 to 4127, and 4129, then the developer shall apply for and obtain a letter of map revision, based on fill, from the federal emergency management agency prior to the issuance of a local building permit or the construction of the building if 1 or both of the following apply:

(a) The floodplain will be altered through the placement of fill.

(b) The watercourse is relocated or enclosed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 162, Imd. Eff. Apr. 11, 1996.

Popular name: Act 451

Popular name: NREPA

324.3109 Discharge into state waters; prohibitions; exception; violation; penalties; abatement; "on-site wastewater treatment system" defined.

Sec. 3109. (1) A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:

(a) To the public health, safety, or welfare.

(b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may

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be made of such waters.

(c) To the value or utility of riparian lands.

(d) To livestock, wild animals, birds, fish, aquatic life, or plants or to their growth or propagation.

(e) To the value of fish and game.

(2) The discharge of any raw sewage of human origin, directly or indirectly, into any of the waters of the state shall be considered prima facie evidence of a violation of this part by the municipality in which the discharge originated unless the discharge is permitted by an order or rule of the department. If the discharge is not the subject of a valid permit issued by the department, a municipality responsible for the discharge may be subject to the remedies provided in section 3115. If the discharge is the subject of a valid permit issued by the department pursuant to section 3112, and is in violation of that permit, a municipality responsible for the discharge is subject to the penalties prescribed in section 3115.

(3) Notwithstanding subsection (2), a municipality is not responsible or subject to the remedies or penalties provided in section 3115 under either of the following circumstances:

(a) The discharge is an unauthorized discharge from a sewerage system as defined in section 4101 that is permitted under this part and owned by a party other than the municipality, unless the municipality has accepted responsibility in writing for the sewerage system and, with respect to the civil fine and penalty under section 3115, the municipality has been notified in writing by the department of its responsibility for the sewerage system.

(b) The discharge is from 3 or fewer on-site wastewater treatment systems.

(4) Unless authorized by a permit, order, or rule of the department, the discharge into the waters of this state of any medical waste, as defined in part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13832, is prima facie evidence of a violation of this part and subjects the responsible person to the penalties prescribed in section 3115.

(5) Unless a discharge is authorized by a permit, order, or rule of the department, the discharge into the waters of this state from an oceangoing vessel of any ballast water is prima facie evidence of a violation of this part and subjects the responsible person to the penalties prescribed in section 3115.

(6) A violation of this section is prima facie evidence of the existence of a public nuisance and in addition to the remedies provided for in this part may be abated according to law in an action brought by the attorney general in a court of competent jurisdiction.

(7) As used in this section, "on-site wastewater treatment system" means a system of components, other than a sewerage system as defined in section 4101, used to collect and treat sanitary sewage or domestic equivalent wastewater from 1 or more dwellings, buildings, or structures and discharge the resulting effluent to a soil dispersal system on property owned by or under the control of the same individual or entity that owns or controls the dwellings, buildings, or structures.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2005, Act 32, Eff. Jan. 1, 2007;—Am. 2005, Act 241, Imd. Eff. Nov. 22, 2005;—Am. 2014, Act 536, Imd. Eff. Jan 15, 2015.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1001 et seq. of the Michigan Administrative Code.

324.3109a Mixing zones for discharges of venting groundwater; conditions not requiring permit; definitions.

Sec. 3109a. (1) Notwithstanding any other provision of this part, or rules promulgated under this part, the department shall allow for a mixing zone for discharges of venting groundwater in the same manner as the department provides for a mixing zone for point source discharges. Mixing zones for discharges of venting groundwater shall not be less protective of public health or the environment than the level of protection provided for mixing zones from point source discharges.

(2) Notwithstanding any other provision of this part, if a discharge of venting groundwater is in compliance with the water quality standards provided for in this part and the rules promulgated under this part, a permit is not required under this part for the discharge if the discharge is provided for in either or both of the following:

(a) A remedial action plan that is approved by the department under part 201.

(b) A corrective action plan that is submitted to the department under part 213 that includes a mixing zone determination made by the department and that has been noticed in the department calendar.

(3) As used in this section:

(a) "Mixing zone" means that portion of a water body where a point source discharge or venting groundwater is mixed with receiving water.

(b) "Venting groundwater" means groundwater that is entering a surface water of the state from a facility,

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as defined in section 20101.

History: Add. 1995, Act 70, Imd. Eff. June 5, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999.

Popular name: Act 451

Popular name: NREPA

324.3109b Satisfaction of remedial obligations.

Sec. 3109b. Notwithstanding any other provision of this part, remedial actions that satisfy the requirements of part 201 satisfy a person's remedial obligations under this part.

History: Add. 1995, Act 70, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: NREPA

324.3109c Open water disposal of dredge materials contaminated with toxic substances; prohibition.

Sec. 3109c. Notwithstanding any other provision of this part or the rules promulgated under this part, the open water disposal of dredge materials that are contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code is prohibited.

History: Add. 2006, Act 97, Imd. Eff. Apr. 4, 2006;—Am. 2013, Act 87, Imd. Eff. June 28, 2013.

Popular name: Act 451

Popular name: NREPA

324.3109d MAEAP-verified farms; applicable conditions; obligation to obtain permit not modified or limited; definitions.

Sec. 3109d. (1) Beginning 6 months after the effective date of the amendatory act that added this section, notwithstanding any other provision of this part, the following apply to MAEAP-verified farms:

(a) Except as provided in subdivision (b), if all of the following conditions are met, the owner or operator of the MAEAP-verified farm is not subject to civil fines under section 3115, but may be responsible for actual natural resources damages:

(*i*) A discharge to the waters of the state occurs from a portion or operation of the farm that is MAEAP-verified and in compliance with MAEAP standards.

(*ii*) The owner or operator acted promptly to correct the condition after discovery.

(*iii*) The owner or operator reported the discharge to the department within 24 hours of the discovery.

(b) Subdivision (a) does not apply if either of the following conditions occurs:

(*i*) The actions of the owner or operator pose or posed a substantial endangerment to the public health, safety, or welfare.

(*ii*) The director, upon advice from the interagency technical review panel provided for in section 8710, determines the owner or operator has previously committed significant violations that constitute a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events.

(c) If a MAEAP-verified farm is in compliance with all MAEAP standards applicable to the farming operation, the farm is considered to be implementing conservation and management practices needed to meet total maximum daily load implementation for impaired waters pursuant to 33 USC 1313.

(d) If a discharge from a MAEAP-verified farm that is in compliance with all MAEAP standards applicable to land application is caused by an act of God weather event, both of the following apply:

(*i*) The discharge shall be considered nonpoint source pollution.

(*ii*) If the discharge is determined by the director with scientific evidence provided by water quality data to have caused an exceedance of water quality standards, the farm, within 30 days of notification, shall provide to the department a report that includes details of conservation or management practice changes, if necessary, to further address the risk of discharge recurrence. The report shall state whether those conservation or management practices have already been implemented by the farm. Upon receipt of the report, the department shall review the report and respond within 30 days. The departmental response may include report acceptance with no further action required or may recommend environmentally sound and economically feasible conservation or management practices to prevent future discharges.

(2) This section does not modify or limit any obligation to obtain a permit under this part.

(3) As used in this section:

(a) "Act of God weather event" means a precipitation event that meets both of the following conditions:

(*i*) Exceeds 1/2 inch in precipitation.

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(*ii*) Was forecast by the national weather service 24 hours earlier as having less than a 70% probability of exceeding 1/2 inch of precipitation.

(b) "MAEAP-verified farm" means that term as it is defined in part 87.

History: Add. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.3109e Sodium or chloride in groundwater discharge permit; limitation; discharge of sodium or chloride causing groundwater concentration exceeding certain levels; duties of permittee; response activities.

Sec. 3109e. (1) Notwithstanding any other provision in this act or the rules promulgated under this act, the department shall not establish or enforce a limitation for sodium or chloride in a groundwater discharge permit that is more restrictive than the following:

(a) 400 milligrams of sodium per liter.

(b) 500 milligrams of chloride per liter.

(2) Notwithstanding any other provision of this act or the rules promulgated under this act, the department shall not establish or enforce a limitation for sodium or chloride in groundwater that is more restrictive than the following:

(a) 230 milligrams of sodium per liter.

(b) 250 milligrams of chloride per liter.

(3) Notwithstanding any other provision of this part or rules promulgated under this part, if a permittee discharges sodium or chloride, or both, into groundwater that migrates off of the property on which the discharge was made and that discharge directly causes the groundwater concentration of sodium or chloride, or both, to exceed the levels provided under subsection (2), the permittee shall do all of the following:

(a) Initiate a sampling program approved by the department to monitor downgradient water supply wells for the levels of sodium or chloride, or both, in the water supply.

(b) If the concentration of sodium in a downgradient water supply exceeds the level provided under subsection (2), the permittee shall provide and maintain, for each affected downgradient water supply, free of charge, a point-of-use treatment system approved by the department that will remove sodium from the water supply so as to be in compliance with the level provided under subsection (2).

(c) If the concentration of chloride in a downgradient water supply exceeds the level provided under subsection (2), provide to each affected water supply owner a notice of aesthetic impact with respect to chloride levels.

(4) Notwithstanding any other provision of this act, a permittee subject to the requirements of subsection (3) that complies with the requirements of subsection (3) is not subject to response activities under part 201 with respect to a discharge of sodium or chloride, or both, that is in compliance with the discharge level under subsection (1).

History: Add. 2013, Act 180, Imd. Eff. Nov. 26, 2013.

Popular name: Act 451

Popular name: NREPA

324.3110 Waste treatment facilities of industrial or commercial entity; exception; examination and certification of supervisory personnel; training program; fees; failure to pay fee; continuing education programs; reports; false statement; applicability of section.

Sec. 3110. (1) Each industrial or commercial entity, other than a concentrated animal feed operation, that discharges liquid wastes into any surface water or groundwater or underground or on the ground other than through a public sanitary sewer shall have waste treatment or control facilities under the specific supervision and control of individuals who are certified by the department as properly qualified to operate the facilities. The department shall examine all supervisory personnel having supervision and control of the facilities, other than a concentrated animal feed operation, and certify that the individuals are properly qualified to operate or supervise the facilities.

(2) The department may conduct a program for training individuals seeking to be certified as operators or supervisors under subsection (1), section 4104, or section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009. Until October 1, 2025, the department may charge a fee based on the costs to the department of operating this training program. The fees must be deposited into the operator training and certification fund created in section 3134.

(3) The department shall administer certification operator programs for individuals seeking to be certified

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as operators or supervisors under subsection (1), section 4104, or section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009. An individual that wishes to become certified as an operator or a supervisor shall submit an application to the department that contains the information required by the department. Information submitted as part of the application must be considered part of the examination for certification. Until October 1, 2025, the department may charge a certification examination fee and a certification renewal fee in accordance with the following fee schedule:

(a) For certification examinations under subsection (1), the following fees apply:

(*i*) Industrial wastewater certification level 1 or 2 examination as described under subrule (2) of R 323.1253 of the Michigan Administrative Code, $35.00.

(*ii*) Industrial wastewater certification level 3 examination as described under subrule (2) of R 323.1253 of the Michigan Administrative Code, $40.00.

(*iii*) Industrial wastewater special classification A-1a examination or noncontact cooling water A-1h examination as described under subrule (2) of R 323.1253 of the Michigan Administrative Code, $30.00.

(*iv*) Stormwater industrial certification A-1i examination as described under subrule (2) of R 323.1253 of the Michigan Administrative Code, $30.00.

(b) For certification examinations under section 4104, the following fees apply:

(*i*) Municipal wastewater certification level A, B, C, or D examination as described under subrule (1) of R 299.2911 of the Michigan Administrative Code, $70.00.

(*ii*) Municipal wastewater certification level L2 examination as described under subrule (3)(a) of R 299.2911 of the Michigan Administrative Code, $45.00.

(*iii*) Municipal wastewater certification level L1 examination as described under subrule (3)(b) of R 299.2911 of the Michigan Administrative Code, $45.00.

(*iv*) Municipal wastewater certification level SC examination as described under subrule (4) of R 299.2911 of the Michigan Administrative Code, $45.00.

(c) For certification examinations under section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009, for operators of the following systems, the following fees apply:

(*i*) Drinking water complete treatment system classes F-1, F-2, F-3, or F-4 as described under subrule (1) of R 325.11901 of the Michigan Administrative Code, $70.00.

(*ii*) Drinking water limited treatment system classes D-1, D-2, D-3, or D-4 as described under subrule (2) of R 325.11901 of the Michigan Administrative Code, $70.00.

(*iii*) Drinking water distribution system classes S-1, S-2, S-3, or S-4 as described under R 325.11902 of the Michigan Administrative Code, $70.00.

(*iv*) Drinking water complete treatment system class F-5 as described under subrule (1) of R 325.11901 of the Michigan Administrative Code, $45.00.

(*v*) Drinking water limited treatment system class D-5 as described under subrule (2) of R 325.11901 of the Michigan Administrative Code, $45.00.

(*vi*) Drinking water distribution system class S-5 as described under R 325.11902 of the Michigan Administrative Code, $45.00.

(d) For certification renewals under subsection (1), the following fees apply:

(*i*) Stormwater industrial certification A-1i as described under subrule (2) of R 323.1253 of the Michigan Administrative Code, $95.00.

(*ii*) Stormwater construction certification A-1j as described under subrule (2) of R 323.1253 of the Michigan Administrative Code, $95.00.

(*iii*) All other industrial wastewater certification levels 1, 2, or 3 as described under subrule (2) of R 323.1253 of the Michigan Administrative Code and issued on a single certificate, $95.00.

(e) For certification renewals under section 4104 for all municipal wastewater certification levels as described under R 299.2911 of the Michigan Administrative Code and issued on a single certificate, $95.00.

(f) For certification renewals under section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009, for all drinking water certification levels as described under R 325.11901 or R 325.11902 of the Michigan Administrative Code and issued on a single certificate, $95.00.

(4) The failure to pay a required certification examination fee within 90 days after taking an examination is considered failure of the examination. The department shall not allow an individual to take a future examination within the failed examination program unless he or she pays the prior fee in full.

(5) The department shall conduct a program for persons or organizations seeking to offer approved continuing education courses to be used by certified operators and supervisors when renewing their certifications under subsection (1), section 4104, and section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009. The department may charge continuing education providers a course application fee and course renewal fee as provided in the following fee schedule:

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(a) An application for approval of a training course, $75.00 for each course.

(b) An application for renewal of an approved training course, $50.00 for each course.

(6) All fees collected under this section must be deposited in the operator training and certification fund created in section 3134.

(7) An individual certified as required by subsection (1) shall file monthly, or at longer intervals as the department may designate, on forms provided by the department, reports showing the effectiveness of the treatment or control facility operation and the quantity and quality of discharged liquid wastes. If an individual knowingly makes a false statement in a report, the department may revoke his or her certificate as an approved treatment facility operator.

(8) This section does not apply to water, gas, or other material that is injected into a well to facilitate production of oil or gas or to water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes and is under permit by the state supervisor of wells.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 148, Imd. Eff. Sept. 21, 2011;—Am. 2017, Act 90, Imd. Eff. July 12, 2017;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

324.3111 Repealed. 2012, Act 43, Imd. Eff. Mar. 6, 2012.

Compiler's note: The repealed section pertained to requirements for filing of report by person doing business with state who discharges wastewater into waters of the state or sewer system.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.9001 et seq. of the Michigan Administrative Code.

324.3111b Release required to be reported under R 324.2001 to R 324.2009.

Sec. 3111b. (1) If a person is required to report a release to the department under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan administrative code, the person, via a 9-1-1 call, shall at the same time report the release to the primary public safety answering point serving the jurisdiction where the release occurred.

(2) If a person described in subsection (1) is required to subsequently submit to the department a written report on the release under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan administrative code, the person shall at the same time submit a copy of the report to the local health department serving the jurisdiction where the release occurred.

(3) If the department of state police or other state agency receives notification, pursuant to an agreement with or the laws of another state, Canada, or the province of Ontario, of the release in that other jurisdiction of a polluting material in excess of the threshold reporting quantity and if the polluting material has entered or may enter surface waters or groundwaters of this state, the department of state police or other state agency shall contact the primary public safety answering point serving each county that may be affected by the release.

(4) The emergency management coordinator of each county shall develop and oversee the implementation of a plan to provide timely notification of a release required to be reported under subsection (1) or (3) to appropriate local, state, and federal agencies. In developing and overseeing the implementation of the plan, the emergency management coordinator shall consult with both of the following:

(a) The directors of the primary public safety answering points with jurisdiction within the county.

(b) Any emergency management coordinator appointed for a city, village, or township located in that county.

(5) If rules promulgated under this part require a person to maintain a pollution incident prevention plan, the person shall update the plan to include the requirements of subsections (1) and (2) when conducting any evaluation of the plan required by rule.

(6) If a person reports to the department a release pursuant to subsection (1), the department shall do both of the following:

(a) Notify the person of the requirements imposed under subsections (1) and (2).

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

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

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

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

(a) The requirements of subsections (1) and (2).

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

(c) The criminal and civil sanctions under section 3115 applicable to violations of subsections (1) and (2).

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

(9) The department shall biennially do both of the following:

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

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

History: Add. 2004, Act 142, Imd. Eff. June 15, 2004.

Popular name: Act 451

Popular name: NREPA

324.3112 Permit to discharge waste into state waters; application determined as complete; condition of validity; modification, suspension, or revocation of permit; reissuance; application for new permit; notice; order; complaint; petition; contested case hearing; rejection of petition; oceangoing vessels engaging in port operations; permit required; compliance with federal aquatic nuisance rule; legislative intent.

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

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

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

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

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

(6) All oceangoing vessels engaging in port operations in this state shall obtain a permit from the department. The department shall issue a permit for an oceangoing vessel only if the applicant can demonstrate that the oceangoing vessel complies with 33 CFR 151.1510 as then in effect or the oceangoing vessel will utilize environmentally sound technology and methods approved by the department that prevent the discharge of aquatic nuisance species. However, all of the following shall apply:

(a) The grant by the coast guard of an extension to the implementation schedule under 33 CFR 151.1513 or the exchange of ballast water under 33 CFR 151.1510(a)(1) or saltwater flushing under 33 CFR 401.30 alone

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is not considered compliance with the federal aquatic nuisance rule for the purposes of this section.

(b) A vessel discharging ballast water must employ a ballast water management system approved pursuant to 33 CFR 151.1510(A)(3) or a ballast water treatment method approved by the department.

(c) A vessel must carry out an exchange of ballast water or saltwater flushing and comply with other applicable requirements of 33 CFR part 151, subpart C, and 33 CFR 401.30.

(d) A vessel using water from a public water system under 33 CFR 151.1510(a)(4) shall utilize a method to sufficiently clean ballast water tanks prior to using water from a public water supply system as ballast water as approved by the department.

(e) A discharge that may cause or contribute to a violation of a water quality standard is not authorized by a permit described in this subsection.

(f) If the federal aquatic nuisance rule is amended after the enactment date of the 2018 amendatory act that added subsection (7), and the director determines that the amended version of the federal aquatic nuisance rule is less protective of the waters of this state from aquatic nuisance species, the applicant shall demonstrate that the oceangoing vessel complies with the federal aquatic nuisance rule as in effect immediately before the effective date of that amendment to the federal aquatic nuisance rule.

(g) If pursuant to a compact of Great Lakes states of which this state is a part, this state adopts standards more protective of the waters of this state from aquatic nuisance species than the version of the federal aquatic nuisance rule otherwise applicable under this subsection, the standards adopted pursuant to the compact apply.

(7) The intent of the legislature in adopting in part the federal aquatic nuisance rule by reference is to help harmonize regulatory programs in Great Lakes states for preventing the introduction and spread of aquatic nuisance species in the Great Lakes, including ballast water management programs, and to allow regulatory agencies to cooperate in developing stronger programs.

(8) Permit fees for permits under subsection (6) shall be assessed as provided in section 3120. The permit fees for an individual permit issued under subsection (6) are the fees specified in section 3120(1)(a) and (5)(a). The permit fees for a general permit issued under subsection (6) are the fees specified in section 3120(1)(c) and (5)(b)(*i*). Permits under subsection (6) shall be issued in accordance with the timelines provided in section 3120. The department may promulgate rules to implement subsections (6) to (8).

(9) As used in this section, "federal aquatic nuisance rule" means 33 CFR part 151, subpart C, and applicable requirements of 33 CFR 151.2050, 151.2060, and 151.2070.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2005, Act 33, Imd. Eff. June 6, 2005;—Am. 2018, Act 667, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.3112a Discharge of untreated sewage from sewer system; notification; duties of municipality; legal action by state not limited; penalties and fines; definitions.

Sec. 3112a. (1) Except for sewer systems described in subsection (8), if untreated sewage or partially treated sewage is directly or indirectly discharged from a sewer system onto land or into the waters of the state, the person responsible for the sewer system shall immediately, but not more than 24 hours after the discharge begins, notify the department; local health departments as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105; a daily newspaper of general circulation in the county or counties in which a municipality notified pursuant to subsection (4) is located; and a daily newspaper of general circulation in the county in which the discharge occurred or is occurring of all of the following:

(a) Promptly after the discharge starts, by telephone or in another manner required by the department, that the discharge is occurring.

(b) At the conclusion of the discharge, in writing or in another manner required by the department, all of the following:

(*i*) The volume and quality of the discharge as measured pursuant to procedures and analytical methods approved by the department.

(*ii*) The reason for the discharge.

(*iii*) The waters or land area, or both, receiving the discharge.

(*iv*) The time the discharge began and ended as measured pursuant to procedures approved by the department.

(*v*) Verification of the person's compliance status with the requirements of its national pollutant discharge elimination system permit or groundwater discharge permit and applicable state and federal statutes, rules, and orders.

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(2) Upon being notified of a discharge under subsection (1), the department shall promptly post the notification on its website.

(3) Each time a discharge to surface waters occurs under subsection (1), the person responsible for the sewer system shall test the affected waters for E. coli to assess the risk to the public health as a result of the discharge and shall provide the test results to the affected local county health departments and to the department. The testing shall be done at locations specified by each affected local county health department but shall not exceed 10 tests for each separate discharge event. The requirement for this testing may be waived by the affected local county health department if the affected local county health department determines that such testing is not needed to assess the risk to the public health as a result of the discharge event.

(4) A person responsible for a sewer system that may discharge untreated sewage or partially treated sewage into the waters of the state shall annually contact each municipality whose jurisdiction contains waters that may be affected by the discharge. If those contacted municipalities wish to be notified in the same manner as provided in subsection (1), the person responsible for the sewer system shall provide that notification.

(5) A person who is responsible for a discharge of untreated sewage or partially treated sewage from a sewer system into the waters of the state shall comply with the requirements of its national pollutant discharge elimination system permit or groundwater discharge permit and applicable state and federal statutes, rules, and orders.

(6) This section does not authorize the discharge of untreated sewage or partially treated sewage into the waters of the state or limit the state from bringing legal action as otherwise authorized by this part.

(7) The penalties and fines provided for in section 3115 apply to a violation of this section.

(8) For sewer systems that discharge to the groundwater via a subsurface disposal system, that do not have a groundwater discharge permit issued by the department, and the discharge of untreated sewage or partially treated sewage is not to surface waters, the person responsible for the sewer system shall notify the local health department in accordance with subsection (1)(a) and (b), but the requirements of subsections (2), (3), (4), and (5) do not apply.

(9) As used in this section:

(a) "Partially treated sewage" means any sewage, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that meets 1 or more of the following:

(*i*) Is not treated to national secondary treatment standards for wastewater or that is treated to a level less than that required by the person's national pollutant discharge elimination system permit.

(*ii*) Is treated to a level less than that required by the person's groundwater discharge permit.

(*iii*) Is found on the ground surface.

(b) "Sewer system" means a public or privately owned sewer system designed and used to convey or treat sanitary sewage or sanitary sewage and storm water. Sewer system does not include an on-site wastewater treatment system serving 1 residential unit or duplex.

(c) "Surface water" means all of the following, but does not include drainage ways and ponds used solely for wastewater conveyance, treatment, or control:

(*i*) The Great Lakes and their connecting waters.

(*ii*) Inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(*vi*) Open drains.

(*vii*) Other surface bodies of water.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 3, Imd. Eff. Jan. 30, 1998;—Am. 2000, Act 286, Imd. Eff. July 10, 2000;—Am. 2004, Act 72, Imd. Eff. Apr. 20, 2004.

Popular name: Act 451

Popular name: NREPA

324.3112b Discharge from combined sewer system; issuance or renewal of permit; disconnection of eaves troughs and downspouts as condition; exception; “combined sewer system” defined.

Sec. 3112b. (1) When a permit for a discharge from a combined sewer system is issued or renewed under this part, the department shall require as a condition of the permit that eaves troughs and roof downspouts for the collection of storm water throughout the tributary service area are not directly connected to the sewer

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system. The department may allow the permittee up to 1 year to comply with this provision for residential property and up to 5 years for commercial and industrial properties.

(2) Subsection (1) does not apply if the permittee demonstrates to the satisfaction of the department that the disconnection of downspouts and eaves troughs is not a cost-effective means of reducing the frequency or duration of combined sewer overflows or of maintaining compliance with discharge requirements.

(3) As used in this section, "combined sewer system" means a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.

History: Add. 1998, Act 4, Imd. Eff. Jan. 30, 1998.

Popular name: Act 451

Popular name: NREPA

324.3112c Discharges of untreated or partially treated sewage from sewer systems; list of occurrences; "partially treated sewage" and "sewer system" defined.

Sec. 3112c. (1) The department shall compile and maintain a list of occurrences of discharges of untreated or partially treated sewage from sewer systems onto land or into the waters of the state that have been reported to the department or are otherwise known to the department. This list shall be made available on the department's website on an ongoing basis. In addition, the department shall annually publish this list and make it available to the general public. The list shall include all of the following:

(a) The entity responsible for the discharge.

(b) The waters or land area, or both, receiving the discharge.

(c) The volume and quality of the discharge.

(d) The time the discharge began and ended.

(e) A description of the actions the department has taken to address the discharge.

(f) Whether the entity responsible for the discharge is subject to a schedule of compliance approved by the department.

(g) Any other information that the department considers relevant.

(2) As used in this section:

(a) "Partially treated sewage" means any sewage, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that is not treated to national secondary treatment standards for wastewater or that is treated to a level less than that required by a national pollutant discharge elimination system permit.

(b) "Sewer system" means a sewer system designed and used to convey sanitary sewage or storm water, or both.

History: Add. 2000, Act 287, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.3112e Permit not required; "beneficial use by-product" and "beneficial use 3" defined.

Sec. 3112e. (1) Notwithstanding sections 3112 and 3113, a permit is not required under this part for any of the following:

(a) The use of a beneficial use by-product for beneficial use 3 in compliance with part 115.

(b) The storage of a beneficial use by-product in compliance with part 115.

(2) As used in subsection (1), "beneficial use by-product" and "beneficial use 3" mean those terms as defined in section 11502.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

324.3113 New or increased use of waters for sewage or other waste disposal purposes; filing information; permit; conditions; complaint; petition; contested case hearing; rejection of petition.

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

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and other known characteristics of the wastes.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3114 Enforcement of part; criminal complaint.

Sec. 3114. An employee of the department of natural resources or an employee of another governmental agency appointed by the department may, with the concurrence of the department, enforce this part and may make a criminal complaint against a person who violates this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3115 Violations; civil or criminal liability; venue; jurisdiction; penalties; knowledge attributable to defendant; lien; setoff.

Sec. 3115. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued or rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. If requested by the defendant within 21 days after service of process, the court shall grant a change of venue to the circuit court for the county of Ingham or for the county in which the alleged violation occurred, is occurring, or, in the event of a threat of violation, will occur. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court, except as otherwise provided in this subsection, shall impose a civil fine of not less than $2,500.00 and the court may award reasonable attorney fees and costs to the prevailing party. However, all of the following apply:

(a) The maximum fine imposed by the court shall be not more than $25,000.00 per day of violation.

(b) For a failure to report a release to the department or to the primary public safety answering point under section 3111b(1), the court shall impose a civil fine of not more than $2,500.00.

(c) For a failure to report a release to the local health department under section 3111b(2), the court shall impose a civil fine of not more than $500.00.

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

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

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

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

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

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

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

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

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

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

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

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

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2004, Act 143, Imd. Eff. June 15, 2004.

Popular name: Act 451

Popular name: NREPA

324.3115a Violation as misdemeanor; penalty; "minor offense" defined.

Sec. 3115a. (1) Except as provided in subsections (2) and (3), a person who alters or causes the alteration of a floodplain in violation of this part is guilty of a misdemeanor punishable by a fine of not more than $2,500.00 for each occurrence.

(2) A person who commits a minor offense is guilty of a misdemeanor punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(3) A person who willfully or recklessly violates a condition of a floodplain permit issued under this part is guilty of a misdemeanor punishable by a fine of not more than $2,500.00 per day.

(4) As used in this section, "minor offense" means either of the following violations of this part if the department determines that restoration of the affected floodplain is not required:

(a) The failure to obtain a permit under this part.

(b) A violation of a permit issued under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3116 Construction of part; exemptions.

Sec. 3116. (1) This part does not repeal any law governing the pollution of lakes and streams, but shall be held and construed as ancillary to and supplementing the other laws and in addition to the laws now in force, except as a law may be in direct conflict with this part. This part does not apply to ferrous and nonferrous mining operations subject to parts 631 and 632 with respect to mining areas, as defined in sections 63101 and 63201, with regard to the placement, removal, use, or processing of mineral tailings or mineral deposits being placed in inland waters on bottomlands owned by or under the control of the ferrous or nonferrous mineral

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operator unless there is to be a discharge of waste or waste effluent from the inland waters into waters of the state. This part does not apply to the discharge of water from underground ferrous and nonferrous mining operations unless there is to be a discharge of waste or waste effluent into the waters of the state.

(2) The exemption provided in subsection (1) does not apply to inland waters owned by or under control of a ferrous or nonferrous mineral operator if there is an inland lake or stream as defined in section 30101 that flows both into those inland waters and out from those inland waters directly into the waters of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 164, Eff. Aug. 21, 2018.

Popular name: Act 451

Popular name: NREPA

324.3117 Supplemental construction.

Sec. 3117. This part is supplemental to and in addition to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws. This part does not amend or repeal any law of the state relating to the public service commission, the department, and the department of public health relating to waters and water structures, or any act or parts of acts not inconsistent with this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3118 Stormwater discharge fees; definitions.

Sec. 3118. (1) Except as otherwise provided in this section, until October 1, 2025, the department shall collect the following stormwater discharge fees from persons that apply for or have been issued stormwater discharge permits:

(a) A 1-time fee of $400.00 for a permit related solely to a site of construction activity for each permitted site. The fee must be submitted with the application for an individual permit or for a certificate of coverage under a general permit. For a permit by rule, the fee must be submitted by the construction site permittee with the notice of coverage. A person needing more than 1 permit may submit a single payment for more than 1 permit and receive appropriate credit. Payment of the fee under this subdivision or verification of prepayment is a necessary part of a valid permit application or notice of coverage under a permit by rule.

(b) An annual fee of $260.00 for a permit related solely to a stormwater discharge associated with industrial activity or from a commercial site for which the department determines a permit is needed.

(c) Except as provided in subdivision (d), (e), or (f), an annual fee of $500.00 for a permit for a municipal separate storm sewer system.

(d) For a permit for a municipal separate storm sewer system issued to a city, village, or township, an annual fee determined by its population in an urbanized area as defined by the United States Bureau of the Census and, except as provided in subsection (11), based on the latest available decennial census, as follows:

(*i*) For a population of 1,000 people or fewer, $500.00.

(*ii*) For a population of more than 1,000 people, but fewer than 3,001 people, $1,000.00.

(*iii*) For a population of more than 3,000 people, but fewer than 10,001 people, $2,000.00.

(*iv*) For a population of more than 10,000 people, but fewer than 30,001 people, $3,000.00.

(*v*) For a population of more than 30,000 people, but fewer than 50,001 people, $4,000.00.

(*vi*) For a population of more than 50,000 people, but fewer than 75,001 people, $5,000.00.

(*vii*) For a population of more than 75,000 people, but fewer than 100,001 people, $6,000.00.

(*viii*) For a population of more than 100,000 people, $7,000.00.

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

(f) For a single municipal separate storm sewer systems permit authorizing a state or federal agency to operate municipal separate storm sewer systems in multiple locations statewide, an annual fee determined pursuant to a memorandum of understanding between that state or federal agency and the department and based on the projected costs of the department to administer the permit.

(2) A stormwater discharge permit is not required for a municipality that does not own or operate a separate storm sewer system. The department shall not collect stormwater discharge fees under this section from a municipality that does not own or operate a separate storm sewer system.

(3) Permit fees required under this section are nonrefundable.

(4) A person possessing a permit not related solely to a site of construction activity as of January 1 shall be assessed a fee. The department shall notify those persons of their fee assessments by February 1. Payment must be postmarked no later than March 15. Failure by the department to send a person a fee assessment notification by the deadline, or failure of a person to receive a fee assessment notification, does not relieve

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that person of the obligation to pay the fee. If the department does not meet the February deadline for sending the fee assessment, the fee assessment is due not later than 45 days after the permittee receives a fee notification.

(5) If a stormwater permit is issued for a drainage district, the drainage district is responsible for the applicable fee under this section.

(6) The department shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

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

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

(9) In addition to any other penalty provided in this part, if a person fails to pay the fee required under this section by its due date, the person is in violation of this part and the department may undertake enforcement actions as authorized under this part.

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

(11) If the permit is for a municipal separate storm sewer system and the population served by that system is different than that determined by the latest decennial census, the permittee may appeal the annual fee determination and submit written verification of actual population served by the municipal separate storm sewer system.

(12) A person that wishes to appeal either a fee or a penalty assessed under this section is limited to an administrative appeal under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The appeal must be filed within 30 days after the department's fee notification under subsection (4).

(13) As used in this section and section 3119:

(a) "Certificate of coverage" means a document issued by the department that authorizes a discharge under a general permit.

(b) "Clean water act" means the federal water pollution control act, 33 USC 1251 to 1388.

(c) "Construction activity" means a human-made earth change or disturbance in the existing cover or topography of land that is 5 acres or more in size, for which a national permit is required pursuant to 40 CFR 122.26(a), and which is described as a construction activity in 40 CFR 122.26(b)(14)(x). Construction activity includes clearing, grading, and excavating activities. Construction activity does not include the practice of clearing, plowing, tilling soil, and harvesting for the purpose of crop production.

(d) "Fee" means a stormwater discharge fee authorized under this section.

(e) "Fund" means the stormwater fund created in section 3119.

(f) "General permit" means a permit issued authorizing a category of similar discharges.

(g) "Individual permit" means a site-specific permit.

(h) "Municipal separate storm sewer system" means all separate storm sewers that are owned or operated by the United States or a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district or similar entity, or a designated or approved management agency under section 208 of the clean water act, 33 USC 1288, that discharges to waters of the state. Municipal separate storm sewer system includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. Municipal separate storm sewer system does not include separate storm sewers in very discrete areas, such as individual buildings.

(i) "Notice of coverage" means a notice that a person engaging in construction activity agrees to comply with a permit by rule for that activity. A notice of coverage is not required to include a copy of an individual permit issued under part 91 if the notice of coverage includes a copy of a permit for the construction activity issued under part 615, 625, 631, 632, or 634, along with any forms or diagrams pertaining to soil erosion and sedimentation control that were part of the application for that permit.

(j) "Permit", unless the context implies otherwise, or "stormwater discharge permit" means a permit authorizing the discharge of wastewater or any other substance to surface waters of the state under the national pollutant discharge elimination system, pursuant to the clean water act or this part and the regulations or rules promulgated under that act or this part.

(k) "Public body" means the United States, this state, a city, village, township, county, school district, public college or university, or single purpose governmental agency, or any other body that is created by federal or state law.

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(*l*) "Separate storm sewer system" means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, that has the following characteristics:

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

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

(m) "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

(n) "Stormwater discharge associated with industrial activity" means a point source discharge of stormwater from a facility that is considered to be engaging in industrial activity under 40 CFR 122.26(b)(14)(i) to (ix) and (xi).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 169, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 35, Imd. Eff. June 3, 1999;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2008, Act 2, Imd. Eff. Jan. 16, 2008;—Am. 2009, Act 102, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2017, Act 40, Eff. Aug. 21, 2017;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

324.3119 Storm water fund.

Sec. 3119. (1) The storm water fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

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

(a) Review of storm water permit applications.

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

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

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

(e) Enforcement against storm water permit violations.

(f) Classification of storm water control facilities.

(g) Not more than 10% of the money in the fund for training for certification of storm water operators and educational material to assist persons regulated under this part.

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

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

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

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

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

(*i*) Permit issuance and development.

(*ii*) Compliance.

(*iii*) Enforcement.

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

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

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

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

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

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

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(h) The number of permit applications denied.

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

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

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

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

(m) The percentage and number of permit renewals and modifications processed within the required time.

(n) The number of permits reopened by the department.

(o) The number of unfilled positions dedicated to the department's storm water program.

(p) The amount of revenue in the fund at the end of the fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3120 New, reissued, or modified permit fees; new or increased use permit; grant or denial of permit; failure to make decision within applicable time period; annual permit fees; definitions.

Sec. 3120. (1) Until October 1, 2025, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, must be accompanied by an application fee as follows:

(a) For an EPA major facility permit, $750.00.

(b) For an EPA minor facility individual permit, a CSO permit, or a wastewater stabilization lagoon individual permit, $400.00.

(c) For an EPA minor facility general permit, $75.00.

(2) Within 180 days after receipt of a complete application for a new or increased use permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(3) By September 30 of the year following the submittal of a complete application for reissuance of a permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(4) If the department fails to make a decision on an application within the applicable time period under subsection (2) or (3), all of the following apply:

(a) The department shall return to the applicant the application fee submitted under subsection (1).

(b) The applicant is not subject to an application fee.

(c) The applicant shall receive a 15% annual discount on an annual permit fee required for a permit issued based on that application.

(5) Until October 1, 2025, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

(a) For an industrial or commercial facility that is an EPA major facility, $8,700.00.

(b) For an industrial or commercial facility that is an EPA minor facility, the following amount:

(*i*) For a general permit for a low-flow facility, $150.00.

(*ii*) For a general permit for a high-flow facility, $400.00.

(*iii*) For an individual permit for a low-flow facility, $1,650.00.

(*iv*) For an individual permit for a high-flow facility, $3,650.00.

(c) For a municipal facility that is an EPA major facility, the following amount:

(*i*) For an individual permit for a facility discharging 500 MGD or more, $213,000.00.

(*ii*) For an individual permit for a facility discharging 50 MGD or more but less than 500 MGD, $20,000.00.

(*iii*) For an individual permit for a facility discharging 10 MGD or more but less than 50 MGD, $13,000.00.

(*iv*) For an individual permit for a facility discharging less than 10 MGD, $5,500.00.

(d) For a municipal facility that is an EPA minor facility, the following amount:

(*i*) For an individual permit for a facility discharging 10 MGD or more, $3,775.00.

(*ii*) For an individual permit for a facility discharging 1 MGD or more but less than 10 MGD, $3,000.00.

(*iii*) For an individual permit for a facility discharging less than 1 MGD, $1,950.00.

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(*iv*) For a general permit for a high-flow facility, $600.00.

(*v*) For a general permit for a low-flow facility, $400.00.

(e) For a municipal facility that is a CSO facility, $6,000.00.

(f) For an individual permit for a wastewater stabilization lagoon, $1,525.00.

(g) For an individual or general permit for an agricultural purpose, $600.00, unless either of the following applies:

(*i*) The facility is an EPA minor facility and would qualify for a general permit for a low-flow facility, in which case the fee is $150.00.

(*ii*) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee is $8,700.00.

(h) For a facility that holds a permit issued under this part but has no discharge and is connected to and is authorized to discharge only to a municipal wastewater treatment system, an annual permit maintenance fee of $100.00. However, if a facility does have a discharge or at some time is no longer connected to a municipal wastewater treatment system, the annual permit fee must be the appropriate fee as otherwise provided in this subsection.

(6) If the person required to pay an application fee under subsection (1) or an annual permit fee under subsection (5) is a municipality, the municipality may pass on the application fee or the annual permit fee, or both, to each user of the municipal facility.

(7) The department shall send invoices for annual permit fees under subsection (5) to all permit holders by December 1 of each year. A fee must be based on the status of the facility as of October 1 of that year. A person subject to an annual permit fee shall pay the fee not later than January 15 of each year. Failure by the department to send a person an invoice by December 1, or failure of a person to receive an invoice, does not relieve that person of the obligation to pay the annual permit fee. If the department does not send invoices by December 1, the annual permit fee is due not later than 45 days after the permittee receives an invoice. The department shall forward annual permit fees received under this section to the state treasurer for deposit into the national pollutant discharge elimination system fund created in section 3121.

(8) The department shall assess a penalty on all annual permit fee payments submitted under this section after the due date. The penalty is 0.75% of the payment due for each month or portion of a month the payment remains past due.

(9) Following payment of an annual permit fee, if a permittee wishes to challenge its annual permit fee under this section, the owner or operator shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department by March 1 of the year the payment is due. A challenge must identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the permittee with notification of a revised annual permit fee and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. If the owner or operator of a facility desires to further challenge its annual permit fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The attorney general may bring an action for the collection of the annual permit fee imposed under this section.

(11) As used in this section:

(a) "Agricultural purpose" means the agricultural production or processing of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture and rural development, that incorporates the use of food, feed, fiber, or fur. Agricultural purpose includes an operation or facility that produces wine.

(b) "Combined sewer overflow" means a discharge from a combined sewer system that occurs when the flow capacity of the combined sewer system is exceeded at a point before the headworks of a publicly owned treatment works during wet weather conditions.

(c) "Combined sewer system" means a sewer designed and used to convey both storm water runoff and sanitary sewage, and that contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert stormwater and sanitary sewage to surface waters during storm flow periods.

(d) "CSO facility" means a facility whose discharge is solely a combined sewer overflow.

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(e) "EPA major facility" means a major facility as defined in 40 CFR 122.2.

(f) "EPA minor facility" means a facility that is not an EPA major facility.

(g) "Farmers' cooperative corporation" means a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

(h) "General permit" means a permit suitable for use at facilities meeting eligibility criteria as specified in the permit. With a general permit, the discharge from a specific facility is acknowledged through a certificate of coverage issued to the facility.

(i) "High-flow facility" means a facility that discharges 1 MGD or more.

(j) "Individual permit" means a permit developed for a particular facility, taking into account that facility's specific characteristics.

(k) "Industrial or commercial facility" means a facility that is not a municipal facility.

(*l*) "Low-flow facility" means a facility that discharges less than 1 MGD.

(m) "MGD" means 1,000,000 gallons per day.

(n) "Municipal facility" means a facility that is designed to collect or treat sanitary wastewater, is either publicly or privately owned, and serves a residential area or a group of municipalities.

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

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004;—Am. 2009, Act 102, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

324.3121 National pollutant discharge elimination system fund.

Sec. 3121. (1) The national pollutant discharge elimination system fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to administer the national pollutant discharge elimination system program under this part including, but not limited to, all of the following:

(a) Water quality standards development and maintenance.

(b) Permit development and issuance.

(c) Maintenance of program data.

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

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

(f) Laboratory services.

(g) Enforcement.

(h) Program administration activities.

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

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

(*i*) Permit issuance and development.

(*ii*) Compliance.

(*iii*) Enforcement.

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

(c) The number of staff hours dedicated to each of the fee categories listed in section 3120.

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(d) The number of permits issued for fee categories listed in section 3120.

(e) The number of permit applications denied.

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

(g) The percentage and number of permit applications that were reviewed for administrative completeness within statutory time frames.

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

(i) The percentage and number of permit applications for which a final action was taken by the department within statutory time frames for new and increased uses and reissuances.

(j) The number of permits reopened by the department.

(k) The number of unfilled positions dedicated to the national pollutant discharge elimination system program.

(*l*) The amount of revenue in the fund at the end of the fiscal year.

(6) As used in this section:

(a) "Fund" means the national pollutant discharge elimination system fund created in subsection (1).

(b) "National pollutant discharge elimination system program" means the national pollutant discharge elimination system program delegated to the department under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, and implemented under this part.

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3122 Annual groundwater discharge permit fee; failure of department to grant or deny within certain time period; payment of fee by municipality; definitions.

Sec. 3122. (1) Until October 1, 2027, the department may levy and collect an annual groundwater discharge permit fee from facilities or municipalities that discharge wastewater to the ground or groundwater of this state under section 3112. The fee is as follows:

(a) For a group 1 facility, $7,500.00.

(b) For a group 2 facility or a municipality of 1,000 or fewer residents, $1,800.00.

(c) For a group 2a facility, $300.00.

(d) For a group 3 facility, $240.00.

(2) Within 180 days after receipt of a complete application for a permit to discharge wastewater to the ground or to groundwater, the department shall grant or deny a permit, unless the applicant and the department agree to extend this time period. If the department fails to make a decision on an application within the time period specified or agreed to under this subsection, an applicant subject to an annual groundwater discharge permit fee shall receive a 15% annual discount on the annual groundwater discharge permit fee.

(3) If the person required to pay the annual groundwater discharge permit fee under subsection (1) is a municipality, the municipality may pass on the annual groundwater discharge permit fee to each user of the municipal facility.

(4) As used in this section, "group 1 facility", "group 2 facility", "group 2a facility", and "group 3 facility" do not include a municipality with a population of 1,000 or fewer residents.

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2015, Act 247, Imd. Eff. Dec. 22, 2015;—Am. 2019, Act 79, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.3122a Annual groundwater discharge permit fees; credit; amount.

Sec. 3122a. In any state fiscal year, if the department collects more than $2,000,000.00 under section 3122 in annual groundwater discharge permit fees, the department shall credit in the next fiscal year each permittee who paid a groundwater discharge permit fee a proportional amount of the fees collected in excess of $2,000,000.00. However, if a permit is no longer required by the permittee in the next fiscal year, the department shall do the following:

(a) If the credited amount is $50.00 or more, the department shall provide a refund to the permittee for the credited amount.

(b) If the credited amount is less than $50.00, the department shall provide a credit to the permittee for an annual groundwater discharge permit fee that may be required in a subsequent year.

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History: Add. 2004, Act 114, Imd. Eff. May 21, 2004.

Popular name: Act 451

Popular name: NREPA

324.3123 Groundwater discharge permit fees; invoices; late payment; action by attorney general.

Sec. 3123. (1) The department shall send invoices for the groundwater discharge permit fees under section 3122 to all permit holders by January 15 of each year. Fees will be charged for all facilities authorized as of December 15 of each calendar year. Payment shall be postmarked no later than March 1 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual groundwater discharge permit fee. If the department does not meet the January 15 deadline for sending invoices, the annual groundwater discharge permit fee is due not later than 45 days after receiving an invoice. The department shall forward money collected pursuant to this section to the state treasurer for deposit into the groundwater discharge permit fund established under section 3124.

(2) The department shall assess a penalty on all fee payments submitted under this section after the due date. The penalty shall be an amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due. Failure to timely pay a fee imposed by this section is a violation of this part and is cause for revocation of a permit issued under this part and may subject the discharger to additional penalties pursuant to section 3115.

(3) The attorney general may bring an action for the collection of the groundwater discharge permit fees imposed under this section.

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3124 Groundwater discharge permit fund.

Sec. 3124. (1) The groundwater discharge permit fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the groundwater discharge permit fund. The state treasurer shall direct the investment of the groundwater discharge permit fund.

(2) Money in the groundwater discharge permit fund at the close of the fiscal year shall remain in the groundwater discharge permit fund and shall not lapse to the general fund.

(3) The state treasurer shall credit to the groundwater discharge permit fund the interest and earnings from groundwater discharge permit fund investments.

(4) The department shall expend money from the groundwater discharge permit fund, upon appropriation, only to implement the department's groundwater discharge program under this part. However, in any state fiscal year, the department shall not expend more than $2,000,000.00 of money from the fund.

(5) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chair of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities during the previous fiscal year in administering the department's groundwater discharge program that were funded by the groundwater discharge permit fund. This report shall include, at a minimum, all of the following as they relate to the department:

(a) The number of full-time equated positions performing groundwater permitting, compliance, and enforcement activities.

(b) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(c) The number of applications for groundwater permits determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(d) The percentage and number of applications determined to be administratively complete for which a final decision was made within the statutory time frame.

(e) The number of inspections conducted at groundwater facilities.

(f) The number of violation letters sent.

(g) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties

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collected through such actions or orders.

(h) For each enforcement action that includes a penalty, a description of what corrective actions were required by the enforcement action.

(i) The number of groundwater complaints received, investigated, resolved, and not resolved by the department.

(j) The amount of revenue in the groundwater discharge permit fund at the end of the fiscal year.

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004.

Popular name: Act 451

Popular name: NREPA

324.3131 Land application of sewage sludge and derivatives; rules; applicability to bulk biosolids or bulk derivative; definitions.

Sec. 3131. (1) By October 1, 1997, the department of environmental quality in consultation with the department of agriculture and rural development shall promulgate rules to manage the land application of sewage sludge and sewage sludge derivatives. The rules shall be consistent with the minimum requirements of 40 CFR part 503 but may impose requirements in addition to or more stringent than 40 CFR part 503 to protect public health or the environment from any adverse effect from a pollutant in sewage sludge or in a sewage sludge derivative. However, the rules shall require that if monitoring of sewage sludge or a sewage sludge derivative indicates a pollutant concentration in excess of that provided in table 3 of 40 CFR 503.13, monitoring frequency shall be increased to not less than twice that provided in table 1 of 40 CFR 503.16, until pollutant concentrations are at or below those provided in table 3 of 40 CFR 503.13. The rules shall require a sewage sludge generator or sewage sludge distributor to deliver to a county, city, village, or township a copy of any record required to be created under the rules pertaining to sewage sludge or a sewage sludge derivative applied to land in that local unit. The copy shall be delivered free of charge promptly after the record is created.

(2) Notwithstanding R 323.2407(3) of the Michigan administrative code, the requirements of R 323.2408 and R 323.2410 of the Michigan administrative code in effect on the effective date of the 2012 amendatory act that added this subsection, or subsequent revisions of those requirements, do not apply to bulk biosolids or a bulk derivative that is sold or given away if all of the following requirements are met:

(a) The material is finished compost or other material that has been demonstrated to be mature and stable and to present minimal vector attraction and potential to generate a nuisance.

(b) The material is of exceptional quality.

(c) The generator or distributor provides to the person receiving the material a written record that contains all of the following information:

(*i*) The name and address of the person who prepared the material.

(*ii*) General handling guidelines and recommended application rates.

(*iii*) A current monitoring summary of nitrogen, phosphorus, and potassium concentrations.

(d) The material is used beneficially for its nutrient value in accordance with the generator's approved residuals management program.

(e) The material is utilized only for landscaping uses at 1 or more of the following locations:

(*i*) A public park.

(*ii*) An athletic field.

(*iii*) A cemetery.

(*iv*) A plant nursery.

(*v*) A turf farm.

(*vi*) A golf course.

(*vii*) A lawn.

(*viii*) A home garden.

(*ix*) Any other location approved by the director of the department or his or her designee.

(3) The requirements of R 323.2413(2)(a) through (c) and (e) through (i) of the Michigan administrative code in effect on the effective date of the 2012 amendatory act that added this subsection do not apply to bulk biosolids or a bulk derivative of exceptional quality utilized for landscaping purposes.

(4) A person who generates bulk biosolids or a bulk derivative of exceptional quality for landscaping uses shall keep a record of quantities in excess of 20 cubic yards sold or given away in a single transaction and make the record available to the department for inspection and copying. The record shall include all of the following information:

(a) The name and address of the recipient.

(b) The quantity received.

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(c) The signature or initials of the recipient.

(d) A general description of the intended use consistent with subsection (2)(e).

(5) As used in this section:

(a) All of the following mean those terms as defined in R 324.2402 of the Michigan administrative code:

(*i*) "Bulk biosolids".

(*ii*) "Derivative".

(*iii*) "Exceptional quality".

(*iv*) "Generator".

(*v*) "Residuals management program".

(b) "Bulk derivative" means a derivative that is not sold or given away in a bag or other container for application to a lawn or home garden.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997;—Am. 2012, Act 563, Imd. Eff. Jan. 2, 2013.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Popular name: Act 451

Popular name: NREPA

324.3132 Sewage sludge generators and sewage sludge distributors; fees; report; sewage sludge land application fund; local ordinance.

Sec. 3132. (1) Beginning in state fiscal year 1998, an annual sewage sludge land application fee is imposed upon sewage sludge generators and sewage sludge distributors. The sewage sludge land application fee shall be in an amount equal to the sum of an administrative fee and a generation fee. The administrative fee shall be $400.00 and the department shall set the generation fee as provided by subsection (2). The department shall set the generation fee so that the annual cumulative total of the sewage sludge land application fee to be paid in a state fiscal year is, as nearly as possible, $650,000.00 minus the amount in the fund created under subsection (5) carried forward from the prior state fiscal year. Starting with fees to be paid in state fiscal year 1999, the $650,000.00 amount shall be annually adjusted for inflation using the Detroit consumer price index.

(2) Each sewage sludge generator and sewage sludge distributor shall annually report to the department for each state fiscal year, beginning with the 1997 state fiscal year, the number of dry tons of sewage sludge it generated or the number of dry tons of sewage sludge in sewage sludge derivatives it distributed that were applied to land in that state fiscal year. The report is due 30 days after the end of the state fiscal year. By December 15 of each state fiscal year, the department shall determine the generation fee on a per dry ton basis by dividing the cumulative generation fee by the number of dry tons of sewage sludge applied to land or in sewage sludge derivatives applied to land in the immediately preceding state fiscal year. The department shall notify each sewage sludge generator and sewage sludge distributor of the generation fee on a per dry ton basis. Notwithstanding any other provision of this section, for the 1998 state fiscal year, the generation fee shall not exceed $4.00 per dry ton.

(3) By January 31 of each state fiscal year, each sewage sludge generator or sewage sludge distributor shall pay its sewage sludge land application fee. The sewage sludge generator or sewage sludge distributor shall determine the amount of its sewage sludge land application fee by multiplying the number of dry tons of sewage sludge that it reported under subsection (2) by the generation fee and adding the administrative fee.

(4) The department of environmental quality shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) The sewage sludge land application fund is created in the state treasury. The department of environmental quality shall forward all fees collected under this section to the state treasurer for deposit into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. An unexpended balance within the fund at the close of the state fiscal year shall be carried forward to the following state fiscal year. The fund shall be allocated solely for the administration of this section and sections 3131 and 3133, including, but not limited to, education of the farmers, sewage sludge generators, sewage sludge distributors, and the general public about land application of sewage sludge and sewage sludge derivatives and the requirements of this section and sections 3131 and

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3133. The director of the department of environmental quality may contract with a nonprofit educational organization to administer the educational components of this section. Ten percent of the fund shall be allocated to the department of agriculture to provide persons involved in or affected by land application of sewage sludge or sewage sludge derivatives with education and technical assistance relating to land application of sewage sludge or sewage sludge derivatives.

(6) A local unit may enact, maintain, and enforce an ordinance that prohibits the land application of sewage sludge or a sewage sludge derivative if monitoring indicates a pollutant concentration in excess of that provided in table 1 of 40 C.F.R. 503.13 until subsequent monitoring indicates that pollutant concentrations do not exceed those provided in table 1 of 40 C.F.R. 503.13.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997.

Popular name: Act 451

Popular name: NREPA

324.3133 Local ordinances, regulations, or resolutions; preemption; contracts with local units; enactment and enforcement of local standards; compliance with conditions of approval; submission of resolution by local unit to department; public meeting; issuance of opinion and approval by department.

Sec. 3133. (1) Except as otherwise provided in this section, sections 3131 and 3132 preempt a local ordinance, regulation, or resolution of a local unit that would duplicate, extend, revise, or conflict with section 3131 or 3132. Except as otherwise provided for in this section, a local unit shall not enact, maintain, or enforce an ordinance, regulation, or resolution that duplicates, extends, revises, or conflicts with section 3131 or 3132.

(2) The director of the department of environmental quality may contract with a local unit to act as its agent for the purpose of enforcing this section and sections 3131 and 3132. The department shall have sole authority to assess fees. If a local unit is under contract with the department of environmental quality to act as its agent or the local unit has received prior written authorization from the department, then the local unit may pass an ordinance that is identical to section 3132 and rules promulgated under section 3131, except as prohibited in subsection (4).

(3) A local unit may enact an ordinance prescribing standards in addition to or more stringent than those contained in section 3132 or in rules promulgated under section 3131 and which regulate a sewage sludge or sewage sludge derivative land application site under either or both of the following circumstances:

(a) The operation of a sewage sludge or sewage sludge derivative land application site within that local unit will result in unreasonable adverse effects on the environment or public health within the local unit. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within the local unit.

(b) The operation of a sewage sludge or sewage sludge derivative land application site within that local unit has resulted or will result in the local unit being in violation of other existing state laws or federal laws.

(4) An ordinance enacted pursuant to subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (3) shall not be enforced by a local unit until approved or conditionally approved by the director of the department of environmental quality under subsection (5). The local unit shall comply with any conditions of approval.

(5) If the legislative body of a local unit submits to the department of environmental quality a resolution identifying how the requirements of subsection (3)(a) or (b) are met, the department shall hold a public meeting in the local unit within 60 days after the submission of the resolution to assist the department in determining whether the requirements of subsection (3)(a) or (b) are met. Within 45 days after the public meeting, the department shall issue a detailed opinion on whether the requirements of subsection (3)(a) or (b) are met as identified by the resolution of the local unit and shall approve, conditionally approve, or disapprove the ordinance accordingly. If the department fails to satisfy the requirements of this subsection, the ordinance is considered to be approved.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997.

Popular name: Act 451

Popular name: NREPA

324.3134 Operator training and certification fund.

Sec. 3134. (1) The operator training and certification fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and

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earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only to administer this part, part 41, and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, including all of the following:

(a) Licensing, examination, compliance assistance, education, training, and other certification activities directly related to this part, part 41, and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) Maintenance of program data.

(c) Development of program-related databases and software.

(d) Program administration activities.

(6) By January 1 of each year until January 1, 2017, the department shall prepare and submit to the governor, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the department's administration of the operator training and certification program under section 3110, section 4104, and section 9 of the safe drinking water act, 1976 PA 399, MCL 325.1009, in the previous fiscal year. This report shall include, at a minimum, all of the following as itemized for each operator training and certification program:

(a) The type and number of training programs offered by the department, including the total number of participants in each type of training program.

(b) The type and number of certification exams given.

(c) The type and number of certifications awarded.

(d) The amount of revenue in the fund at the end of the fiscal year.

History: Add. 2011, Act 148, Imd. Eff. Sept. 21, 2011.

Popular name: Act 451

Popular name: NREPA

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PART 33

AQUATIC NUISANCE CONTROL

324.3301 Definitions; A to D.

Sec. 3301. As used in this part:

(a) "Aquatic invasive species" means an aquatic species that is nonnative to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

(b) "Aquatic nuisance" means an organism that lives or propagates, or both, within the aquatic environment and that impairs the use or enjoyment of the waters of the state, including the intermediate aquatic hosts for schistosomes that cause swimmer's itch.

(c) "Certificate of coverage" means written authorization from the department to implement a project under a general permit.

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

(e) "Director" means the director of the department.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Compiler's note: Former PART 33 was entitled "CONTAMINATION OF WATERS." Former MCL 324.3301, which pertained to disposal of refuse from fish catch, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3302 Definitions; G to W.

Sec. 3302. As used in this part:

(a) "General permit" means a permit for a category of activities that the department determines will not negatively impact human health and will have no more than minimal short-term adverse impacts on the natural resources and environment.

(b) "Lake management plan" means a document that contains all of the following:

(*i*) A description of the physical, chemical, and biological attributes of a waterbody.

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(*ii*) A description of the land uses surrounding a waterbody.

(*iii*) A detailed description of the historical and planned future management of the waterbody.

(c) "Violation of this part" means a violation of a provision of this part or a permit, certificate of coverage, or order issued under or rule promulgated under this part.

(d) "Waters of the state" or "waterbody" means groundwaters, lakes, ponds, rivers, streams, and wetlands and all other watercourses and waters within the jurisdiction of this state including the Great Lakes bordering this state.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Compiler's note: Former MCL 333.3302, which pertained to nonresident license to use pound or trap net, fee, and violation, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3303 Chemical treatment of waters for aquatic nuisance control; permit or certificate of coverage required; exception; records; qualifications; authorization under part 31.

Sec. 3303. (1) Subject to subsections (2), (4), and (5), a person shall not chemically treat either of the following for purposes of aquatic nuisance control unless the person has obtained from the department an individual permit or a certificate of coverage under this part:

(a) Any waters of the state, if water is visibly present or contained in the area of impact at the time of chemical treatment.

(b) The Great Lakes or Lake St. Clair if the area of impact is exposed bottomland located below the ordinary high-water mark.

(2) Subject to subsections (3), (4), and (5), a person may chemically treat waters of the state for purposes of aquatic nuisance control without obtaining from the department an individual permit or a certificate of coverage if all of the following criteria are met:

(a) The waterbody does not have an outlet.

(b) There is no record of species on a list of endangered or threatened species referred to in part 365.

(c) The waterbody has a surface area of less than 10 acres.

(d) If the bottomlands of the waterbody are owned by more than 1 person, written permission for the proposed chemical treatment is obtained from each owner.

(e) The person posts the area of impact in the manner provided in section 3310(d).

(3) A person conducting a chemical treatment authorized under subsection (2) shall maintain any written permissions required under subsection (2) and records of treatment, including treatment date, chemicals applied, amounts applied, and a map indicating the area of impact, for 1 year from the date of each chemical treatment. The records shall be made available to the department upon request.

(4) A person shall not apply for a permit or certificate of coverage under subsection (1) or conduct a chemical treatment described in this section unless the person is 1 or more of the following:

(a) An owner of bottomland within the proposed area of impact.

(b) A lake board established under part 309 for the affected waterbody.

(c) A state or local governmental entity.

(d) A person who has written authorization to act on behalf of a person described in subdivision (a), (b), or (c).

(5) The chemical treatment of waters authorized pursuant to part 31 is not subject to this part.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Compiler's note: Former MCL 324.3303, which pertained to unlawful dumping into waters and molesting of nets, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3304 Lake management plan as part of permit application; proposal for whole lake evaluation treatment; placement of specific conditions in permit; scientific rationale for permit denial.

Sec. 3304. (1) An applicant shall provide a lake management plan as part of an application for permit, if a whole lake treatment is proposed.

(2) An applicant for a permit for a whole lake evaluation treatment may provide scientific evidence and documentation that the use of a specific pesticide, application rate, or means of application will selectively control an aquatic nuisance but not cause unacceptable impacts on native aquatic vegetation, other aquatic or terrestrial life, or human health. Such evaluation treatments include the use of fluridone at rates in excess of 6

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parts per billion. The department may place special conditions in a permit issued under this subsection to require additional ambient monitoring to document possible adverse impacts on native aquatic vegetation or other aquatic life. If the department denies the application, the department shall provide to the applicant the scientific rationale for the denial, in writing.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Compiler's note: Former MCL 324.3304, which pertained to violation of part as misdemeanor and penalty, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3305 Registration of chemical used for aquatic nuisance control; evaluations; order to prohibit or suspend chemical use.

Sec. 3305. (1) A chemical shall not be used in waters of the state for aquatic nuisance control unless it is registered with the EPA, pursuant to section 3 of the federal insecticide, fungicide, and rodenticide act, 7 USC 136a, and the department of agriculture and rural development, pursuant to part 83, for the aquatic nuisance control activity for which it is used. The department shall not deny a permit or certificate of coverage because of the specific chemical proposed to be used, if the chemical is so registered, unless the department has worked with the applicant to identify an appropriate alternative chemical that satisfies the department's concern and no such chemical is available.

(2) The department may conduct evaluations of the impacts and effectiveness of any chemicals that are proposed for use for aquatic nuisance control in waters of the state. This may include the issuance of permits for field assessments of the chemicals.

(3) The director, in consultation with the director of the department of agriculture and rural development, may issue an order to prohibit or suspend the use of a chemical for aquatic nuisance control if, based on substantial scientific evidence, use of the chemical causes unacceptable negative impacts to human health or the environment. The department shall not issue permits authorizing the use of such chemicals. In addition, a person shall cease the use of such chemicals upon notification by the department.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Compiler's note: Former MCL 324.3305, which pertained to civil liability for unlawful acts against property lawfully set and used to take fish, was repealed by Act 27 of 1996, Imd. Eff. Feb. 26, 1996.

Popular name: Act 451

Popular name: NREPA

324.3306 Certificate of coverage; application fee; adjustment; target; "consumer price index" defined; aquatic nuisance control fund; payment of fee.

Sec. 3306. (1) Until October 1, 2014, an application for a certificate of coverage under this part shall be accompanied by a fee of $75.00. Subject to subsection (2), an application for an individual permit under this part shall be accompanied by the following fee, based on the size of the area of impact:

(a) Less than 1/2 acre, $75.00.

(b) 1/2 acre or more but less than 5 acres, $200.00.

(c) 5 acres or more but less than 20 acres, $400.00.

(d) 20 acres or more but less than 100 acres, $800.00.

(e) 100 acres or more, $1,500.00.

(2) For the 2014-2015 state fiscal year and each subsequent fiscal year, the department shall proportionately adjust the certificate of coverage and permit application fees under subsection (1) by category to achieve a target in fee revenue under subsection (1) and shall post the adjusted fees on its website by November 1. The department shall set the target so that the annual cumulative total of the target amount plus all of the following equals, as nearly as possible, $900,000.00:

(a) The total amount of annual fees to be collected under section 3309 in the state fiscal year.

(b) The amount of general funds appropriated to the program under this part.

(c) The amount in the aquatic nuisance control fund created under subsection (4) in excess of $100,000.00 carried forward from the prior state fiscal year.

(3) Notwithstanding any other provision of this section, fees as adjusted under subsection (2) shall be proportional to and shall not exceed the amounts set forth in subsection (1). For each state fiscal year beginning with the 2015-2016 state fiscal year, the state treasurer shall adjust the $900,000.00 figure in subsection (2) by an amount determined by the state treasurer at the end of the preceding fiscal year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau

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of labor statistics of the United States department of labor.

(4) The aquatic nuisance control fund is created in the state treasury. The department shall forward all fees collected under this section, section 3309, and section 3311 to the state treasurer for deposit into the fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only for the administration of this part, including, but not limited to, the following:

(a) Issuance of certificates of coverage and permits.

(b) Technology and reasonable laboratory costs to operate the program under this part.

(c) Compliance and enforcement activities related to aquatic nuisance control.

(d) Education of aquatic herbicide applicators, local and state government agencies, lake boards, lakefront property owners, and the general public about aquatic nuisance control and the requirements of this part. The director may contract with a nonprofit educational organization to administer an educational program as described in this subdivision.

(5) A fee under this section, section 3309, or section 3311 may be paid by credit or debit card or electronic fund transfer. The department shall determine which major credit and debit cards may be used to pay a fee. If a fee is paid by credit or debit card, the department may collect a service assessment from the user of the credit or debit card. The service assessment shall not exceed the actual cost to the department of the credit or debit card transaction.

(6) The department shall not charge a fee for an amendment to an application for a certificate of coverage or permit, including an amendment to an application after that application has been resubmitted under section 3307(7).

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3307 Application; electronic submission; approval or denial within certain time period; requirements; failure to satisfy requirements.

Sec. 3307. (1) An application for a certificate of coverage or permit may be submitted electronically.

(2) The department shall either approve or deny an application for a certificate of coverage by the latest of the following dates:

(a) April 15.

(b) 15 working days after receipt of a complete application.

(c) Any date requested by the applicant for the certificate of coverage and agreed to by the department.

(3) If the department denies an application for a certificate of coverage, the department shall notify the applicant, in writing, of the reasons for the denial.

(4) The department shall approve an application for a permit in whole or part and issue the permit, or shall deny the application, by the latest of the following dates:

(a) April 15.

(b) 30 working days after receipt of a complete application except that this approval time is reduced to 15 working days after receipt of a complete application if the waterbody is listed on the registry under section 3315 as being infested with the particular aquatic invasive species that the applicant proposes to control under the permit.

(c) Any date requested by the permit applicant and agreed to by the department.

(5) The department shall not delay processing an application for a permit or certificate of coverage because the department has not completed processing of the fee payment accompanying the application. This subsection does not apply to an applicant if a previous fee payment offered by the applicant under section 3306 or section 3309 failed because of nonsufficient funds.

(6) If the department approves the application for a permit in part or denies the application, the department shall, by the deadline for approval or denial of the application, notify the applicant, in writing, of the reasons for the partial approval or denial.

(7) The department shall not deny an application for a certificate of coverage or a permit because it was submitted after a certain date in the year in which treatment is proposed. If the department approves an application in part or denies an application, the applicant may resubmit the application with changes to

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address the reasons for partial approval or denial. The resubmitted application is not subject to an additional fee.

(8) If the department fails to satisfy the requirements of subsections (2) to (7) with respect to an application for a certificate of coverage or a permit, all of the following apply:

(a) The department shall pay the applicant an amount equal to 15% of the application fee specified under section 3306 for that certificate of coverage or permit.

(b) The application shall be considered to be approved and the department shall be considered to have made any determination required for approval if all of the following apply:

(*i*) The proposed area of impact is the same as or entirely contained within the area of impact approved in a previous permit.

(*ii*) The active ingredient or trade name of each chemical proposed to be applied is the same as approved in a previous permit and each chemical is currently approved for use by the department.

(*iii*) The application rate and number of treatments do not exceed those approved in the previous permit.

(*iv*) The minimum length of time between treatments is not less than that approved in the previous permit.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3308 Written permission from bottomland owner.

Sec. 3308. An applicant shall obtain authorization to chemically treat the proposed area of impact by obtaining written permission from each person who owns bottomlands in the area of impact. The applicant shall maintain the written permission for 1 year from the expiration date of the permit and shall make the records available to the department upon request. Written permission from each bottomland owner is not required if the applicant is providing, or has contracted to provide, chemical treatment for either of the following:

(a) A lake board established under part 309 for the waterbody for which chemical treatment is proposed.

(b) This state or a local unit of government acting under authority of state law to conduct lake improvement projects or to control aquatic vegetation.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Popular name: Act 451

Popular name: NREPA

324.3309 Permit; term; information to be included; authorization of chemical treatment; annual fees; additional conditions.

Sec. 3309. (1) The term of a certificate of coverage shall not be less than 3 years unless the applicant requests a shorter term.

(2) A permit under this part shall, at a minimum, include all of the following information:

(a) The active ingredient or the trade name of each chemical to be applied.

(b) The application rate of each chemical.

(c) The maximum amount of each chemical to be applied per treatment.

(d) Minimum length of time between treatments for each chemical.

(e) A map or maps that clearly delineate the approved area of impact.

(f) The term of the permit. The term shall not be less than 3 years unless the applicant requests a shorter term.

(3) A permit under this part shall authorize chemical treatment in each year covered by the permit. This subsection does not apply to a chemical if the chemical's annual use is restricted in rules that were in effect on the effective date of the amendatory act that added this subsection.

(4) By April 1 of the second and each subsequent year of a permit, the permittee shall pay the department an annual fee. The annual fee shall equal the permit application fee paid for that specific permit under section 3306 including, for annual fees due after the initial treatment of an expanded area of impact under section 3311(3), the additional fee under section 3311(3)(e). If an annual fee is not received by the department by April 1, the permit is suspended until the annual fee is paid. When the application fee for a permit is paid, an applicant may choose to also pay in advance all the annual fees that will become due under this subsection if the permit is granted for the term requested by the applicant. If the application is denied or is granted for a shorter period than the applicant requested, the department shall refund the overpayment of annual fees.

(5) The department may impose additional conditions on a permit under this part to protect the natural resources or the public health, to prevent economic loss or impairment of recreational uses, to protect

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nontarget organisms, or to help ensure control of the aquatic nuisance.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3310 Permit conditions.

Sec. 3310. As a condition of a permit under this part, the department may require the permittee to do any of the following:

(a) Notify the department not less than 2 working days in advance of chemical treatment.

(b) Proceed with chemical treatment only if a department representative is present.

(c) Allow the department or its representative to collect a sample of the chemical or chemicals used before or during any chemical treatment.

(d) Post the area of impact before chemical treatment with signs, as follows:

(*i*) Each sign shall be of a brilliant color and made of sturdy, weather-resistant material. Each sign shall be at least 8-1/2 by 11 inches and shall be attached to a supporting device with the bottom of the sign at least 12 inches above the ground surface.

(*ii*) Signs shall be posted in the following locations:

(A) Subject to sub-subparagraph (C), along the shoreline of the area of impact not more than 100 feet apart. Signs shall also be posted in riparian lands adjacent to that portion of the shoreline.

(B) Subject to sub-subparagraph (C), for an area of impact of 2 or more acres, at all access sites, boat launching areas, and private and public parks located on the waterbody in conspicuous locations, such as at the entrances, boat ramps, and bulletin boards, if permitted by managers or owners. If the access sites, launching areas, and parks are not to be treated or are not adjacent to the area of impact, then the signs shall clearly indicate the location of the area of impact.

(C) At alternative posting locations approved by the department upon a determination that the locations where signs are otherwise required to be posted are impractical or unfeasible. The department's determination shall be based on a written request from the applicant that includes an explanation of the need for alternative posting locations and a description of the proposed alternative posting locations.

(*iii*) The department shall specify by rule the information required to be on the signs.

(e) Publish a notice in a local newspaper or make an announcement on a local radio station regarding the chemical treatment. The notice or announcement shall include all of the following information:

(*i*) The permit number.

(*ii*) The name of the waterbody.

(*iii*) A list of the chemicals to be used with corresponding water use restrictions.

(*iv*) A description of the area of impact.

(*v*) The proposed treatment dates.

(f) Apply chemicals so that swimming restrictions and fish consumption restrictions are not imposed on any Saturday, Sunday, or state-declared holiday.

(g) Take special precautions to avoid or minimize potential impacts to human health, the environment, and nontarget organisms.

(h) Notify, in writing, an owner of any waterfront property within 100 feet of the area of impact, not less than 7 days and not more than 45 days before the initial chemical treatment. However, if the owner is not the occupant of the waterfront property or the dwelling located on the property, then the owner is responsible for notifying the occupant. Written notification shall include all of the following information:

(*i*) Name, address, and telephone number of the permittee.

(*ii*) A list of chemicals proposed for use with corresponding water use restrictions.

(*iii*) Approximate treatment dates for each chemical to be used.

(i) Complete and return the treatment report form provided by the department for each treatment season.

(j) Perform lake water residue analysis to verify the chemical concentrations in the waterbody according to a frequency, timing, and methodology approved by the department.

(k) Before submitting a permit application, perform aquatic vegetation surveys according to a frequency, timing, and methodology approved by the department.

(*l*) Use chemical control methods for nuisance aquatic vegetation that are consistent with the approved vegetation management plan submitted separately or as part of a lake management plan. The department may approve modifications to the vegetation management plan upon receipt of a written request from the permittee that includes supporting documentation.

(m) Perform pretreatment monitoring of the target aquatic nuisance population according to a frequency,

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timing, and methodology that has been approved by the department before submittal of a permit application.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Popular name: Act 451

Popular name: NREPA

324.3311 Permit; revisions; transfer; expansion of area of impact.

Sec. 3311. (1) The department may make revisions to a permit under this part, to minimize the impacts to the natural resources, public health, and safety or to improve aquatic nuisance control, if the proposed revisions do not change the scope of the project and the permittee requests the revisions in writing. The department shall not charge a fee for a request for revisions to a permit. The department shall approve a request for revisions to a permit in whole or in part or deny the request within 3 business days after the request is received. The request shall include all of the following information:

(a) The proposed changes to the permit.

(b) An explanation of the necessity for the proposed changes.

(c) Maps that clearly delineate any proposed changes to the area of impact.

(d) Additional information that would help the department reach a decision on a permit amendment.

(2) If the permittee has written authorization to act on behalf of a person described in section 3303(4)(a), (b), or (c), upon written request of that person, the department shall transfer the permit to a new permittee with written authorization to act on behalf of that person. The department shall notify the original permittee of the transfer of the permit.

(3) Subject to subsection (4), a permittee may, without a revision to the permit or certificate of coverage, expand the area of impact beyond that authorized in the permit or certificate of coverage to include adjacent areas of the same waterbody that become infested after the application for the permit or certificate of coverage was submitted to the department. The permittee may increase the amount of chemicals used, as authorized in the permit or certificate of coverage, by an amount proportionate to the expansion in the area of impact. Before the initial treatment of the expanded area, the permittee shall notify the department. The permittee shall, within 15 business days after the initial treatment of the expanded area of impact, provide the department with all of the following:

(a) A written explanation of the necessity for the expansion of the area of impact.

(b) A map that clearly delineates the changes to the area of impact.

(c) A written statement specifying the increase in the amount of chemicals used or to be used as a result of the expansion of the area of impact.

(d) The treatment dates for the expanded area of impact.

(e) If the permit application fee under section 3306 would have been higher if the expanded area of impact had been included in the permit application, a fee equal to the difference between the application fee paid and the application fee that would have been due.

(4) If the area of impact authorized in a permit or certificate of coverage is greater than 100 acres, a permittee shall not expand the area of impact under subsection (3) by more than 50% unless both of the following apply:

(a) The permittee has notified the department in advance of the proposal to expand the area of impact. The notification shall include the information described in subsection (3)(a) and (b).

(b) The department has not, within 2 business days after receiving notification under subdivision (a), notified the permittee of specific concerns about the proposal and that the proposal requires a revision of the permit or certificate of coverage.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.3312 Rules.

Sec. 3312. The department may promulgate rules to implement this part.

History: Add. 2004, Act 246, Eff. Oct. 1, 2004.

Popular name: Act 451

Popular name: NREPA

324.3313 Violations as misdemeanors; penalty; commencement of civil action by attorney general; revocation of permit or certificate of coverage.

Sec. 3313. (1) A person who commits a violation of this part that does not result in harm to or pose a

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substantial threat to natural resources, the environment, or human health is guilty of a misdemeanor punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for that violation pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

(2) A person who commits a violation of this part that results in harm to or poses a substantial threat to natural resources, the environment, or human health, or a corporate officer who had advance knowledge of such a violation of this part but failed to prevent the violation, is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than $1,000.00 or more than $2,500.00.

(3) A person who commits a violation described in subsection (2) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $2,500.00 or more than $5,000.00.

(4) A person who commits a violation of this part that results in serious harm to or poses an imminent and substantial threat to natural resources, the environment, or human health and who knew or should have known that the violation could have such a result is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $5,000.00 or more than $10,000.00.

(5) A person who commits a violation described in subsection (4) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 2 years and shall be fined not less than $7,500.00 or more than $15,000.00.

(6) A person who knowingly makes a false statement, representation, or certification in an application for a permit or a certificate of coverage or in a report required by a permit or certificate of coverage issued under or rule promulgated under this part is guilty of a misdemeanor and shall be fined not less than $1,000.00 or more than $2,500.00.

(7) A person who commits a violation described in subsection (6) after a first conviction for such a violation is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $2,000.00 or more than $5,000.00.

(8) The attorney general may commence a civil action for appropriate relief for a violation of this part, including a permanent or temporary injunction restraining a violation or ordering restoration of natural resources affected by a violation and a civil fine of not more than $25,000.00. The action may be commenced in the circuit court for the county of Ingham or the county in which the violation occurred.

(9) If a person knowingly commits a violation of this part, the department may revoke a permit or certificate of coverage issued to the person under this part.

History: Add. 2004, Act 247, Eff. Oct. 1, 2004.

Popular name: NREPA

324.3315 Registry of waterbodies infested by aquatic invasive species; maintenance of website.

Sec. 3315. The department shall post, by January 1, 2016, and maintain on its website a registry of waterbodies infested by aquatic invasive species and the particular aquatic invasive species infesting each waterbody. The registry shall be based on information from all of the following:

(a) Permits and certificates of coverage issued under this part.

(b) Reports received by the department from any of the following:

(*i*) Certified applicators or registered applicators under part 83.

(*ii*) Representatives of public or private institutions of higher education.

(*iii*) Representatives of any other state, local, or federal agency with responsibility for the environment or natural resources.

History: Add. 2014, Act 253, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: NREPA

PART 35
USE OF WATER IN MINING LOW-GRADE IRON ORE

324.3501 Definitions.

Sec. 3501. As used in this part:

(a) "Low-grade iron ore" means iron-bearing rock in the Upper Peninsula of this state that is not merchantable as ore in its natural state and from which merchantable ore can be produced only by beneficiation or treatment.

(b) "Low-grade iron ore mining property" includes the ore beneficiation or treatment plant and other

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necessary buildings, facilities, and lands located in the Upper Peninsula of this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3502 Iron ore mining in Upper Peninsula; issuance of water permits.

Sec. 3502. Substantial deposits of low-grade iron ore are located in the Upper Peninsula of this state. The development and continuation of the industry of mining and beneficiating low-grade ores will provide employment and generally improve economic conditions in that area and will be in the public interest and for the public welfare of this state. As the mining and beneficiating of the low-grade iron ore requires considerable quantities of water, it is necessary that persons engaged in or about to engage in the mining and beneficiation of low-grade iron ores be assured of an adequate and continuing supply of water for the operations to protect the large capital expenditures required for mills, plants, and other improvements. Therefore, the use of water in connection with the mining and beneficiation of low-grade iron ores is in the public interest, for the public welfare, and for a public purpose, and permits for the use of water or waters may be issued by the department in connection with the mining and beneficiation of low-grade iron ores as provided in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3503 Operation of low-grade iron ore mining property; draining, diverting, controlling, or using water; permit required; application; contents; hearing; notice; publication; findings.

Sec. 3503. A person shall not drain, divert, control, or use water for the operation of a low-grade iron ore mining property except as authorized by a permit issued by the department pursuant to part 13. An application for a permit shall include information and data as may be prescribed by the department in its rules and regulations. Not later than 60 days following receipt of an application, the department shall fix the time and place for a public hearing on the application and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least 1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may grant the permit and publish notice of the granting of the permit, in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposed drainage, diversion, control, or use of waters is necessary for the mining of substantial deposits of low-grade iron ore, and that other feasible and economical methods of obtaining a continuing supply of water for that purpose are not available to the applicant.

(b) That the proposed drainage, diversion, control, or use of waters will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands, and will not endanger the public health or safety.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.3504 Water permits; liability of state.

Sec. 3504. Neither the state nor any of its officers, agents, or employees shall incur any liability because of the issuance of a permit under this part or of any act or omission of the permittee or his or her agents or servants under or in connection with a permit issued under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3505 Water permits; term.

Sec. 3505. Every permit granted under this part shall be for a term as is necessary to permit the mining to exhaustion and beneficiation of all low-grade iron ore referred to in the permit application, but not to exceed 50 years. The department may prescribe in the permit such time as it considers reasonable for the commencement or completion of any operations or construction under the permit or the exercise of the rights granted in the permit. The original term of the permit or the time allowed for the performance of any condition in the permit may be extended by the department upon application of the permittee.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3506 Water permits; rights; violation; revocation; emergency order for abatement.

Sec. 3506. Every permit issued by the department under this part shall give to the permittee the right to use the water specified in the permit at the times, in the manner, in the quantity, and under the circumstances as specified in the permit, subject to the conditions contained in the permit, and shall be irrevocable except for a breach or violation of the terms and conditions of the permit. If the department finds, upon consideration of the needs of the applicant, the public interest to be served by the use of the water by the applicant, and all other facts relating to the use of the water, that the public interest requires the inclusion in the permit of a provision that will authorize modification or revocation of the permit, then the department may provide for modification or revocation of the permit by including in the permit the specific grounds upon which the permit may be modified or revoked by the department in the public interest. A permit issued pursuant to this part shall not be revoked for breach or violation of the terms and conditions of the permit or be revoked or modified upon other grounds specified in the permit unless the permittee has been given an opportunity to be heard on the grounds for the proposed revocation or modification after 30 days' written notice to the permittee. A permit shall not be revoked for breach or violation of the terms and conditions of the permit unless the permittee has been given an opportunity to correct or remedy the alleged breach or violation within a reasonable time and has failed to do so. Every notice shall specify the grounds for the proposed revocation or modification and, in the event of a proposed modification, the extent of the modification. If a violation of the conditions of a permit exists that in the judgment of the department threatens the public interest in the waters involved as to require abatement without first giving 30 days' written notice to the permittee, the department may issue an emergency order for abatement, which order shall have the same validity as if a 30 days' written notice had been given and the permittee had been granted a hearing. The emergency order shall remain in force no longer than 21 days from its effective date. Failure to comply with an emergency order constitutes grounds for revocation of the permit.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3507 Enforcement; administration.

Sec. 3507. (1) The department is responsible for enforcing this part.

(2) At any hearing, the department, or its duly authorized agents, has the power to administer oaths, to take testimony and compel the introduction of written evidence, to issue subpoenas, and to compel the attendance of witnesses.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3508 Rules; judicial review.

Sec. 3508. The department shall promulgate rules to implement this part. Any interested person has the right of judicial review from any decision, order, or permit made or granted by the department under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 37
WATER POLLUTION CONTROL FACILITIES; TAX EXEMPTION

324.3701 Definitions.

Sec. 3701. As used in this part:

(a) "Facility" means any disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating water pollution caused by industrial waste.

(b) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of

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industry, manufacture, trade, or business, or from the development, processing, or recovery of any paper or wood, which is capable of polluting the waters of the state.

(c) "Treatment works" means any plant, pumping station, incinerator, or other works or reservoir used primarily for the purpose of treating, stabilizing, isolating, or holding industrial waste.

(d) "Disposal system" means a system used primarily for disposing of or isolating industrial waste and includes pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne industrial waste to a point of disposal, treatment, or isolation, except that which is necessary to the manufacture of products.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3702 Tax exemption certificate; application; filing; manner; form; notice; hearing.

Sec. 3702. (1) An application for a water pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of industrial waste pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any facility.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.3703 Issuance of certificate; grounds; effective date.

Sec. 3703. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of industrial waste from the water, and is suitable, reasonably adequate, and meets the intent and purposes of part 31, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3704 Exemption of facility from real and personal property taxes; exemption of certain tangible personal property from sales and use taxes; statement in certificate.

Sec. 3704. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) Tangible personal property purchased and installed as a component part of the facility shall be exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3705 Tax exemption certificate; issuance; mailing to applicant, local tax assessors, and department of treasury; filing; notice of refusal of certificate.

Sec. 3705. The state tax commission shall send a water pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing

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unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the assessor.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3706 Tax exemption certificate; modification or revocation; grounds; notice and hearing; statute of limitations.

Sec. 3706. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, shall modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificates shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3707 Tax exemption certificate; appeal.

Sec. 3707. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.3708 State tax commission; rules.

Sec. 3708. The state tax commission may promulgate rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not industrial waste pollution control exists within the meaning of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 39
CLEANING AGENTS

324.3901 Definitions; selling or distributing cleaner, rinsing aid, or sanitizing agent containing more than 14% phosphorus prohibited; selling or distributing products containing more than 28% phosphorus prohibited.

Sec. 3901. (1) As used in this part:

(a) "Cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound, or other substance intended to be used for cleaning purposes. Cleaning agent does not include any of the following:

(*i*) A cleaner, rinsing aid, or sanitizing agent intended primarily for use in commercial machine

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dishwashers with not more than 14% phosphorus.

(*ii*) A cleaner for food processing with not more than 14% phosphorus.

(*iii*) A cleaner for industrial uses with not more than 28% phosphorus.

(b) "Nutrient" means a substance or combination of substances that, when added to the waters of this state in a sufficient quantity, provide nourishment that promotes the growth of aquatic vegetation in the waters to such a density as to interfere with or be detrimental to use of the waters by human beings or by an animal, fish, or plant useful to human beings.

(c) "Water conditioner" means a water softening chemical, antiscale chemical, corrosion inhibitor, or other substance intended to be used to treat water.

(2) Notwithstanding any other provision of this part:

(a) A person shall not sell or distribute for use in this state a cleaner, rinsing aid, or sanitizing agent intended primarily for use in commercial automatic or commercial machine dishwashers that contains phosphorus in excess of 14% by weight expressed as elemental phosphorus.

(b) A person shall not sell or distribute for use in this state a cleaner, rinsing aid, or sanitizing agent intended primarily for use in dairy agricultural and farm operations and in the manufacture, preparation, and processing of foods and food products including those used in dairy, beverage, egg, fish, brewery, poultry, meat, fruit, and vegetable processing that contains phosphorus in excess of 14% by weight expressed as elemental phosphorus.

(c) A person shall not sell or distribute for use in this state a metal cleaner, metal brightener, metal treatment compound, conversion coating agent, corrosion remover, paint remover, rust inhibitor, etchant, phosphatizer, degreasing compound, industrial cleaner, or commercial cleaner intended primarily for use in industrial and manufacturing processes that contains phosphorus in excess of 28% by weight expressed as elemental phosphorus.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3902 Phosphorus content; cleaning agent intended for use beginning July 1, 2010.

Sec. 3902. A person shall not sell, offer for sale, or distribute for sale or use in this state any of the following:

(a) Subject to subdivision (b), a cleaning agent that contains phosphorus in any form in excess of 8.7% by weight expressed as elemental phosphorus.

(b) A cleaning agent that is intended for use in household clothes washing machines or, beginning July 1, 2010, in household dishwashers and that contains phosphorus in any form in excess of 0.5% by weight expressed as elemental phosphorus.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 426, Imd. Eff. Jan. 6, 2009;—Am. 2008, Act 427, Imd. Eff. Jan. 6, 2009.

Popular name: Act 451

Popular name: NREPA

324.3903 Rules; compliance.

Sec. 3903. The department shall promulgate rules to implement this part. The rules may further restrict the nutrient content and other contents of cleaning agents and water conditioners to prevent unlawful pollution and control nuisance growths of algae, weeds, and slimes that are or may become injurious to other lawful water uses; to prevent cleaning agents and water conditioners, separately or in combination with other substances, from rendering or tending to render any waters of this state harmful or inimical to public health, animal or aquatic life, or beneficial water uses; and to minimize any hazard to the health or safety of users of the cleaning agents or water conditioners. The burden of proof is on a manufacturer of a cleaning agent or water conditioner, before distribution for sale or use in this state, to establish that its contents comply with this part and rules promulgated under this part, and will not or is not likely to adversely affect human health or the environment. A person shall not sell or distribute for use in this state a cleaning agent or water conditioner in violation of a rule promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1171 et seq. of the Michigan Administrative Code.

324.3904 Prohibited sales.

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Sec. 3904. A person shall not sell detergents or cleaning compounds containing any substance other than phosphorus that may cause unlawful pollution of the waters of the state when discharged into the waters of the state, if the department determines that the other substance will cause unlawful pollution under the circumstances of its expected use and disposal or will pose a hazard to human health and safety. A determination by the department does not limit, restrain, or in any way affect an action as it finds appropriate under part 31. The department may establish by rule the criteria by which it will determine the possible pollutional effect of any substance. This part does not apply to a detergent or cleaning compound contained in fuel or lubricating oil.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3905 Local regulation prohibited.

Sec. 3905. A local unit of government shall not enact or enforce an existing or future ordinance or rule with respect to the sale of cleaning agents containing phosphorus or any other substance that is or may be regulated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.3906 Enforcement of part.

Sec. 3906. The department shall enforce this part and seek court enforcement of its orders pursuant to part 31.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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SEWAGE DISPOSAL AND WATERWORKS SYSTEMS

PART 41
SEWERAGE SYSTEMS

324.4101 Definitions.

Sec. 4101. As used in this part:

(a) "Conventional gravity sewer extension" means the installation of a new gravity sewer and connection to an existing collection system to provide sewer service to new areas previously not served by the public sewer system.

(b) "Expedited review" means an expedited review of an application for a construction permit under section 4112.

(c) "Fund" means the infrastructure construction fund created in section 4113.

(d) "Governmental agencies" means local units of government, metropolitan districts, or other units of government or the officers of the units of government authorized to own, construct, or operate sewerage systems to serve the public.

(e) "Licensed professional engineer" means a professional engineer licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(f) "Plans and specifications" means a true description or representation of the entire sewerage system and parts of a system as the sewerage system exists or is to be constructed, and also a full and fair statement of how the system is to be operated.

(g) "Project" means a proposal to install within 1 general area a new wastewater collection system. Systems proposed for construction on separate land parcels shall be considered separate projects.

(h) "Sewerage system" means a system of pipes and structures including pipes, channels, conduits, manholes, pumping stations, sewage or waste treatment works, diversion and regulatory devices, outfall structures, and appurtenances, collectively or severally, actually used or intended for use by the public for the purpose of collecting, conveying, transporting, treating, or otherwise handling sanitary sewage or other industrial liquid wastes that are capable of adversely affecting the public health.

(i) "Simple pumping station and force main" means the installation of a duplex pumping station and a force main with only 1 high point and of length of no more than 2,000 feet that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer

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system.

(j) "Small diameter pressure sewer and grinder pumping station" means a single project that includes the installation of new pressure sewers totaling not more than 5,000 feet and not more than 25 grinder pumping stations with each grinder pumping station serving not more than 5 separate owners and that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.4102 Department of natural resources; powers.

Sec. 4102. The department is given power and control as limited in this part over persons engaged in furnishing sewerage or sewage treatment service, or both, and over sewerage systems.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 342.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.4103 Sewerage systems; inspection by department.

Sec. 4103. The department may enter at reasonable times the sewerage systems and other property of a person for the purpose of inspecting a sewerage system and carrying out the authority vested in the department by this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4104 Sewerage systems; rules; classification of sewage treatment works; examinations; issuance and revocation of certificates; supervision by certified operator; training program for certified operator; fees.

Sec. 4104. (1) The department may promulgate and enforce rules that the department considers necessary governing and providing a method of conducting and operating all or a part of sewerage systems including sewage treatment works. The department shall classify sewage treatment works with regard to size, type, location, and other physical conditions affecting those works and according to the skill, knowledge, experience, and character that the individual who is in charge of the active operation of the sewage treatment works must possess to successfully operate the works and prevent the discharge of deleterious matter capable of being injurious to the public health or other public interests. The department shall examine or provide for the examination of individuals as to their qualifications to operate sewage treatment works. The department shall promulgate rules regarding the classification of sewage treatment works, the examinations for certification of operators for those works, and the issuance and revocation of certificates, and shall issue and revoke certificates as provided in those rules. Every sewage treatment works subject to this part must be under the supervision of a properly certified operator, except that this section does not require the employment of a certified operator in a waste treatment works that receives only wastes that are not potentially prejudicial to the public health.

(2) As provided in section 3110, the department may conduct a program for training individuals seeking to be certified as operators under subsection (1) and shall administer operator certification programs for individuals seeking to be certified as operators under subsection (1). Until October 1, 2025, the department may charge fees for these programs as provided in section 3110. The department shall transmit fees collected under this section to the state treasurer for deposit into the operator training and certification fund created in section 3134.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 148, Imd. Eff. Sept. 21, 2011;—Am. 2017, Act 90, Imd. Eff. July 12, 2017;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.2901 et seq. and R 299.2903 et seq. of the Michigan Administrative Code.

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324.4105 Sewerage systems; plans and specifications; rules; permit for construction; minor modifications; misdemeanor.

Sec. 4105. (1) The mayor of each city, the president of each village, the township supervisor of each township, the responsible executive officer of a governmental agency, and all other persons operating sewerage systems in this state shall file with the department a true copy of the plans and specifications of the entire sewerage system owned or operated by that person, including any filtration or other purification plant or treatment works as may be operated in connection with the sewerage system, and also plans and specifications of all alterations, additions, or improvements to the systems that may be made. The plans and specifications shall, in addition to all other requirements, show all the sources through or from which water is or may be at any time pumped or otherwise permitted to enter into the sewerage system, and the drain, watercourse, river, or lake into which sewage is to be discharged. The plans and specifications shall be certified by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person that operates the sewerage system, as well as by the engineer, if any are employed by any such operator. The department may promulgate and enforce rules regarding the preparation and submission of plans and specifications and for the issuance and period of validity of construction permits for the work.

(2) A person shall not construct a sewerage system or any filtration or other purification plant or treatment works in connection with a sewerage system except as authorized by a construction permit issued by the department pursuant to part 13. An application for a permit shall be submitted by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person proposing the construction. If eligible, a person may request an expedited review of an application for a construction permit under section 4112. An application for a permit shall include plans and specifications as described in subsection (1). If considered appropriate by the department, the department may issue a permit with conditions to correct minor design problems.

(3) The department may verbally approve minor modifications of a construction permit issued by the department as a result of unforeseen site conditions that become apparent during construction. Minor modifications include, but are not limited to, a minor change of location of the sewer or location of manholes. The person making the request for a modification shall provide to the department all relevant information pursuant to R 299.2931 to R 299.2945 of the Michigan administrative code and the application form provided by the department related to the requested modification. Written approval from the department shall be obtained for all modifications except when the department provides verbal approval for a minor modification as provided for in this subsection. The person receiving a written or verbal approval from the department shall submit revised plans or specifications to the department within 10 days from the date of approval.

(4) If a person seeks confirmation of the department's verbal approval of a minor modification under subsection (3), the person shall notify the department electronically, at an address specified by the department, with a detailed description of the request for the modification. The department shall make reasonable efforts to respond within 2 business days, confirming whether the request has been approved or not approved. If the department has not responded within 2 business days after the department receives the detailed description, the verbal approval shall be considered confirmed.

(5) A municipal officer or an officer or agent of a person who permits or allows construction to proceed on a sewerage works without a valid permit, or in a manner not in accordance with the plans and specifications approved by the department, is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment for not more than 90 days, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.2901 et seq. of the Michigan Administrative Code.

324.4106 Sewage treatment works; reports; false statement; penalty.

Sec. 4106. (1) A person who operates a sewage treatment works shall file with the department reports under oath as required by the department. The reports shall be sworn to by a responsible officer or person acquainted with the facts and employed by the person required to report under this part.

(2) A person making a false statement in a report under subsection (1) is guilty of perjury and subject to the penalty for that offense.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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Popular name: NREPA

324.4107 Inspection of plans and specifications; inspection of sewerage systems; recommendations or orders; compliance.

Sec. 4107. (1) The department on receipt of plans and specifications for a sewerage system shall inspect them with reference to their adequacy to protect the public health, and if the public water supply of the city or village is impure and dangerous to individuals or to the public generally, he or she shall inspect the sewerage systems or any parts of the sewerage system and the manner of its operation. If upon inspection the department finds the plans and specifications or the sewerage systems are inadequate or operated in a manner that does not adequately protect the public health, he or she may order the person owning or operating the sewerage system to make alterations in the plans and specifications or in the sewerage systems or the method of operation of the sewerage system as may be required or advisable in his or her opinion, in order that the sewage is not potentially prejudicial to the public health.

(2) The recommendations or orders of the department shall be served in writing upon the owner or operator of the sewerage system and the owner and operator shall comply with the recommendations or orders.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4108 Sewerage system; planning, construction and operation; cooperation; compliance; "private, investor-owned wastewater utility" defined.

Sec. 4108. (1) The department shall exercise due care to see that sewerage systems are properly planned, constructed, and operated to prevent unlawful pollution of the streams, lakes, and other water resources of the state. The department shall cooperate with appropriate federal or state agencies in the determination of grants of assistance for the preparation of plans or for the construction of waterworks systems, sewerage systems, or waste treatment projects, or both.

(2) The activities of a private, investor-owned wastewater utility shall comply with all applicable provisions of this act, local zoning and other ordinances, and the construction and operation requirements of the federal water pollution control act and the national environmental policy act of 1969, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(3) As used in this section, "private, investor-owned wastewater utility" means a utility that delivers wastewater treatment services through a sewerage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

History: 1994, Act 451, Eff. Mar. 30, 1995;—2005, Act 191, Imd. Eff. Nov. 7, 2005.

Popular name: Act 451

Popular name: NREPA

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324.4109 Engineers and other assistants; employment.

Sec. 4109. The department may employ engineers and other assistants as may be necessary to administer this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4110 Commencement of civil action by attorney general; jurisdiction; additional relief; violation as misdemeanor; penalty; appearance ticket; enforcement; "minor offense" defined.

Sec. 4110. (1) The department may request that the attorney general commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued under this part or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), a person who violates this part is subject to the following:

(a) If the person fails to obtain a permit required under this part, the court shall impose a civil fine of not less than $1,500.00 or greater than $2,500.00 for the first violation, not less than $2,500.00 or greater than $10,000.00 for the second violation, and not less than $10,000.00 or greater than $25,000.00 for each

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subsequent violation.

(b) If the person violates this part or a provision of a permit or order issued under this part or rule promulgated under this part other than by failure to obtain a permit, the court shall impose a civil fine of not less than $500.00 or greater than $2,500.00 for the first violation, not less than $1,000.00 or greater than $5,000.00 for the second violation, and not less than $2,500.00 or greater than $10,000.00 for each subsequent violation. For the purposes of this subdivision, all violations of a specific construction permit are treated as a single violation.

(3) Subject to section 4105(5), a person who violates this part or a written order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both, and payment of the costs of prosecution.

(4) A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g.

(5) The attorney general shall enforce this part.

(6) As used in this section, "minor offense" means a violation of a permit issued under this part that does not functionally impair the operation or capacity of a sewerage system.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.4111 Actions brought by department.

Sec. 4111. The department may bring an appropriate action in the name of the people of this state as may be necessary to carry out this part and to enforce any and all laws, rules, and regulations relating to this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4112 Expedited review process for certain projects.

Sec. 4112. (1) Subject to subsection (2), the following projects are eligible for expedited review:

(a) A conventional gravity sewer extension of 10,000 feet or less of sewer line.

(b) A simple pumping station and force main.

(c) A small diameter pressure sewer and grinder pumping station.

(2) An expedited review must not be conducted for a project that is being funded by the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(3) To obtain an expedited review, a person shall do all of the following before October 1, 2027:

(a) At least 10 business days before submitting an application under subdivision (b), notify the department electronically, in accordance with instructions provided on the department's website, of the person's intent to request expedited review. The department may waive this 10-day notification requirement.

(b) Submit electronically a complete application for a construction permit including a request for expedited review and credit card payment of the appropriate fee under subsection (4).

(c) Provide a written copy of the construction plans and specifications for the project that is prepared, signed, and sealed by a licensed professional engineer to the department postmarked not later than the date that the application is submitted electronically.

(d) For nongovernmental entities, provide certification to the department that all necessary contractual service agreements and financial plans are in place.

(4) Except as provided in subsection (6), the fee for an expedited review is as follows:

(a) For a conventional gravity sewer extension less than 2,000 feet, $1,000.00.

(b) For a conventional gravity sewer extension equal to or greater than 2,000 feet but less than 4,000 feet of sewer line, $1,500.00, and for each incremental increase of up to 2,000 feet of sewer line, an additional $500.00.

(c) For a simple pumping station and force main, $2,000.00.

(d) For a small diameter pressure sewer and grinder pumping station consisting of not more than 2,000 feet of sewer line and not more than 10 grinder pumping stations, $2,000.00.

(e) For small diameter pressure sewer and grinder pumping station projects not covered by subdivision (d) and consisting of not more than 5,000 feet of sewer line and not more than 25 grinder pumping stations, $4,000.00.

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(5) Except as provided in subsection (7), if an applicant does not comply with subsection (3), the department shall not conduct an expedited review and any submitted fee shall not be refunded. Within 10 business days after receipt of the application, the department shall notify the applicant of the reasons why the department's review of the application will not be expedited. On receipt of this notification, a person may correct the deficiencies and resubmit an application and request for an expedited review with the appropriate fee specified under subsection (6). The department shall not reject a resubmitted application and request for expedited review solely because of deficiencies that the department failed to fully identify in the original application.

(6) For a second submission of an application that originally failed to meet the requirements specified in subsection (3), the applicant shall instead include a fee equal to 10% of the fee specified in subsection (4). However, if the deficiency included failure to pay the appropriate fee, the second submission must include the balance of the appropriate fee plus either 10% of the appropriate fee or, if the applicant makes additional changes other than those items identified by the department as being deficient, an additional fee equal to the fee specified in subsection (4). For the third and each subsequent submittal of an application that failed to meet the requirements specified in subsection (3), the applicant shall include an additional fee equal to the fee specified in subsection (4).

(7) If an applicant fails to sign the application, submits construction plans and specifications that have not been prepared, signed, and sealed by a licensed professional engineer, or does not submit the required fee, the department shall notify the applicant of the deficiency within 5 business days after receiving the application. The application must not be processed until the deficient items are addressed. If the applicant does not provide the deficient items within 5 business days after notification by the department, the application must be handled as provided in subsection (5).

(8) The department shall review and make a decision on complete applications submitted with a request for expedited review within 10 business days after receipt by the department of a complete application. However, if the department waives the notification requirement of subsection (3)(a), the department shall review and make a decision on the application within 20 business days after receipt of a complete application.

(9) If the department fails to meet the deadline specified in subsection (8), both of the following apply:

(a) The department shall continue to expedite the application review process for the application.

(b) The fee required under this section for an expedited review must be refunded.

(10) The department shall transmit fees collected under this section to the state treasurer for deposit into the fund.

(11) As used in this section, "complete application" means a department-provided application form that is completed, for which all requested information has been provided, and that can be processed without additional information.

History: Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2019, Act 79, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.4113 Infrastructure construction fund.

Sec. 4113. (1) The infrastructure construction fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

(4) The department shall expend money from the fund, upon appropriation, only to administer this part and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, including all of the following:

(a) Maintenance of program data.

(b) Development of program-related databases and software.

(c) Compliance assistance, education, and training directly related to this part and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(d) Program administration activities.

History: Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

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PART 43

WATERWORKS SYSTEMS, SEWERS, AND DISPOSAL PLANTS

324.4301 Waterworks systems, sewers, and disposal plants; acquisition, construction, equipping, operation, and maintenance; acquisition of land; powers of local units of government.

Sec. 4301. A local unit of government in this state, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain, either within or outside of the statutory or corporate limits of the local unit or units of government, intercepting sewers, other sanitary and storm sewers, pumping stations, and a plant or plants for the treatment, processing, purification, and disposal in a sanitary manner approved by the department, of the liquid and solid wastes, refuse, sewage and night soil, storm water, and garbage of the local unit or units of government. A local unit of government, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain either within or outside of the statutory or corporate limits of the local unit or units of government waterworks systems approved by the department of public health, including such facilities as water mains, treatment works, source facilities, pumping stations, reservoirs, storage tanks, and other appurtenances for the purpose of obtaining, treating, and delivering pure and wholesome water in adequate quantity to the local unit or units of government. They may acquire by gift, grant, purchase, or condemnation necessary lands either within or outside of the statutory or corporate limits of the local unit or units of government. However, a township shall not condemn land outside its corporate limits. For the purpose of acquiring property for the uses described in this part, the local unit of government has all the rights, powers, and privileges granted to public corporations under Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws. These powers are in addition to any powers granted to the local unit of government by statute or charter.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.4302 Waterworks systems, sewers, and disposal plants; mortgage bonds.

Sec. 4302. (1) The waterworks system, intercepting sewers, pumping stations, sewage disposal plant and system, transfer station, and garbage and refuse processing or disposal plant and system, are public utilities within the meaning of any constitutional or statutory provisions for the purpose of acquiring, purchasing, owning, operating, constructing, equipping, and maintaining the waterworks system, intercepting sewers, pumping stations, sewage disposal plant and system, transfer station, and garbage and refuse processing or disposal plant and system. A local unit of government may issue full faith and credit bonds or mortgage bonds for the purposes described in this part beyond the general limits of the bonded indebtedness prescribed by law except as provided in this section. The mortgage bonds as provided in this section shall not impose any general liability upon the local unit of government but shall be secured only on the property and revenues of the utility as provided in this section, including a franchise, stating the terms upon which the purchaser may operate the utility in case of foreclosure. The franchise shall not extend for a longer period than 20 years from the date of the sale on foreclosure. The total amount of mortgage bonds shall not exceed 60% of the original cost of the utility except as provided in this section. Bonds shall not be issued as general obligations of the local unit of government except upon a 3/5 affirmative vote of the qualified electors of the local unit of government and except as provided in this section, not in excess of 3% of the assessed valuation of the real and personal property of the local unit of government as shown by the last preceding tax roll. Bonds shall not be issued as full faith and credit bonds or mortgage bonds of the utility except upon a 3/5 affirmative vote of the legislative body of the local unit of government.

(2) Revenue bonds issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(3) Except for revenue bonds described in subsection (2), all other bonds and notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 327, Imd. Eff. May 23, 2002.

Popular name: Act 451

Popular name: NREPA

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324.4303 Waterworks systems, sewers, and disposal plants; supervision and control by local units of government; rules; establishment, certification, and assessment of rates or charges.

Sec. 4303. The legislative body of a local unit of government or the respective legislative bodies of the local units of government who have agreed to jointly own and operate waterworks systems, intercepting sewers, or sewage treatment plants, may create a separate board or may designate certain officials of the local unit or units of government to have the supervision and control of the waterworks systems, intercepting sewers, transfer stations, or sewage and refuse and garbage processing or disposal plants. The legislative body, respective legislative bodies, or the board may make all necessary rules governing the use, operation, and control of the facilities and systems. The legislative body or respective legislative bodies may establish just and equitable rates or charges to be paid to them for the use of the waterworks system or disposal or processing plant and system by each person whose premises are served, and the rates or charges may be certified to the tax assessor and assessed against the premises served and collected or returned in the same manner as other county or municipal taxes are certified, assessed, collected, and returned.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4304 Mortgage bonds; manner of payment; sinking fund.

Sec. 4304. Bonds that are issued and secured by a mortgage on the utility as provided in this part shall not be a general obligation of the local unit of government, but shall be paid only out of revenues received from the service charges as provided in section 4303 or from a sale of the property and franchises under a foreclosure of the mortgage. If a service rate is charged, a sufficient portion shall be set aside as a sinking fund for the payment of the interest on the bonds and the principal of the bonds at maturity.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4305 Sewers and disposal plants; granting franchise to private corporation.

Sec. 4305. Instead of owning and operating a sewer system and sewage disposal plant, transfer station, garbage or refuse collection, processing, and disposal plant or system as provided in section 4301, a local unit of government may grant a franchise for a period not to exceed 30 years to a private corporation organized under, or authorized by, the laws of this state to engage in such business, to build, construct, own, and operate a sewage or garbage and refuse processing or disposal system for the purpose of receiving and treating sewage and night soil, refuse, and garbage from the local unit or units of government. The franchise may authorize the corporation to charge each person owning property, from which the sewage, refuse, or garbage is received, a fee determined to be reasonable by the public service commission of this state, upon proper application made either by the corporation or local unit or units of government, and after holding a public hearing. The franchise may also grant to the corporation the right and privilege to provide collection services and to lay all intercepting and other sewers and connecting pipes in the streets and public alleys of the local unit or units of government as are necessary to receive, transfer, and conduct the sewage, garbage, or refuse to the processing or disposal plant and under reasonable rules, regulations, and supervision as are established by the local unit or units of government. The franchise is void unless approved by 3/5 of the electors of the local unit or units of government voting at a general or special election. This franchise shall not duplicate existing private solid waste management services or facilities that have been developed under part 115.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4306 Contract to receive, treat, transfer, and process sewage, night soil, garbage, and refuse; charges.

Sec. 4306. The local unit or units of government may enter into a contract with a person to receive, treat, transfer, and process in the manner provided in this part, the sewage, night soil, garbage, and refuse of the local unit or units of government. The contract may authorize the person to charge the owners of the premises served a service rate determined by the local unit or units of government to be just and reasonable, or the local unit or units of government may contract to pay a flat rate for the service, paid out of their general fund or funds, or assess the owners of the property served a reasonable charge to be collected as provided in this part

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and paid into a fund to be used to defray the contract charges.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4307 Sewage system, solid waste facility, or waterworks system; bonds generally.

Sec. 4307. (1) In accordance with and to the extent authorized by law, when the department, the department of public health, or a court of competent jurisdiction in this state has ordered, or when the department has issued a permit for, the installation, construction, alteration, improvement, or operation of a sewage system, solid waste facility, or waterworks system in a local unit of government, and the plans for the facility or system have been prepared and approved by the state department or commission having the authority by law to grant the approval, the legislative body or the respective legislative bodies of the local unit or units of government may issue and sell the necessary bonds for the construction, installation, alteration, operation, or improvement, including the treatment works, and other facilities as may be ordered or set forth in the permit as being necessary to provide for the effective operation of the system. This provision shall be construed to allow a local unit of government the option of selling bonds under a department order or permit, or of taking or permitting the matter to go into court and selling bonds under a court order. The legislative body or the respective legislative bodies shall determine the denomination of the bonds and the date, time, and manner of payment. The amount of the bonds either issued or outstanding shall not be included in the amount of bonds that the local unit or units of government are authorized to issue under any statutes of this state or charters. Local units of government issuing bonds under this section may raise a sum annually by taxation as the legislative body or respective legislative bodies consider necessary to pay interest on the bonds, and to pay the principal as it falls due. The annual amount may be in excess of the authorized annual tax rate fixed by statute or charter.

(2) Except as otherwise provided in this part, all bonds issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Court ordered bonds do not require approval of the electors and are not subject to section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5, as to publication of notice, petition, and referendum. Bonds other than court ordered bonds issued under this part require approval of the electors at a general or special election only if an appropriate petition is filed as provided by law.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 213, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.4308 Waterworks systems, sewers, or disposal systems; court order; plans and specifications; authorization and issuance of bonds.

Sec. 4308. If an order is made by a court of competent jurisdiction pursuant to this part, the fact that the order was issued shall be recited in the official minutes of the legislative body or the respective legislative bodies. The body or bodies shall require that plans and specifications be prepared for a waterworks, sewage, garbage, or refuse transfer, processing, or disposal system, including the necessary other facilities. After the plans are approved by the legislative body or respective legislative bodies, they shall be submitted to the department of public health or the department for approval. If the plans are approved, the legislative body or respective legislative bodies shall authorize the issuance and sale of the necessary bonds to construct the proposed system or facilities in accordance with the approved plans.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4309 Construction of part.

Sec. 4309. The authority given by this part is in addition to and not in derogation of any power existing in any of the local units of government under any statutory or charter provisions which they may now have or may adopt.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4310 Waterworks systems, sewers, or disposal plants; court proceedings.

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Sec. 4310. Proceedings under this part shall be taken only in a court of competent jurisdiction in the county in which the proposed waterworks system, interceptors, sewage, garbage, or refuse transfer, processing, or disposal plants are to be constructed.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4311 Waterworks systems, sewers, or disposal plants; agreements between local units of government and municipalities as to bonds.

Sec. 4311. If considered expedient for the safety and health of the people, local units of government may enter into agreement with each other to raise money and issue bonds to erect and maintain waterworks systems, intercepting sewers, sewage treatment plants, or garbage or refuse transfer, processing, or disposal systems.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4312 Local units of government; contract power; approval.

Sec. 4312. If local units of government desire to act under this part, the relationship established between such local units of government shall be fixed by contract and such contracts may be made by local units of government under this part in a manner and to the extent that natural persons might make contracts for like purposes. Such contracts before becoming operative shall be approved by a vote of the majority of the members elect of each of the respective legislative bodies of the local units of government operating under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 45

BONDS FOR PREVENTION AND ABATEMENT OF WATER POLLUTION

324.4501 “Municipality” defined.

Sec. 4501. The term "municipality" or "municipalities" as used in this part means and includes a county, city, village, township, school district, metropolitan district, port district, drainage district, authority, or other governmental authority, agency, or department within or of the state with power to acquire, construct, improve, or operate facilities for the prevention or abatement of water pollution, or any combination of such governmental agencies.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4502 Legislative determinations.

Sec. 4502. The legislature hereby determines all of the following:

(a) That it is essential for the public health, safety, and welfare of the state and the residents of the state to undertake a complete program of construction of facilities to abate and prevent pollution of the water in and adjoining the state, the program to be undertaken by the state in cooperation with any municipalities and with such aid from the United States government or its agencies as is available.

(b) That abating and preventing pollution of the water in and adjoining the state is essential to the encouragement of business, industrial, agricultural, and recreational activities within the state.

(c) That the encouragement of business, industrial, agricultural, and recreational activities in the state by abating and preventing pollution of the water in and adjoining the state will benefit the economy of the state by encouraging businesses and industries to locate or expand within the state in order to provide more employment within the state.

(d) That abating and preventing pollution of the water in and adjoining the state is in furtherance of the purpose and the public policy of the state as expressed in sections 51 and 52 of article IV of the state constitution of 1963 and to carry out the remaining unfunded portions of the program for which electors of the state authorized the issuance of general obligation bonds.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.4503 Bond issuance; authorization; amount; purpose.

Sec. 4503. The state shall borrow the sum of $335,000,000.00 and issue the general obligation bonds of the state, pledging the faith and credit of the state for the payment of the principal and interest on the bonds, for the purpose of providing money for the planning, acquisition, and construction of facilities for the prevention and abatement of water pollution, consisting of trunk and interceptor sewers, sewage treatment plants and facilities, improvements and additions to existing sewage treatment plants and facilities, and such other structures, devices, or facilities as will prevent or abate water pollution, and for the making of grants, loans, and advances to municipalities, in accordance with conditions, methods, and procedures established by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4504 Bonds; issuance in series; resolution of administrative board; sale of bonds.

Sec. 4504. (1) The bonds shall be issued in 1 or more series, each series to be in the principal amount, to be dated, to have the maturities that may be either serial, term, or term and serial, to bear interest at a rate or rates not to exceed 6% per annum if issued before September 19, 1982 and not to exceed 18% per annum if issued on or after September 19, 1982, to be subject or not subject to prior redemption and, if subject to prior redemption with call premiums, to be payable at a place or places, to have or not have the provisions for registration as to principal only or as to both principal and interest, and to be in the form and to be executed in the manner as determined by resolution to be adopted by the administrative board. The administrative board may in the resolution provide for the investment and reinvestment of bond sales proceeds and any other details for the bonds and the security of the bonds considered necessary and advisable. The bonds or any series of the bonds shall be sold for not less than the par value of the bonds and may be sold, as authorized by the state administrative board, either at a public sale or at a publicly negotiated sale.

(2) Bonds issued under this part are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) The issuance of bonds under this part is subject to the agency financing reporting act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2002, Act 248, Imd. Eff. Apr. 30, 2002.

Popular name: Act 451

Popular name: NREPA

324.4505 Revenues; disposition.

Sec. 4505. The proceeds of sale of the bonds or any series of the bonds and any premium and accrued interest received on the delivery of the bonds shall be deposited in the treasury in a separate account and shall be disbursed from the separate account only for the purposes for which the bonds have been authorized and for the expense of issuing the bonds. Proceeds of sale of the bonds or any series of the bonds shall be expended for the purposes set forth in this part in the manner provided by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4506 Bonds; negotiability; tax exempt.

Sec. 4506. Bonds issued under this part are fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws, and the bonds and the interest on the bonds are exempt from all taxation by the state or any of its political subdivisions.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4507 Legal investments.

Sec. 4507. Bonds issued under former Act No. 76 of the Public Acts of 1968 or this part are securities in which all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors,

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guardians, trustees, and other fiduciaries may properly and legally invest any funds, including capital, belonging to them or within their control.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4508 Bonds; question; submission to electors; ballot; form.

Sec. 4508. The question of borrowing the sum of $335,000,000.00 and issuing bonds of the state for the purpose set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963 , at the general November election to be held on November 5, 1968. The question submitted shall be substantially as follows:

"Shall the state of Michigan borrow the sum of $335,000,000.00 and issue general obligation bonds of the state therefor pledging the full faith and credit of the state for the payment of principal and interest thereon for the purpose of planning, acquiring and constructing facilities for the prevention and abatement of water pollution and for the making of grants, loans and advances to municipalities, political subdivisions and agencies of the state for such purposes, the method of repayment of said bonds to be from the general fund of the state?

Yes [ ]

No [ ]".

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4509 Submission to electors.

Sec. 4509. The secretary of state shall take such steps and perform all acts as are necessary to properly submit the question to the electors of the state qualified to vote on the question at the general November election to be held on November 5, 1968.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4510 Bonds; appropriation to make prompt payment.

Sec. 4510. After the issuance of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part, or any series of the bonds, the legislature shall each year make appropriations fully sufficient to pay promptly when due the principal of and interest on all outstanding bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part and all costs incidental to the payment of that principal and interest.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.4511 Approval of electors.

Sec. 4511. Bonds shall not be issued under this part unless the question set forth in section 4508 is approved by a majority vote of the qualified electors voting on the question at the general November election to be held on November 5, 1968.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 47

SEWAGE DISPOSAL AND WATER SUPPLY DISTRICTS

324.4701 Definitions.

Sec. 4701. As used in this part:

(a) "Due notice" means notice published at least twice, with an interval of at least 7 days between the 2 publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if a publication of general circulation is not available, by posting at a reasonable number of conspicuous places within the appropriate area. Posting shall include, if possible, posting at public places where it may be customary to post notices concerning county or municipal affairs. At any hearing held pursuant to the notice

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and at the time and place designated in the notice, adjournment may be made without renewing the notice for an adjournment date.

(b) "Municipality" includes a metropolitan district, a water or sewer authority created by law, or a county, township, charter township, incorporated city, or incorporated village. An incorporated village, for the purposes of this part, is a governmental unit separate and distinct from the township or townships in which it is located.

(c) "Sewage disposal systems" includes all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes.

(d) "United States or agencies of the United States" includes the United States of America or any bureau, department, agency, or instrumentality of the United States or otherwise created by the congress of the United States.

(e) "Water supply and sewage disposal district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this part for the purpose, with the powers, and subject to the restrictions in this part.

(f) "Water supply system" includes all plants, work, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, and the distribution of water.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4702 Department of natural resources; powers and duties.

Sec. 4702. The department under this part has all of the following powers and duties:

(a) To foster and encourage the organization of sewage disposal and water supply districts, to act as the administrative agency in the proceedings incident to the formation of districts, and to offer and lend appropriate assistance to the directors of districts organized as provided in this part in the carrying out of any of their powers, functions, and programs.

(b) To cooperate, negotiate, and enter into contracts with the other governments, governmental units and agencies in matters concerning water supply systems and sewage disposal systems; to take steps and perform acts and execute documents as may be necessary to take advantage of any act enacted by the congress of the United States that may make available funds for any of the purposes enumerated in this part or be otherwise of assistance in carrying out the purposes of this part; to disburse money that may be appropriated by the legislature for the use and benefit of the districts created under this part or municipalities or local units of government of this state in accordance with the formula prescribed in this part or in the acts of appropriation; and to disburse money that may be received by this state from the United States government for the purposes provided for in this part in accordance with the formula set forth by applicable acts of congress.

(c) To act as the fiscal agent for this state for the purpose of making available to local units of government and the districts as may be organized under this part money or instruments of indebtedness that may be approved by the legislature or the people of this state for the construction and operation of sewage disposal systems by local units of government or districts.

(d) To coordinate its duties and functions with similar or related duties and functions that are performed by other state agencies or governmental units to coordinate and cooperate efforts to accomplish the purposes of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4703 Sewage disposal and water supply districts; joint municipal action to form district; filing, contents, and consolidation of petition.

Sec. 4703. (1) Two or more municipalities, by resolution of their legislative bodies, may file a petition with the department requesting that a sewage disposal district or a water supply district or a combination of both be organized to function in the area described in the petition. The petition shall set forth all of the following:

(a) The proposed name of the district.

(b) That there is need in the interests of public health and welfare for the district to function in the area described in the petition.

(c) A description of the area proposed to be organized as a district. The description is not required to be given by metes and bounds or by legal subdivision, but is sufficient if the description is generally accurate and

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designates the local units of governments comprised within the proposed district. The territory shall include only area within the boundaries of the petitioning municipality.

(d) A request that a referendum be held within the defined territory on the question of creation of the district in the territory, and that the agency create the requested district.

(2) When more than 1 petition is filed covering a portion of the same territory, the agency may consolidate all or any of the petitions.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4704 Sewage disposal and water supply districts; petition; hearing; notice; adjournment; determination as to territory affected.

Sec. 4704. Within 30 days after a petition is filed with the department, or later if authorized by the department, but not to exceed 90 days, the department shall cause due notice to be given of a hearing upon the question of the desirability and necessity in the interests of public health and welfare of the creation of the district, upon the question of appropriate boundaries to be assigned to the district, upon the propriety of the petition and of the proceedings taken under this part, and upon all other questions relative to this matter. All interested parties have the right to attend the hearings and be heard. Due notice of the time and place of holding the hearing shall be given to all of the executive officials of the municipalities included within the involved territory. If it appears upon the hearing that it is desirable to include within the proposed district territory outside of the area within which due notice has been given, or if it is made to appear that more data or information is needed, the hearing shall be publicly adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing held. The department shall cooperate to the fullest extent possible with the local units of government included within the territorial limits of the proposed district in the making of the necessary investigations and engineering and financial studies that may be required for the proper decisions to be made by the department upon the conclusion of the hearing. After the hearing, if the department determines upon the facts presented and upon other relevant facts and information as may be available to it that there is need in the interests of public health and welfare for a sewage disposal or water supply district, or both, to be created and to function in the territory considered at the hearing, it shall make and record this determination and shall define the boundaries of the districts by the territorial limits of municipalities included within the district or by metes and bounds. In making the determination and in defining the boundaries, the department may give due weight and consideration to the physical and topographical conditions of the area considered, availability or nonavailability of water resources, engineering and economic feasibility of the construction and management of the works required, and all other relevant and pertinent facts that may be brought to its attention or of which it may have knowledge. Such additional territory shall not be included without the approval by resolution of the legislative body of any municipality affected, including the original petitioners.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4705 Sewage disposal and water supply districts; hearing; determination of no necessity; record; determination of necessity; referendum; rules; creation of authority; application; petitions to include additional territory; legal status of district; certificate.

Sec. 4705. (1) If the department determines after the hearing that there is no need for a district to be formed in the territory considered at the hearing and that the operation of the district within the defined boundaries is not practicable and feasible from the standpoint of engineering, administration, and financing, the department shall make and record the determination and shall deny any petition filed with it.

(2) If the department has made and recorded a determination that in the interests of public health and welfare there is a need for the formation, organization, and functioning of a district in a particular territory and has defined the boundaries of the district, it shall consider the question of whether the operation of that district within the boundaries with the powers conferred upon districts in this part is desired by a majority of the electors within the boundaries of the district. To assist the department in the determination of this question, it is the duty of the department, within a reasonable time of entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, to order a referendum within the proposed district upon the proposition of the creation of the district and to order the municipalities affected to cause due notice of the referendum to be given. The department shall direct the

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officials in charge of the holding of elections in the local units of government included within the district to call a special election or to place the referendum on the ballot at the next general election to be held in all of the territory comprising the district. The question shall be submitted by ballots prepared by the department that shall succinctly describe the district proposed to be formed, the area in which it shall function, and in appropriate language require those voting on the proposition to vote for or against the creation of the district, in accordance with the requirements of law for the holding of referendums on state questions. Municipalities affected are responsible for the costs of the preparation of the ballots. Only electors who have property assessed for taxes within the boundaries of the district are eligible to vote in the referendum. Upon the completion of the referendum, the department shall publish the result of the referendum.

(3) The department shall pay all expenses for the issuance of the notice and the conduct of the hearings described in this section and shall supervise the conduct of the hearings. The referendum shall be held by the regular established election officials and any costs shall be borne by the affected municipalities. The department shall promulgate rules governing the conduct of the hearings.

(4) If the results of the referendum described in subsection (3) call for the formation of the proposed district, the department shall call a conference of all the officials of all of the municipalities within the boundaries of the proposed district and the department shall make every effort to encourage the municipalities to incorporate an authority for the purpose of constructing and operating a sewage disposal system or water supply system under the terms and authority vested in the municipalities pursuant to law. If after the expiration of 180 days from the holding of the conference or within an additional period as the department may consider necessary, the municipalities have not created an authority as provided in this part, the department shall make, file, and publish as provided in this part a determination creating the district as contained in the application and as approved by the referendum.

(5) Upon the making and filing of the determination as described in subsection (4), due notice shall be served and published and the department shall appoint 5 directors who, for the purpose of this part, are electors within the territory comprising the district and who shall comprise a temporary governing body of the district. The members of the temporary governing body shall hold office until the officers of the first permanent governing body have been elected and qualified.

(6) The district shall be a governmental subdivision of this state and a public body corporate when the appointed directors present to the secretary of state an application signed by them that sets forth all of the following:

(a) That a petition for the creation of the district was filed with the department pursuant to this part, that the proceedings specified in this part were taken, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate under this part, and that the applicants are the temporary directors of the district.

(b) The name and official residence of each of the directors together with a certification of their appointment.

(c) The name which is proposed for the district.

(d) The location of the present office that has been selected for the district by the directors.

(7) The application shall be subscribed and sworn to by at least a majority of the directors before an officer authorized by the laws of the state to administer oaths. The officer shall certify upon the application that he or she personally knows the directors and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a certified statement made by the department that a petition was filed, notice issued, and hearing held as required in this part; that the department determined that there is need in the interests of the public health and welfare for a district to function in the proposed territory; that the boundaries are defined; that notice was given and referendum held in the question of creation of the district; that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of such a district; and that the department did determine that the operation of the proposed district is administratively practicable and feasible. In addition, the statement shall set forth the boundaries of the district.

(8) The secretary of state shall examine the application and statement and, if he or she finds that the name proposed for the district is not identical with any similar district of this state or so nearly identical as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the office of the secretary of state. When the application and statement have been made, filed, and recorded as provided in this section, the district shall constitute a governmental subdivision of this state and a public body corporate. The secretary of state shall make and issue to the directors a certificate under the seal of the state of the due organization of the district and shall record such certificate with the application and statement.

(9) Petitions for including additional territory within a district may be filed with the department and the

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proceedings provided for in this part or petitions to organize a district shall be observed in the case of petitions for inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as possible to the form prescribed in this part for petitions to organize a district. The petition shall be filed with the department and upon its receipt it shall be referred to the governing body of the district to be affected by the petition and if, after due consideration, the governing body determines against the inclusion of the additional territory, the petition shall be denied.

(10) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district, the district shall be considered to be legally established in accordance with this part upon proof of the issuance of the certificate by the secretary of state. The certificate of the secretary of state shall be admissible in evidence in any suit, action, or proceeding described in this subsection and shall be proof of the filing and contents of the certificate.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4706 Permanent governing body; nomination, election, and terms of directors; certification of election; vacancy; conducting business at public meeting; notice of meeting; quorum; concurrence of majority for determination; expenses.

Sec. 4706. (1) The first permanent governing body of the district after the district has been organized and has received the secretary of state certificate described in section 4705 shall consist of 5 directors. The directors shall be nominated and elected at the next general state election in the same manner and pursuant to the election laws applicable to members of the house of representatives.

(2) Except for the first directors, the directors shall hold office for a term of 6 years. Among the first directors to be elected, the 2 receiving the highest number of votes shall hold office for the full term of 6 years and the 3 receiving the next highest number of votes shall hold office for 4 years. The secretary of state shall be responsible for the certification of the election of the directors. A vacancy shall be filled by appointment made by the remaining directors for the unexpired term.

(3) The business which the directors may perform shall be conducted at a public meeting of the directors held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A majority of the directors constitutes a quorum for the transaction of business and the concurrence of a majority of the total number of directors in a matter shall be required for the matter's determination. A director shall not receive compensation for services, but shall be reimbursed for expenses necessarily incurred in the discharge of his or her duties.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4707 Employment of executive secretary, technical experts, officers, agents, and employees; qualifications, duties, and compensation; delegation of powers and duties; furnishing copies of documents and other information; availability of writings to public; execution of surety bonds; records; annual audit; designation of representatives to advise and consult on questions of program and policy.

Sec. 4707. (1) The directors may employ an executive secretary, technical experts, and other officers, agents, and employees, permanent or temporary, as required, and shall determine their qualifications, duties, and compensation. The directors may delegate to the chairperson, to 1 or more directors, or to 1 or more agents or employees, powers and duties as they consider proper.

(2) The directors shall furnish to the department upon request copies of all rules, orders, contracts, forms, minutes, proceedings, and other documents that they adopt or employ and other information concerning their activities as required by the department in the performance of the department's duties under this part. A writing prepared, owned, used, in the possession of, or retained by the directors in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) The directors shall provide for the execution of surety bonds for employees and officers entrusted with funds or property; shall provide for the keeping of a full and accurate record of their proceedings and of rules and orders promulgated or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. The directors shall request that the legislative body and executive officers of a municipality

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located within the territory comprised within the district designate a representative to advise and consult with the directors of the district on questions of program and policy that may affect the property, water supply, or sewage disposal problems, or other interests of the municipality.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4708 Sewage disposal and water supply districts; powers.

Sec. 4708. A district organized under this part constitutes a governmental subdivision of this state and a body corporate, exercising public powers, with power to sue and to be sued in any court of this state. A district shall possess all the powers necessary to organize itself and also shall possess powers incident to the powers enumerated in this part. The district is authorized and empowered to do all of the following:

(a) Pursuant to the terms of any contract entered into under section 4709 of this part, to construct and operate sewage disposal systems and water supply systems within the area comprising its territorial limits and to acquire, extend, and improve the systems.

(b) To make and cause to be made surveys, studies, and investigations of water resources of the area within its territorial limits for the purpose of determining the feasibility and practicability of developing new sources of water supply to municipalities, industrial and commercial establishments, and agricultural and residential lands and areas so that water is available to agricultural and residential lands in a quantity and quality necessary for the protection of the public health and the promotion of the general welfare within the areas.

(c) To make and cause to be made surveys, studies, and investigations for the purpose of ascertaining the requirements of municipalities, industrial and commercial establishments, individual and collective groups, or occupants of lands for sewage disposal systems so that sewers and sewage disposal facilities are available to the entities described in this subdivision that are situated within the territorial limits of the district and that may need or require the facilities for the protection of public health and the promotion of the general welfare.

(d) To cooperate with and enter into agreements with any person as may be necessary for the full performance of its functions and duties and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in property, either within or outside of its territorial limits; to maintain, administer, and improve any acquired properties; to receive income from same and to expend the income in implementing this part and its purposes; and to sell, lease, or otherwise dispose of any of its property or interests in property to implement this part and its purposes. The district is invested with the power of eminent domain in acquiring private property for public use. For the purposes of exercising the power, the district may proceed under Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or any other statute that grants to any municipality or public body the authority to acquire private property for public use.

(e) To accept and receive money as may be appropriated to the district by the legislature of this state.

(f) To accept and receive any funds or money which may be appropriated by any act of congress either directly from any federal governmental agency responsible for the disbursement and allocation of the funds or through the department and for that purpose the districts are authorized to execute contracts, documents, or agreements as may be required by the congressional act as a prerequisite to the securing of the funds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4709 Sewage disposal and water supply districts; contracts with municipalities; construction, improvement, enlargement, extension, operation, and financing; pledge of payment; resolution; approval by electors; issuance of bonds.

Sec. 4709. (1) The district may enter into contracts with any municipality located within its territorial limits providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a sewage disposal system or water supply system. A contract shall provide for the allocation and payment of the share of the total cost to be borne by the municipality in annual installments for a period not exceeding 40 years. Each contracting municipality may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. The district shall make a reasonable charge for its services that it renders to the users in order to cover the retirement of outstanding indebtedness, costs of operation, maintenance, and replacement of its plants and reserves for capital improvements. If there is excess money in the treasury of the district after all of the contingencies have been met, the excess shall be rebated to the contracting municipalities in proportion to the total amount that the municipality paid for services it has

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received from the district. No limitation in any statute or charter shall prevent the levy and collection by each of the contracting municipalities of the full amount of taxes necessary for the payment of the contractual obligation. These funds may be raised by each contracting municipality by the use of 1 or more of the following methods:

(a) The levy of special assessments on property benefited by the sewage disposal system or water supply system. The procedures relative to the levying and collection of the special assessments shall conform as near as may be to applicable charter or statutory provisions.

(b) The levy and collection of rates or charges to users and beneficiaries of the service or services furnished by the sewage disposal system or water supply system.

(c) From money received, or to be received, derived from the imposition of taxes by this state, unless the money for this purpose is expressly prohibited by the state constitution of 1963.

(d) From any other fund or funds that may be validly used for the purpose. The contract may provide for any and all matters relating to the acquisition, construction, operation, and financing of the sewage disposal system or water supply system as are considered necessary, including authorization to the district to issue bonds secured by the full faith and credit pledges of the contracting municipalities, as authorized in this part. The contract may provide for appropriate remedies in case of default, including, but not limited to, the right of the municipalities to authorize the county treasurer or other official charged with the disbursement of funds derived from the state sales tax levy under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, to withhold sufficient funds to make up any default or deficiency in funds.

(2) A municipality desiring to enter into a contract with the district under this section shall authorize, by resolution of its governing body, the execution of the contract. The resolution shall be published in 1 or more newspapers of general circulation within the municipality, and the contract may be executed without a vote of the electors upon the expiration of 30 days after the date of the publication unless, within the 30-day period, a petition signed by not less than 10% of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the execution of the contract. If this occurs, the contract shall not be executed until approval by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election to be held not more than 90 days after the filing of the petition. A special election called for this purpose shall not be included in any statutory or charter limitation as to the number of special elections to be called within any period of time. Signatures on any petition shall be verified by some person under oath, as the actual signatures of the persons whose names are signed on the petition, and the clerk of the municipality has the same power to reject signatures as city clerks under section 25 of the home rule city act, 1909 PA 279, MCL 117.25. The number of registered electors in a municipality is determined by the registration books as of the date of the filing of the petition.

(3) To obtain funds to acquire, construct, improve, enlarge, or extend the sewage disposal system or water supply system authorized by this part, the district, after the execution of the contract or contracts authorized by this part, upon ordinance or resolution adopted by the district, may issue its negotiable bonds secured by the full faith and credit pledges made by each contracting municipality pursuant to authorization contained in this part and the contracts entered into pursuant to this part. Except as otherwise provided in this part, bonds are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The ordinance or resolution authorizing the issuance of the bonds shall include the terms of the contracts.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 214, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.4710 Sewage disposal and water supply districts; contract sewage treatment; income; application.

Sec. 4710. The district may enter into a contract for the furnishing of sewage treatment services by any sewage treatment plant owned or operated by the district as a part of its sewage disposal system or the furnishing of water service from any water facilities owned or operated by the district. This contract shall provide for reasonable charges or rates for the service furnished. Any income derived from a contract described in this section shall be applied by the district to the costs of operation and maintenance of its sewage disposal system or its water supply system, and any balances remaining after payment of its cost shall be applied in reduction of its outstanding bonded indebtedness incurred for the acquisition or improvement of its sewage disposal system or water supply system. A contract shall not exceed a period of 40 years.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.4711 Detachment of territory from participating municipality; contractual obligations; bonds; redemption.

Sec. 4711. If territory that is part of a district created under this part is detached from a municipality and transferred to a municipality that is not part of the district, the territory shall remain a part of the municipality from which detached only for the purpose of carrying out any contractual obligations or for the purpose of levying a tax to retire any bonded indebtedness incurred by such district for which the territory is liable until the contractual obligations are fulfilled or the bonds are redeemed or sufficient funds are available in the district's debt retirement fund for this purpose. A territory described in this section is a part of the municipality to which transferred for all other purposes and subsequent to the redemption of the bonds or the time when sufficient funds are available to redeem the bonds, the territory is no longer a part of the district.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4712 Existing systems; self-liquidating revenue bonds.

Sec. 4712. If the governing body of a district formed under this part acquires, extends, improves, or operates a sewage disposal system or water supply system or provides for the sale and purchase of sewage disposal service or water supply service from an existing system or systems and executes contracts that may be necessary, the authority may, pursuant to any contract entered into under section 4709, issue self-liquidating revenue bonds in accordance with the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.140 of the Michigan Compiled Laws, or any other act providing for the issuance of revenue bonds. However, these bonds are payable solely from the revenues of the sewage disposal system or the water supply system. The charges specified in any contract are subject to increase by the district at any time if necessary to provide funds to meet its obligations and any contract authorized by this part is for a period of not more than 40 years. The legislative body of any municipality that enters into a contract with the district may raise by taxes or pay from its general funds any money required to be paid under the terms of the contract to obtain maps, plans, designs, specifications, and cost estimates of the proposed sewage disposal system or water supply system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 49
CONSTRUCTION OF COLLECTING SEWERS

324.4901 Definitions.

Sec. 4901. As used in this part:

(a) "Collecting sewers" means lateral, branch, submain, and trunk sewers consisting of pipes or conduits including pumps, lift stations, force mains, and other appurtenances necessary for a system to prevent or eliminate discharges of raw or inadequately treated sewage of human origin into any waters of the state. Collecting sewers do not include pipes or conduits that carry storm water, surface water, and street wash, or that convey sewage from a building to a common public sewer except that part lying within a public right-of-way; and sewers eligible for grants under Act No. 329 of the Public Acts of 1966, being sections 323.111 to 323.128 of the Michigan Compiled Laws.

(b) "Construction" means the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary to the construction of collecting sewers; the installation, erection, and building of collecting sewers; and the inspection and supervision of the construction of such sewers. Construction does not include acquisition of lands and rights-of-way.

(c) "Local agencies" means local units of government or other public bodies created by or pursuant to state law and having jurisdiction over collecting sewers.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.4902 State sewer construction fund; grants; funding.

Sec. 4902. Grants to local agencies shall be funded from the state sewer construction fund for collecting sewer projects in the descending order of their priority as established by the department under sections 4909 to 4912.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4903 State sewer construction fund; establishment; eligibility.

Sec. 4903. A fund to be known as the state sewer construction fund is established to be used for state grants to local agencies for their construction of collecting sewers. Grants shall be made only for collecting sewers on which contracts for construction were awarded prior to the exhaustion of the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4904 State sewer construction fund; disposition.

Sec. 4904. The proceeds of the sale of $50,000,000.00 of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or part 45, or any series of the bonds, and any premiums and accrued interest received on the delivery of the bonds, shall be deposited with the state treasurer in the state sewer construction fund. Disbursements from the fund shall be made only for specific eligible collecting sewer projects approved, as provided in section 4912, by the appropriations committees and by the legislature by concurrent resolution adopted by a roll call vote of a majority of the members elected to and serving in each house. A concurrent resolution shall include all or part of the projects on the priority list of eligible projects reported to the legislature by the department as provided in section 4912, but in case of a part only it shall be the entire part containing all projects on the list having priorities higher than those of projects not included in the resolution and shall not include projects lower in the order of priority. The income from temporary investments of the proceeds shall be deposited in the general fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.4905 Grants; application; amount; limitations.

Sec. 4905. (1) A local agency may apply to the department for a grant under this part.

(2) A grant shall be made in an amount equal to 1/2 that portion of the cost of construction of collecting sewers, computed upon the cost of the current year's project only, in excess of 10% of the state equalized value of all taxable property within the political boundaries of the unit of government served by the collecting sewers certified under subsection (2) of section 4906 or $1,000,000.00, whichever is less.

(3) Grants are subject to the following limitations:

(a) A grant shall not be made for collecting sewers required under the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being sections 560.101 to 560.293 of the Michigan Compiled Laws.

(b) A grant shall not be made for collecting sewers for which a federal grant has been made if the amount of the federal grant equals or exceeds the amount of the state grant that the collecting sewers would have received if there had been no federal grant. If the amount of the federal grant made for the collecting sewers is less than the amount of the state grant that the collecting sewers would have received if there had not been a federal grant, the amount of the state grant made for the collecting sewers shall not exceed the difference between the state grant that the collecting sewers would have received if there had not been a federal grant, and the federal grant.

(c) A grant shall not be made for collecting sewers, the construction of which would result in the discharge of untreated or inadequately treated sewage to the waters of the state.

(d) A grant shall not be made unless the local agency has received approval by the department of an official pollution control plan as required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, and the collecting sewers are in conformity with the official plan.

(e) A grant shall not be made for collecting sewers which the department determines would not meet an existing or imminent need or would constitute a noneconomic or speculative project.

(f) A local agency shall not be allotted more than 2% of the fund.

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History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4906 State sewer construction fund; disbursements.

Sec. 4906. (1) Disbursements from the state sewer construction fund shall be made by the director of the department of management and budget and the state treasurer in accordance with the accounting laws of the state only for the following purposes for which the bonds have been authorized:

(a) Expense of issuing the bonds.

(b) Grants to local agencies as provided in section 4905(2) and (3).

(2) Before any disbursement from the fund, as provided in subsection (3), is made to a local agency for a grant for the construction of collecting sewers, the department shall certify to the director of the department of management and budget and the state treasurer the amount of the grant which the agency is eligible to receive under this part. The certificate shall include or have attached to it a certificate by the department, or by the department of public health when so requested by the department, of the necessity and sufficiency of the collecting sewers.

(3) A disbursement from the fund to a local agency shall be made for projects on the priority list established under sections 4904 and 4912 upon certification to the director of the department of management and budget and the state treasurer by the department that the disbursement is due. A local agency may request and receive disbursement of the state grant in not more than 5 installments:

(a) An installment of 50% of the reasonable cost for preparing completed final construction plans and specifications, but not to exceed the amount of the grant, for the collecting sewers which have been certified as eligible for a state grant, on issuance of a construction permit by the department of public health for the collecting sewers for which the construction plans and specifications have been prepared and on receipt of evidence satisfactory to the department of the local agency's ability and intent to finance the local share of the project cost. A disbursement shall not be made under this subsection to a local agency which has received federal or other state grants for the preparation of final plans and specifications.

(b) An installment when not less than 25% of the cost of construction of the collecting sewers is completed.

(c) An installment when not less than 50% of the cost of construction of the collecting sewers is completed.

(d) An installment when not less than 75% of the cost of construction of the collecting sewers is completed.

(e) A final installment of the unpaid balance of the grant based upon the actual cost of the collecting sewers when construction is completed.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4907 Rules.

Sec. 4907. The department may promulgate rules to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4908 State agencies; officers and employees; use; purpose; grant recipients; records.

Sec. 4908. (1) The department, with consent of the head of any other agency of this state, shall use the officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this part.

(2) A recipient of a grant under this part shall keep records as the department prescribes, including records that fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of construction of the collecting sewers in connection with the grant given or used, and the amount of that portion of the cost of construction of the collecting sewers supplied by other sources, and other records as will facilitate an effective audit. The department, the auditor general, and the state treasurer or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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324.4909 Priority establishment and project certification procedures; compliance prerequisite to grant.

Sec. 4909. Notwithstanding any other provision of this part or of any rule of the department, compliance with sections 4909 to 4912 is a prerequisite to the making of a grant under this part. Sections 4909 to 4912 provide procedures for establishing the priority of eligible projects and for certifying projects for grants for construction of collecting sewers.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4910 Collecting sewer projects; pollution control needs; assignment of points.

Sec. 4910. (1) Points assigned to a collecting sewer project as a complete measure of pollution control needs shall not exceed 15.

(2) Two points shall be assigned for each of the following interests subject to pollution-caused injuries, which injuries will be corrected or substantially lessened by the proposed project:

(a) Public health, safety, or welfare, but not including bathing.

(b) Public water supply for domestic use.

(c) Water supply for commercial or industrial use.

(d) Irrigation or livestock water supply for agricultural use.

(e) Organized public recreational use including bathing.

(f) Aesthetic value or utility of riparian lands.

(g) Water supply for wild animals, birds, and fish and adverse effects on aquatic life or plants.

(h) Usefulness of fish or game for human consumption.

(3) Collecting sewers required to be constructed in compliance with a judgment rendered by a court of competent jurisdiction, a stipulation or an order of the department, or an agreement with the department of public health shall be assigned from 1 to 4 points in accordance with the following schedule, if the stipulation, order, or agreement specifically recites the existence of unlawful pollution and was in effect not less than 30 days before the deadline for filing applications and if the pollution abatement date is such that compliance would make it necessary to start construction during the year ending:

(a) June 30 of the fiscal year for which the application is filed, 4 points.

(b) June 30 of the first succeeding fiscal year, 3 points.

(c) June 30 of the second succeeding fiscal year, 2 points.

(d) June 30 of the third succeeding fiscal year, 1 point.

(4) An applicant in default of a performance date specified by an order, stipulation, or agreement may be assigned points under the preceding schedule only at the discretion of the department.

(5) A collecting sewer project for which construction contracts were awarded before the deadline date for filing applications shall be assigned 4 points. The combined total points assigned pursuant to subsections (3) to (5) shall not exceed 4 points.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4911 Total priority points; computation; tied projects; assignment of priority.

Sec. 4911. (1) Total priority points for a collecting sewer project shall be the sum of the points assigned for water pollution control needs.

(2) If 2 or more projects receive the same priority point totals, the department shall assign priorities to the tied projects after considering factors such as waters affected, extent of public interests involved, relative magnitude of pollution injury, and other factors as the department considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.4912 Fiscal year; filing application for grant; assignment of point total; certification of projects; condition of certification; time extensions; validity of application; report to legislature; approval or rejection of projects.

Sec. 4912. (1) For the purposes of sections 4909 to 4912, the fiscal year is July 1 to June 30.

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(2) Applications for collecting sewer construction grants and official pollution control plans required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, shall be filed with the department not later than September 15 preceding the period or fiscal year for which the application is filed. Applications postmarked not later than midnight of September 15 meet this requirement.

(3) A point total shall be assigned by the department to each application that has been timely filed and conforms to the requirements of this part no later than the following January 1.

(4) Projects entitled to construction grants shall be certified to the director of the department of management and budget and the state treasurer from the eligibility list established by the department and as approved by the legislature. Certification shall be made following approval by the legislature.

(5) Certification of a project for a grant is subject to the condition that construction contracts for the project be awarded not later than March 1 of the fiscal year for which application for a state grant has been filed. Failure to comply with this condition of certification is cause for the department to take any action necessary to withdraw any grant offer that may have been obligated to such project. However, on a showing satisfactory to the department that the project will proceed within an extended period, the department may allow 30-day extensions totaling not more than 90 days.

(6) Except as otherwise provided in this part, an application for a collecting sewer construction grant filed with the department is valid only for the fiscal year for which the application is filed.

(7) The department shall report to the legislature by January 15 of each year a list of collecting sewer projects eligible for grants, the points and priorities assigned to them pursuant to this part, a list of projects that are recommended to be funded, and a list of projects which failed to comply with the conditions of certifications set forth in subsection (5) and on which the department has taken action to withdraw offers of state grants. If legislative approval or rejection of eligible projects is not given each year within 45 days after receipt of the department's list of eligible projects, the department list shall be considered approved.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 50

WATER ASSET MANAGEMENT COUNCIL

324.5001 Definitions.

Sec. 5001. As used in this section:

(a) "Asset management" means an ongoing process of maintaining, upgrading, and operating physical assets cost-effectively, based on a continuous physical inventory and condition assessment and investment to achieve performance goals.

(b) "Asset management plan" means a set of procedures to manage assets through their life cycles, based on principles of life cycle costing.

(c) "Asset owner" means a person or agency that owns or operates an asset that meets either of the following requirements:

(*i*) Serves 1,000 or more individuals and is required by a national pollutant discharge elimination system permit to have an asset management plan.

(*ii*) Serves 1,000 or more individuals and is required by the safe drinking water act, 1976 PA 399, MCL 324.1001 to 324.1003, to have an asset management plan.

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

(e) "Drinking water assets" means a system, owned by an asset owner, of pipes and structures through which drinking water is obtained and distributed, including, but not limited to, wells and well structures, wellhead protection areas, groundwater protection areas, intakes and cribs, pumping stations, treatment plants, storage tanks, pipelines, and appurtenances, or a combination of these pipes and structures that are used or intended for use for the purpose of furnishing drinking water for drinking or household purposes.

(f) "Michigan infrastructure council" means the Michigan infrastructure council created in the Michigan infrastructure council act.

(g) "Performance goals" means standards of system performance that reflect asset management principles for asset preservation and sustainability, operations, capacity consistent with local needs, and identified levels of service.

(h) "Region" means the geographic jurisdiction of any of the following:

(*i*) A regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(*ii*) A regional economic development commission created pursuant to 1966 PA 46, MCL 125.1231 to

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125.1237.

(*iii*) A metropolitan area council formed pursuant to the metropolitan councils act, 1989 PA 292, MCL 124.651 to 124.729.

(*iv*) A metropolitan planning organization established pursuant to federal law.

(*v*) An agency directed and funded by section 822f of article VIII of 2016 PA 268 to engage in joint decision-making practices related but not limited to community development, economic development, talent, and infrastructure opportunities.

(i) "Stormwater assets" means green or gray features, owned by an asset owner, that are located within the geographic limits of an asset service area and are designed or actively managed by an asset owner for collecting, storing, treating, conveying, or attenuating stormwater, such as catch basins, curbs, gutters, ditches and channels solely conveying stormwater, pipes, conduits, swales, bioswales, storm drains, gulches, gullies, flumes, culverts, bridges, siphons, retention, detention, or infiltration areas, floodwalls, levees, pumping stations, and other similar facilities.

(j) "Transportation asset management council" means the transportation asset management council created in section 9a of 1951 PA 51, MCL 247.659a.

(k) "Wastewater assets" means a system, owned by an asset owner, of pipes and structures, including pipes, channels, conduits, manholes, pumping stations, wastewater or wastewater treatment fixed assets, diversion and regulatory devices, outfall structures, and appurtenances, used to collect, convey, transport, treat, or otherwise handle wastewater.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5002 Water asset management council; membership; term; removal; advisory committees.

Sec. 5002. (1) The water asset management council is created within the Michigan infrastructure council.

(2) Subject to subsection (3), the water asset management council consists of the following members:

(a) Nine voting members appointed by the Michigan infrastructure council as follows:

(*i*) One member from the department.

(*ii*) One member from the Michigan Municipal League.

(*iii*) One member from the Michigan Townships Association.

(*iv*) One member from the Michigan Association of Counties.

(*v*) One member from the Michigan Association of Drain Commissioners.

(*vi*) One member representing a regional drinking water, wastewater, or stormwater authority.

(*vii*) One member representing a water infrastructure association.

(*viii*) One member with drinking water, wastewater, or stormwater asset management experience.

(*ix*) One member representing a region.

(b) One ex officio, nonvoting member who has responsibilities related to the department of technology, management, and budget's role as the central data storage agency under section 5008, appointed by the director of the department of technology, management, and budget.

(3) The Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, and Michigan Association of Drain Commissioners shall each submit a list of 2 nominees to the Michigan infrastructure council from which the respective appointments under subsection (2) shall be made. Names shall be submitted within 60 days after the effective date of the amendatory act that added this section. The Michigan infrastructure council shall make the appointments within 30 days after the receipt of the lists.

(4) Voting members of the water asset management council serve for terms of 3 years. However, of the initial appointments to the water asset management council, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years. A vacancy on the water asset management council shall be filled in the same manner as the original appointment.

(5) A member of the water asset management council may be removed for incompetence, dereliction of duty, malfeasance during his or her tenure in office, or any other cause considered appropriate by the Michigan infrastructure council.

(6) At the first meeting of the water asset management council, the water asset management council shall select a chairperson from among its members.

(7) The water asset management council may appoint advisory committees whose members shall serve as needed to provide research on issues and projects as determined by the water asset management council. An advisory committee member who is not a member of the water asset management council does not have voting rights on the advisory committee. A recommendation from the advisory committee appointed under this subsection is advisory only and is not binding.

(8) The department shall provide qualified administrative staff and qualified technical assistance to the

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water asset management council.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5003 Duties.

Sec. 5003. The water asset management council shall do all of the following:

(a) Advise the Michigan infrastructure council on a statewide water asset management strategy and the processes and tools needed to implement a strategy for all asset owners.

(b) Promote and oversee the implementation of the recommendations from the regional infrastructure asset management pilot program created under Executive Directive 2017-1 at a state level related to drinking water, wastewater, and stormwater infrastructure.

(c) By October 1, 2019, develop a template or templates that contain requirements for information to be included in an asset management plan submitted under section 5004. The template or templates shall allow for local asset management plan components, including, but not limited to, all of the following, but shall not require components beyond those required in an asset management plan associated with a permit:

(*i*) An asset inventory. This inventory may include the location, material, size, and condition of the assets in a format that allows for digital mapping. All quality control standards and protocols shall, at a minimum, be consistent with existing federal requirements and regulations and existing government accounting standards.

(*ii*) A level of service analysis. This analysis may include desired levels of service and performance goals of the assets to help the system achieve reliability, responsiveness, safety, capacity, environmental impacts, cost and affordability, and compliance with law. Levels of service may vary among assets under the asset owner's jurisdiction.

(*iii*) A risk of failure analysis. This analysis may identify the probability and criticality of failure of the most critical assets and any contingency plans.

(*iv*) Anticipated revenues and expenses. This component may include a description of all revenue sources and anticipated receipts for the period of the asset management plan, and expected infrastructure repair and replacement expenditures, including planned improvements or capital reconstruction.

(*v*) A performance outcomes analysis. This analysis may determine how the investment strategy achieves the desired levels of service and performance goals. The asset management plan may include steps necessary to ensure asset conditions meet or achieve stated goals, including a description and explanation for any gap between achievable condition and performance through the investment strategy and desired goals.

(*vi*) A description of any plans of the asset owner to coordinate with other entities, such as neighboring jurisdictions and utilities, to minimize duplication of effort with regard to infrastructure preservation and maintenance.

(*vii*) Proof of acceptance, certification, or adoption by the jurisdiction's governing body.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5004 Asset management plans.

Sec. 5004. (1) By October 1, 2019, the water asset management council shall establish a schedule for submission of asset management plans that ensures that 1/3 of asset owners submit an asset management plan each year. The asset management plans are subject to all of the following:

(a) The asset management plans shall cover and be valid for a minimum of 3 years and shall be consistent with the template provided by the water asset management council.

(b) The asset management plans shall be reviewed by the water asset management council within 6 months of receipt. The water asset management council shall compare submitted asset management plans to the minimum components required by this act and the template provided by the water asset management council and shall determine if the asset management plans are in compliance with those standards. If the water asset management council determines that an asset management plan does not meet established standards, the water asset management council shall seek concurrence from the department. If the department concurs, the water asset management council shall notify the entity submitting the asset management plan of the deficiency in meeting the standards and shall require the entity to revise the asset management plan to meet the standards and resubmit the plan within 6 months of receiving the notice.

(c) An asset owner that is required under this part to have an approved asset management plan must implement the approved asset management plan by October 1, 2024.

(2) An asset owner may seek and use federal grants or loans to achieve the goals and manage the asset inventory described in its asset management plan.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5005 Annual report.

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Sec. 5005. The water asset management council shall annually submit to the Michigan infrastructure council a report on asset condition and investment that includes a summary analysis of the asset management plans received from drinking water, wastewater, and stormwater entities. The report shall also include recommendations on drinking water, wastewater, and stormwater condition goals and analysis of how the utilities are meeting those goals. The water infrastructure asset management analyses contained in the report shall be consistent with the Michigan infrastructure council's asset management process and shall be reported consistent with categories established by the Michigan infrastructure council.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5006 State funding; capital improvement program; report.

Sec. 5006. (1) State funding may be provided to asset owners to implement this part as determined by the water asset management council. Funding necessary for the department to support the activities described in this section shall be provided by an annual appropriation.

(2) Each asset owner shall annually report to the water asset management council, consistent with current accounting procedures, how its capital improvement program for assets included in any asset management plans required under section 5004 are meeting its investment goals in a form established by the water asset management council.

(3) The department and each asset owner shall keep accurate and uniform records on all work performed and funds expended for the purposes of this section, according to the procedures developed by the Michigan infrastructure council.

(4) The water asset management council shall annually prepare a report on the activities conducted during the preceding year and the expenditure of funds related to the processes and activities identified by the water asset management council. The report shall also include an overview of the activities identified for the succeeding year. The water asset management council shall submit this report to the Michigan infrastructure council and the legislature by May 2 of each year.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5007 Training needs; multi-asset management system.

Sec. 5007. (1) The water asset management council shall identify training needs to develop proficiency in using a multi-asset management system for asset owners, and training to identify asset system conditions based on a statewide asset condition measure.

(2) The water asset management council shall coordinate and collaborate with the transportation asset management council on planning, reporting, and training. The water asset management council shall collaborate with the transportation asset management council created in section 9a of 1951 PA 51, MCL 247.659a, on potential coordination in the submission of asset management plans.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

324.5008 Central data storing agency.

Sec. 5008. The department of technology, management, and budget shall serve as the central data storage agency for purposes of collecting, storing, and maintaining data under this part.

History: Add. 2018, Act 324, Imd. Eff. July 2, 2018.

PART 51
WASTEWATER DISPOSAL

324.5101 “Land disposal wastewater management program” defined.

Sec. 5101. As used in this part, "land disposal wastewater management program" means the program developed in the United States army corps of engineers southeastern Michigan survey scope wastewater management study, as authorized by section 102 of title I of the federal water pollution control act, chapter 758, 86 Stat. 817, 33 U.S.C. 1252, and the resolution of the United States house of representatives public works committee and the United States senate public works committee or any other study by the corps of engineers proposing disposal of municipal wastewater on land.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

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324.5102 Submission of views as to environmental consequences, cost effectiveness, and social acceptability of program.

Sec. 5102. Upon receipt of a proposal to implement a land disposal wastewater management program as defined in this part by a federal, state, or local unit of government, the department shall submit to the governor, the legislature, and local units of government its views as to the environmental consequences, cost effectiveness, and social acceptability of the program. The department of agriculture shall present its views to the governor, the legislature, and local units of government regarding the impact of the program on agriculture.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5103 Implementation of program; approval or disapproval.

Sec. 5103. Upon receipt of the views of the department and the department of agriculture, the local units of government shall either approve or disapprove by resolution, and the legislature shall either approve or disapprove by concurrent resolution, the implementation of the program.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 52
STRATEGIC WATER QUALITY INITIATIVES

324.5201 Definitions.

Sec. 5201. As used in this part:

(a) "Asset management program" means the program that identifies the desired level of service at the lowest life cycle cost for rehabilitating, repairing, or replacing the assets associated with a municipality's wastewater or storm water system.

(b) "Authority" means the Michigan municipal bond authority created in section 4 of the shared credit rating act, 1985 PA 227, MCL 141.1054.

(c) "Department" means the department of environmental quality.

(d) "Fund" means the strategic water quality initiatives fund created in section 5204.

(e) "Grant" means a grant from the grant program.

(f) "Grant program" means the strategic water quality initiatives grant program established under this part.

(g) "Loan" means a loan from the loan program.

(h) "Loan program" means the strategic water quality initiatives loan program established under section 5202.

(i) "Municipality" means that term as it is defined in section 5301.

(j) "On-site septic system" means a natural system or mechanical device used to store, treat, and dispose of sewage from 1 or more dwelling units that utilize a subsurface trench or bed that allows the effluent to be absorbed and treated by the surrounding soil, including a septic tank and tile field system.

(k) "State water pollution control revolving fund" means the state water pollution control revolving fund established under section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(*l*) "Wetland mitigation bank" means a site where wetlands are restored, created, or preserved for the purpose of doing both of the following:

(*i*) To provide compensatory mitigation in accordance with the provisions of part 303, in advance of authorized, unavoidable impacts to wetlands.

(*ii*) To provide storm water control, nonpoint source pollution control, or pollution treatment that improves the quality of the waters of the state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 257, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

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Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5202 Strategic water quality initiatives loan program; establishment; purpose; asset management program; content; criteria; interest rate.

Sec. 5202. (1) The authority in consultation with the department shall establish a strategic water quality initiatives loan program. This loan program shall provide low interest loans to municipalities to provide assistance for 1 or more of the following:

(a) Improvements to reduce or eliminate the amount of groundwater or storm water entering a sanitary sewer lead or a combined sewer lead.

(b) Upgrades or replacements of failing on-site septic systems that are adversely affecting public health or the environment, or both.

(c) Project costs of the municipality related to testing, demonstration, and construction activities as defined in section 5301(d) for innovative wastewater and storm water technologies approved by the department.

(d) Assistance for construction activities as defined in section 5301(d) designed to protect water quality, including improvements that are water or energy efficient, where feasible, when identified through an asset management program or a project identified in an approved storm water management plan.

(2) The department shall develop criteria specifying the content of an asset management program.

(3) In implementing the loan program, the department shall annually establish the interest rate that will be charged for loans.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5203 Loan application by municipality; process; agreement; disposition of money received as repayment.

Sec. 5203. (1) A municipality that wishes to apply for a loan shall submit a loan application to the department as follows:

(a) In compliance with the application requirements provided in part 53, for activities described in section 5202(1)(a) or (b).

(b) On a form approved by the department, for activities described in section 5202(1)(c) or (d).

(2) The department shall process the loan applications submitted under this part.

(3) Prior to releasing a loan, the authority in consultation with the department shall enter into a loan agreement with the loan recipient.

(4) All money that is received for the repayment of a loan shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

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Popular name: Act 451

Popular name: NREPA

324.5204 Strategic water quality initiatives fund; creation; disposition of money or assets; investment; funds remaining at close of fiscal year; expenditures; fund as security.

Sec. 5204. (1) The strategic water quality initiatives fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The authority shall act as fiscal agent for the fund in accordance with the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The authority in consultation with the department shall expend money from the fund, upon appropriation, only for the following:

(a) Loans under section 5202.

(b) Grants under sections 5204a, 5204d, and 5204e.

(c) Response activities to address nonpoint source water pollution under section 5204b.

(d) Grants and loans for brownfield sites under section 5204c.

(e) Grants and loans for wetland mitigation banks under section 5204f.

(f) The costs of the authority and the department in administering the fund.

(5) The fund may be pledged as security for bonds to be issued by the authority for the purpose of funding loans if authorized by the state administrative board.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 253, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5204a Strategic water quality initiatives grant program.

Sec. 5204a. (1) The authority, in conjunction with the department, shall establish a strategic water quality initiatives grant program that provides grants totaling not more than $80,000,000.00 to eligible municipalities. The grant program shall provide assistance to municipalities to complete the loan application requirements of section 5308 or to complete the loan application requirements for other sources of financing for sewage treatment works projects, storm water treatment projects, or nonpoint source projects.

(2) The grant program is subject to all of the following:

(a) The grant program shall provide grants to cover not more than 90% of the costs incurred by a municipality to complete an application for loan assistance from the state water pollution control revolving fund or the fund or to complete an application for loan assistance from another source of financing for a sewage treatment works project, a storm water treatment project, or a nonpoint source project.

(b) The 10% local match is not eligible for loan assistance from the state water pollution control revolving fund or the fund or other source of financing for the project.

(c) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees.

(d) A municipality shall not receive more than $1,000,000.00 in total grant assistance under this section.

(e) Grants under this section shall be available for projects seeking or intending to seek loan assistance after September 30, 2006.

(3) The department shall establish an application and review process for considering grant applications under this section. The application shall contain the information required by the department and the authority. Within 60 days after receipt of an application, the department shall publish notice of the application on the department's calendar. Within 60 days after receipt of an administratively complete grant application, the department shall, in writing, notify the applicant whether the application is approved or rejected. If the

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department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds. The grant agreement shall contain terms established by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(a) The applicant fails to submit an administratively complete loan application for assistance from the state water pollution control revolving fund or the fund or other source of financing for the project within 3 years of the grant award.

(b) The project has been identified as being in the fundable range or is approved for funding from another source and the applicant declines the loan assistance for 2 consecutive fiscal years unless the applicant proceeds with funding from another source.

(c) The applicant is unable to, or decides not to, proceed with constructing the project.

(4) For each year in which the department receives grant applications under this section, the department shall report by July 1 of each year to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house of representatives appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant applications received under this section.

(b) The name of each municipality applying for a grant.

(c) The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the state water pollution control revolving fund or the fund.

(d) A summary of loan assistance, by year, tendered from the state water pollution control revolving fund and the fund.

(5) The senate and house appropriations committees shall annually review whether there is sufficient money in the fund to implement this section and section 5202.

History: Add. 2005, Act 254, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 231, Imd. Eff. Dec. 14, 2010.

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324.5204b Nonpoint source water pollution; expenditures; limitation; requirements; selection of projects; expenditures subject to generally accepted accounting principles; annual report; use of fund; "facility", "release", and "response activity" defined.

Sec. 5204b. (1) Subject to section 5204c, the department may expend, upon appropriation, not more than $140,000,000.00 of the money from the fund for response activities to address nonpoint source water pollution at facilities as follows:

(a) For the state fiscal year ending September 30, 2011, not more than $50,000,000.00 may be authorized for expenditure under this section.

(b) For the state fiscal year ending September 30, 2012, not more than $50,000,000.00 may be authorized for expenditure under this section.

(c) Beginning October 1, 2012, any money not previously authorized for expenditure under this section may be expended under this section only if the department documents that it has achieved the following performance objectives:

(*i*) Increasing the level of investment in sewage collection and treatment systems.

(*ii*) Providing incentives for actions that not only improve water quality but result in pollution prevention.

(*iii*) Optimizing the cost benefit ratio of alternative designs of sewage collection and treatment systems.

(*iv*) Demonstrating progress toward maximizing risk reduction and economic development objectives identified for projects funded under this section.

(2) The department shall expend money under this section in compliance with all of the following:

(a) The expenditure is used to improve the quality of the waters of the state.

(b) The expenditure is used only for facilities in which the department does not know the identity of the person or persons who are liable under part 201 for the release resulting in the water pollution or the person or persons who are liable do not have sufficient resources to fund the required response activities.

(c) The facilities include property that is located within the identified planning area boundaries of a publicly owned sanitary sewer system eligible for funding under the state water pollution control revolving fund established in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

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(d) The expenditure is used for response activities necessary to address existing or imminent unacceptable risks arising from conditions that contribute to nonpoint source water pollution, including expenses for project management activities within the department.

(3) In using funds to address nonpoint source water pollution projects under this section, the department shall select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

(4) Money expended to support project management within the department to manage response activities at the facility shall be expended pursuant to generally accepted accounting principles.

(5) The department shall annually submit a report to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment and to the senate and house of representatives appropriations subcommittees on natural resources and the environment that describes the projects funded under this section and includes an evaluation of how the expenditures, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development. For each project funded under this section, the report shall include all of the following:

(a) How the project met the criteria described in this section.

(b) The extent to which the project improved water quality or prevented a risk to water quality as measured by the number of individuals who benefit from the project.

(c) The extent to which the project preserved infrastructure investments that protect public health or prevented risks to water quality as measured by the risk posed or the public health protected.

(d) The extent to which the project enhanced economic development as measured by such factors including, but not limited to, all of the following:

(*i*) A net increase to the value of the properties in the vicinity of the project.

(*ii*) The creation of jobs.

(*iii*) The extent to which the project contributed to leveraging private investment in the vicinity of the project.

(e) If the project included funding for project management within the department, a breakdown of the amount of money used to support the project management as justified using generally accepted accounting principles.

(6) The legislature finds that use of the fund for response activities to address nonpoint source water pollution at facilities is appropriate and necessary at this time. It is the intent of this legislature that money from the fund shall not be utilized for response activities to address nonpoint source water pollution at facilities when the $150,000,000.00 has been expended under this section and section 5204c.

(7) As used in this section, "facility", "release", and "response activity" mean those terms as they are defined in part 201.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.5204c Nonpoint source water pollution; brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities; development of materials; applications.

Sec. 5204c. (1) The department may expend $10,000,000.00 of money from the fund to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities to address nonpoint source water pollution at facilities. Of the money expended under this section, $5,000,000.00 shall be used for grants and $5,000,000.00 shall be used for loans. However, on September 30, 2014, if any money described in this section has not been appropriated for the purposes of this section, that money may be used for the purposes of section 5204b.

(2) The department shall develop grant and loan application materials to implement this section and shall accept applications at any time throughout the year.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: NREPA

324.5204d Grant program within strategic water quality initiatives fund; establishment; purpose.

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Sec. 5204d. The state may establish a grant program within the strategic water quality initiatives fund for the purpose of funding specific wastewater treatment facility infrastructure improvement projects designed to prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5204e Grant program; purpose; conditions; application and review process; contents; approval; agreement; terms; report.

Sec. 5204e. (1) In addition to other requirements of this part, the grant program shall provide grants to municipalities for sewage collection and treatment systems or stormwater or nonpoint source pollution control as provided for in this section.

(2) The grant program is subject to all of the following:

(a) The grant program shall provide grants to a municipality in accordance with the following:

(*i*) Subject to subparagraph (*iii*), for total grants of up to $1,000,000.00, not more than 90% of the costs incurred by the municipality.

(*ii*) Subject to subparagraph (*iii*), for total grants of more than $1,000,000.00, not more than 90% of the costs incurred by the municipality for up to $1,000,000.00 of the grant amount and not more than 75% of the remaining costs incurred by the municipality for the balance of the grant amount.

(*iii*) If any of the following conditions are met, a grant may be issued to cover 100% of the costs incurred by the municipality:

(A) The municipality is a disadvantaged community as defined in section 5301.

(B) The municipality is in receivership.

(C) The municipality is operating under an emergency manager or an emergency financial manager appointed under state law.

(D) The municipality is operating under a consent agreement as provided under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(b) A grant may be used for 1 or more of the following purposes:

(*i*) Development of an asset management program for a sewage collection and treatment system or a stormwater system. For sewage collection and treatment systems, the program shall include the development of a funding structure and implementation schedule that provides sufficient resources to implement the program. The municipality shall coordinate, as feasible, with other infrastructure activities in the same geographic area. In addition, a disadvantaged community may expend not more than $500,000.00 in grant funds to implement projects identified in the asset management program.

(*ii*) Development of management plans for the treatment of stormwater.

(*iii*) Planning and design of a sewage treatment works project or stormwater treatment project as defined in section 5301(n) or (o) or planning and design of construction activities designed to reduce nonpoint source pollution.

(*iv*) Project costs of a municipality related to the testing and demonstration of innovative wastewater and stormwater technologies approved by the department.

(*v*) For projects to address a substantial public health risk from treatment system failure, up to 50% of the project costs related to the planning, design, and construction of a sewage collection and treatment system. To be eligible for a grant under this subparagraph, a municipality shall apply on or after June 1, 2016, meet criteria developed by the department, and provide a demonstration of financial need, including an economic feasibility study with which the department of treasury concurs. Construction funding under this subparagraph shall not exceed $10,000,000.00 and shall be allocated from wetland mitigation bank funding authorized in section 5204f(1).

(c) The local match is not eligible for loan assistance from the state water pollution control revolving fund or the fund.

(d) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to the project.

(e) A municipality shall not receive more than $2,000,000.00 in grant assistance for purposes described in subsection (2)(b)(*i*) to (*iv*) and not receive more than $2,000,000.00 in grant assistance for the purposes described in subsection (2)(b)(*v*).

(3) The department shall establish an application and review process for considering grant applications under this section. The application shall contain the information required by the department and the authority.

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Within 60 days after receipt of an application, the department shall publish notice of the application on the department's calendar. Within 120 days after receipt of an administratively complete grant application, the department shall, in writing, notify the applicant whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds. The grant agreement shall contain terms established by the department and the authority, including both of the following:

(a) A requirement that a grant recipient proceed with a project for which grant funding is provided within 3 years after the department approves the grant. For asset management programs related to sewage collection and treatment systems, this includes significant progress, as determined by the department, toward achieving the funding structure necessary to implement the program.

(b) A requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if the applicant is unable to, or decides not to, proceed with a construction project or begin implementation of an asset management program for which grant funding is provided.

(4) For each year in which the department receives grant applications under this section, the department shall report by October 1 of that year to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house of representatives appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant applications received under this section.

(b) The name of each municipality applying for a grant.

(c) The type of project being funded for each grant awarded.

(d) The number of users potentially affected by each grant awarded.

(e) The amount of the local match for each grant awarded.

(f) The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the state water pollution control revolving fund or the fund.

History: Add. 2012, Act 511, Eff. Jan. 2, 2013;—Am. 2016, Act 164, Imd. Eff. June 9, 2016;—Am. 2017, Act 147, Imd. Eff. Nov. 2, 2017.

Popular name: Act 451

Popular name: NREPA

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324.5204f Wetland mitigation bank funding program.

Sec. 5204f. (1) The department, in conjunction with the authority, shall establish a wetland mitigation bank funding program that provides grants and loans totaling not more than $10,000,000.00 to eligible municipalities. Of the money expended under this subsection, up to $500,000.00 may be used for grants. Funding may be used for the purpose of this subsection as long as funds remain available.

(2) Grants awarded under the wetland mitigation bank funding program shall provide assistance to municipalities to complete loan application requirements for funding from the wetland mitigation bank funding program or to complete loan application requirements for other sources of financing. Grants for wetland mitigation banks are subject to the following:

(a) Grants shall not cover more than 90% of the costs incurred by a municipality to complete an application for loan assistance.

(b) Grant funding may be used for the following purposes:

(*i*) Developing an approvable wetland mitigation banking proposal.

(*ii*) Notifying affected local units of government and adjacent property owners of the proposed wetland mitigation bank, and working to resolve objections to the project.

(*iii*) Planning and designing the wetland mitigation bank.

(*iv*) Completing the wetland mitigation bank funding program loan application or loan application requirements for other sources of financing.

(c) The 10% local match is not eligible for loan assistance from the wetland mitigation funding bank program.

(d) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to development of the wetland mitigation bank loan application.

(e) Applications for grants from the wetland mitigation funding bank program shall be made on a form provided by the department and shall contain the information required by the department and the authority.

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Grant applications may be made at any time.

(f) The department shall establish a review process for considering grant applications under this subsection. The department shall notify the applicant in writing whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds.

(g) The grant agreement shall contain terms established by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(*i*) The applicant fails to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within 1 year of the date on which the grant expires.

(*ii*) The applicant declines the loan assistance for 2 consecutive years unless the applicant proceeds with funding from another source.

(*iii*) The applicant is unable to enter into a signed wetland mitigation banking agreement with the department within 2 years of the date on which the grant expires.

(*iv*) The applicant is unable to or decides not to proceed with constructing the project.

(3) Loans under the wetland mitigation bank funding program shall provide assistance to municipalities to establish a wetland mitigation bank. Loans shall be subject to the following:

(a) Loans under the wetland mitigation bank funding program shall be for 1 or more of the following:

(*i*) Complete and execute the wetland mitigation banking agreement with the department.

(*ii*) Complete engineering and design for the wetland mitigation bank.

(*iii*) Purchase land for the wetland mitigation bank.

(*iv*) Construct the wetland mitigation bank.

(*v*) Conduct monitoring and maintenance necessary to ensure that the performance standards are or will be met.

(*vi*) In addition, the department may approve the use of loan funds for other activities needed to establish a wetland mitigation bank upon a demonstrated need by the municipality.

(b) Applications for loans from the wetland mitigation bank funding program shall be made on a form provided by the department and shall contain the information required by the department and the authority. Loan applications may be made at any time.

(4) The department shall establish a review process for considering loan applications under this subsection. The department shall notify the applicant in writing whether the loan is approved or rejected. Prior to releasing a loan, the authority in consultation with the department shall enter into a loan agreement with the loan recipient.

(5) For each year in which the department receives grant or loan applications under this section, the department shall report by October 1 to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant and loan applications received under this section.

(b) The name of each municipality applying for a grant or loan, or both.

(c) The amount of local match for each grant awarded.

(d) The individual and annual cumulative amount of grant and loan funds awarded, including an identification of the purpose of each grant and loan awarded.

History: Add. 2012, Act 559, Imd. Eff. Jan. 2, 2013.

324.5205 Rules.

Sec. 5205. The department may promulgate rules to implement this part.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

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Popular name: Act 451

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324.5206 Legislative findings.

Sec. 5206. The legislature finds and declares that the environmental, natural resources, and water quality protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

PART 53
CLEAN WATER ASSISTANCE

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324.5301 Definitions.

Sec. 5301. As used in this part:

(a) "Assistance" means 1 or more of the following activities to the extent authorized by the federal water pollution control act:

(*i*) Provision of loans to municipalities for construction of sewage treatment works projects, stormwater management projects, or nonpoint source projects.

(*ii*) Project refinancing assistance.

(*iii*) The guarantee or purchase of insurance for local obligations, if the guarantee or purchase action would improve credit market access or reduce interest rates.

(*iv*) Use of the proceeds of the fund as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by this state, if the proceeds of the sale of the bonds will be deposited into the fund.

(*v*) Provision of loan guarantees for similar revolving funds established by municipalities.

(*vi*) The use of deposited funds to earn interest on fund accounts.

(*vii*) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act, 33 USC 1381 to 1389.

(b) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076.

(c) "Capitalization grant" means the federal grant made to this state by the United States Environmental Protection Agency for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, 33 USC 1381 to 1389.

(d) "Construction activities" means an action undertaken to plan, design, or build sewage treatment works projects, stormwater management projects, or nonpoint source projects. Construction activities include, but are not limited to, all of the following:

(*i*) Project planning services.

(*ii*) Engineering services.

(*iii*) Legal services.

(*iv*) Financial services.

(*v*) Design of plans and specifications.

(*vi*) Acquisition of land or structural components, or both.

(*vii*) Building, erection, alteration, remodeling, or extension of any of the following:

(A) A sewage treatment works.

(B) Projects designed to control nonpoint source pollution, consistent with section 319 of the federal water pollution control act, 33 USC 1329.

(C) A stormwater management project.

(*viii*) Reasonable expenses of supervision of the project activities described in subparagraphs (*i*) to (*vii*).

(e) "Federal water pollution control act" means 33 USC 1251 to 1389.

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(f) "Fund" means the state water pollution control revolving fund established under section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(g) "Fundable range" means those projects, taken in descending order on the priority lists, for which sufficient funds are estimated by the department to exist to provide assistance at the beginning of each annual funding cycle.

(h) "Municipality" means a city, village, county, township, authority, or other public body, including either of the following:

(*i*) An intermunicipal agency of 2 or more municipalities, authorized or created under state law.

(*ii*) An Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of the federal water pollution control act, 33 USC 1329.

(i) "Nonpoint source project" means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan under section 319 of the federal water pollution control act, 33 USC 1329.

(j) "Priority list" means the annual ranked listing of projects developed by the department in section 5303.

(k) "Project" means a sewage treatment works project, stormwater management project, or nonpoint source project, or a combination of these and may include utilization of more efficient energy and resources as described in any of the following:

(*i*) The cost-effective governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725.

(*ii*) Section 11c of 1851 PA 156, MCL 46.11c.

(*iii*) Section 75b of 1846 RS 16, MCL 41.75b.

(*iv*) Section 5f of the home rule city act, 1909 PA 279, MCL 117.5f.

(*v*) Section 24b of the home rule village act, 1909 PA 278, MCL 78.24b.

(*vi*) Section 36 of the general law village act, 1895 PA 3, MCL 68.36.

(*l*) "Project refinancing assistance" means buying or refinancing the debt obligations of municipalities within this state if construction activities commenced after March 7, 1985 and the debt obligation was incurred after March 7, 1985.

(m) "Sewage treatment works project" means construction activities on any device or system for the treatment, storage, collection, conveyance, recycling, or reclamation of the sewage of a municipality, including combined sewer overflow correction and major rehabilitation of sewers.

(n) "Stormwater management project" means construction activities of a municipality on any device or system for the treatment, storage, recycling, or reclamation of storm water that is conveyed by a storm sewer that is separate from a sanitary sewer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 255, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013;—Am. 2021, Act 45, Imd. Eff. July 1, 2021;—Am. Act 132, Imd. Eff. June 30, 2022.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5302 Construction of part; broad interpretation of powers; prohibited grants or loans; liability for costs.

Sec. 5302. (1) This part must be construed liberally to effectuate the legislative intent. All powers granted under this part must be broadly interpreted to effectuate the intent and purposes of this part and must not be interpreted as a limitation of powers.

(2) Except as may be authorized by the federal water pollution control act, the fund must not provide grant assistance to a municipality or provide loans for the local share of projects constructed with grants provided under title II of the federal water pollution control act, 33 USC 1281, 1282 to 1293, and 1294 to 1302f.

(3) This state is not liable to a municipality, or any other person performing services for the municipality, for costs incurred in developing or submitting an application for assistance under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the

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Popular name: Act 451

Popular name: NREPA

324.5303 Cooperative regional or intermunicipal projects; planning document; public participation activities; notice; public comment; development of priority list; submission of priority list to legislature; effective date of priority list; other actions not limited.

Sec. 5303. (1) During the development of a planning document, a municipality shall consider and utilize, where possible, cooperative regional or intermunicipal projects in satisfying sewerage needs.

(2) A municipality may submit a planning document for use by the department in developing a priority list. A municipality may submit as part of the planning document for a project either of the following:

(a) Any preexisting documents or plans that were prepared for another project for other purposes.

(b) Any preexisting documents that were developed under another local, state, or federal program, as applicable.

(3) A planning document must include documentation that demonstrates all of the following:

(a) The project is needed to enable maintenance of, or to progress toward, compliance with the federal water pollution control act, part 31, or part 41, and to meet the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(b) An analysis of alternatives that meet the requirements of part 31 or 41, including the cost of each alternative and a resolution adopted by the municipality to implement a selected alternative.

(c) A description of project costs and how the project will be paid for including, but not limited to, an explanation of how the debt will be repaid.

(d) A list of the environmental and public health implications and mitigation plans.

(e) The need for the project.

(f) That feasible alternatives to the project were evaluated, considering volume reduction opportunities and the demographic, topographic, hydrologic, and institutional characteristics of the area.

(g) That the project is implementable from a legal, institutional, financial, and management standpoint.

(h) Any other information required by the department.

(4) A planning document must describe the public participation activities conducted during planning and must include all of the following:

(a) Significant issues raised by the public and any changes to the project that were made as a result of the public participation process.

(b) A demonstration that there were adequate opportunities for making public consultation, participation, and input in the decision-making process during alternatives selection.

(c) A demonstration that before the adoption of the planning document, the municipality held a public meeting on the proposed project not less than 15 days after advertising the public meeting in local media of general circulation including, but not limited to, the municipality's website, and at a time and place conducive to maximizing public input.

(d) A demonstration that, concurrent with advertisement of the public meeting, a notice of the public meeting was sent to all affected local, state, and federal agencies and to any public or private parties that expressed an interest in the proposed project.

(e) A summary of the public meeting including a list of all attendees, and any specific concerns that were raised.

(5) After notice and an opportunity for public comment, the department shall annually develop separate priority lists for sewage treatment works projects and stormwater management projects, nonpoint source projects, and projects funded under the strategic water quality initiatives fund created in section 5204. Projects not funded during the time that a priority list developed under this section is in effect must be automatically prioritized on the next annual list using the same criteria, unless the municipality submits an amendment to its planning document that introduces new information to be used as the basis for prioritization. The priority lists must be based on the planning documents and the scoring criteria developed under section 5303a.

(6) If a municipality is an overburdened community or a significantly overburdened community, the department shall automatically award the municipality at least 20% of the total allowable points.

(7) The priority list must be submitted annually to the chair of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of natural resources and the environment.

(8) For purposes of providing assistance, the priority list takes effect on the first day of each fiscal year.

(9) This section does not limit other actions undertaken to enforce part 31, part 41, the federal water pollution control act, or any other act.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 221, Imd. Eff. Jan. 2, 2002;—Am. 2002, Act 398, Eff. Nov. 5, 2002;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013;—Am. Act 132, Imd. Eff. June 30, 2022.

Compiler's note: Enacting section 2 of Act 398 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5303a Scoring criteria for the prioritization of projects; departmental duties.

Sec. 5303a. (1) The department shall develop scoring criteria that assign points to and prioritize projects under section 5303 and definitions of overburdened community and significantly overburdened community. In developing scoring criteria and the definitions under this subsection, the department shall do all of the following:

(a) Consult with members of statewide local government associations and drinking water, wastewater, stormwater, and environmental organizations regarding the content of the scoring criteria and definitions.

(b) Publish, hold at least 1 public hearing, and allow for public comment.

(c) Review the scoring criteria and definitions not more than once every 3 years, unless otherwise directed by the United States Environmental Protection Agency.

(d) Publish, hold at least 1 public hearing, and allow for public comment on any changes made after a review under subdivision (c).

(2) The scoring criteria developed under subsection (1) must address the following:

(a) Wastewater regulatory compliance.

(b) Public health.

(c) Achieving water quality standards.

(d) Improving infrastructure.

(e) Impacts on overburdened communities and significantly overburdened communities.

(3) The definitions of overburdened community and significantly overburdened community developed under subsection (1) must address the following:

(a) Income and unemployment data.

(b) Population trends.

(c) Housing costs and values.

(d) Annual user costs, allocation of costs across customer classes, and historical and projected trends in user costs.

(e) Existing public health, environmental, and affordability impacts.

(f) Other data considered relevant by the department.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5304 Assistance; requirements.

Sec. 5304. Subject to sections 5309 and 5310, assistance provided to municipalities to construct sewage treatment works projects, stormwater projects, and nonpoint source projects shall be in accordance with all of the following:

(a) Assistance for approved sewage treatment works projects and stormwater treatment projects shall be provided for projects in the fundable range of the priority list developed pursuant to 5303, and to other projects that may become fundable pursuant to section 5310.

(b) Assistance for approved qualified nonpoint source projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 5303. The director shall annually allocate at least 2% of the available funds to the extent needed to provide assistance to projects on the nonpoint source priority list. If these funds are not awarded, the allocation shall revert to provide assistance to projects on the sewage treatment works priority list.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

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"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5305 Descriptions and timetables for actions.

Sec. 5305. The department shall provide written descriptions and timetables for actions required under this part, including the intended use plan developed under section 5306, and may provide to municipalities that request assistance in writing other information that the department considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5306 Intended use plan; preparation and submission; purpose; public participation; contents of plan; notice of approval; notification of municipality; information to be provided; schedule.

Sec. 5306. (1) The department shall prepare and submit an intended use plan annually to identify proposed annual intended uses of the fund, and to facilitate the negotiation process that the department may conduct with the United States Environmental Protection Agency for the capitalization grant agreement and schedule of payments to be made to this state under the federal water pollution control act.

(2) The department must allow for a public participation process that requires not less than 1 public hearing for the intended use plan by publishing a draft of the intended use plan on the department's website at least 14 days before a final intended use plan is submitted under subsection (1). The intended use plan must describe and identify all of the following:

(a) Additional subsidization that will be allocated to projects.

(b) The projects that will receive additional subsidization identified under subdivision (a).

(c) The reasons why a project will receive additional subsidization.

(3) Upon notice from the United States Environmental Protection Agency that the intended use plan is approved, the department shall notify each municipality of its inclusion on the intended use plan and shall provide copies of the sewage treatment works projects and stormwater management projects priority list, the nonpoint source project priority list, and the intended use plan to any person that requests that information. Following notification under this subsection, the department shall establish, with the concurrence of the municipality, a schedule for planning document approval, submittal of a completed application for assistance, and approval of plans and specifications.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5307 Project planning documents; review; approval or disapproval; extension of review period; notice of deficiencies; review of subsequent submittals.

Sec. 5307. (1) The department shall review, generally in priority order, any planning documents for projects in the fundable range and either approve or disapprove a planning document within 120 days after notifying the municipality of its inclusion in the intended use plan submitted under section 5306. Upon determination by the department that a project is complex and warrants additional review, the department shall notify the municipality and may extend the review period described in this subsection for not more than 60 days.

(2) If a planning document is disapproved, the department shall notify the municipality of any deficiencies that need to be corrected. The municipality shall correct any deficiencies and submit an amended planning document to the department within 45 days after receiving notice under this subsection.

(3) The department shall review subsequent submittals and either approve or disapprove an amended planning document within 90 days after the amended planning document is submitted.

(4) If an amended planning document is not approved, the department shall notify the municipality of the deficiencies.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5307a Environmental review of planning documents; necessity of environmental assessment; issuance of findings; environmental impact statement; compliance with national environmental policy act; reevaluation; action limitation.

Sec. 5307a. (1) The department shall conduct an environmental review of the planning document for each project in the fundable range of the priority list to determine whether any significant impacts are anticipated and whether any changes can be made in the project to eliminate significant adverse impacts. As part of the environmental review, the department may require a municipality to submit additional information or meet additional public participation and coordination requirements to justify the environmental determination.

(2) Based on the environmental review completed under subsection (1), the department may determine that an environmental assessment is necessary and the department may describe any of the following in its determination:

(a) The purpose and need for the project.

(b) The project costs.

(c) The alternatives considered and the reasons for their acceptance or rejection.

(d) The existing environment.

(e) Any potential adverse impacts and mitigative measures.

(f) How mitigative measures will be incorporated into the project, as well as any proposed conditions of financial assistance and the means for monitoring compliance with the conditions.

(3) Based on an environmental assessment completed under subsection (2), the department may issue a finding of no significant impact. The finding of no significant impact must document that the potential environmental impacts will not be significant or that the environmental impacts may be mitigated without extraordinary measures.

(4) Based on an environmental assessment completed under subsection (2), the department may require a municipality to complete an environmental impact statement if the department determines any of the following:

(a) The project will have significant adverse impacts on any of the following:

(*i*) Wetlands.

(*ii*) Flood plains.

(*iii*) Threatened or endangered species or habitats.

(*iv*) Cultural resources, including any of the following:

(A) Park lands.

(B) Preserves.

(C) Other public lands.

(D) Areas of recognized scenic, recreational, agricultural, archeological, or historical value.

(b) The project will cause significant displacement of population.

(c) The project will directly or indirectly, such as through induced development, have a significant adverse effect upon any of the following:

(*i*) Local ambient air quality.

(*ii*) Public health.

(*iii*) Local noise levels.

(*iv*) Surface water and groundwater quantity or quality.

(*v*) Shellfish.

(*vi*) Fish.

(*vii*) Wildlife.

(*viii*) Wildlife natural habitats.

(d) The project will generate significant public controversy.

(5) Based on the environmental impact statement, the department shall issue a record of decision summarizing the findings of the environmental impact statement that identifies the conditions under which the project can proceed and maintain compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(6) If 5 or more years have elapsed since a determination of compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347, or if significant changes in the project have occurred, the department shall reevaluate the project for compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to

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4347, and the department may do any of the following:

(a) Reaffirm the original finding of no significant impact or the record of decision through the issuance of a public notice or statement of finding.

(b) Issue an amendment to a finding of no significant impact or revoke a finding of no significant impact and issue a public notice that the preparation of an environmental impact statement is required.

(c) Issue a supplement to a record of decision or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(7) Action regarding approval of a planning document or provision of financial assistance must not be taken during a 30-day public comment period after the issuance of a finding of no significant impact or record of decision.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5308 Application for assistance; requirements; revenue source; acceptance; notice of additional information required; approval or disapproval of application.

Sec. 5308. (1) To apply for assistance from the fund, a municipality shall submit the following, if applicable, as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with municipal bond obligations existing at the time assistance is requested, and pledged to both of the following purposes:

(*i*) If assistance is in the form of a loan, the timely repayment of the loan.

(*ii*) Adequate revenues from a user-based source to fund the operation and maintenance of the project.

(b) A planning document approved under section 5307.

(c) A certification by an authorized representative of a municipality affirming that the municipality has the legal, managerial, institutional, and financial capability to build, operate, and maintain the project.

(d) A letter of credit, insurance, or other credit enhancement to support the credit position of the municipality, as required by the department.

(e) A set of plans and specifications suitable for bidding.

(f) A certification from an authorized representative of the municipality that the applicant has, or will have before the start of construction, all applicable state and federal permits required for construction of the project.

(g) A certified resolution from the municipality designating an authorized representative for the project.

(h) A certification from an authorized representative of the municipality that an undisclosed fact or event, or pending litigation, will not materially or adversely affect the project, the prospects for the project's completion, or the municipality's ability to make timely loan repayments, if applicable.

(i) All executed intermunicipal service agreements, if applicable.

(j) An agreement that the municipality will operate the project in compliance with applicable state and federal laws.

(k) An agreement that the municipality will not sell, lease, abandon, or otherwise dispose of the project without an effective assignment of obligations and the written approval of the department and the authority.

(*l*) An agreement that all municipal project accounts will be maintained in accordance with generally accepted government accounting standards as defined and required under the federal water pollution control act.

(m) An agreement that the municipality will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial records of the project, and that the municipality will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

(n) An agreement that all municipal contracts with contractors will provide that the contractor and any subcontractor may be subject to a financial audit and that contractors and subcontractors shall comply with generally accepted governmental accounting standards.

(o) An agreement that all pertinent records must be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation, a claim, an appeal, or an audit is begun before the end of the 3-year period, records must be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer. As used in this subdivision, "initiation of the operation" means the date certain set by the municipality and accepted by the department, on which use of the project begins for the purposes for which it was constructed.

(p) If the project is segmented as provided in section 5309, a schedule for completion of the project and

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adequate assurance that the project will be completed with or without assistance from the fund or that the segmented project will be operational without completion of the entire project.

(q) An agreement that the project will proceed in a timely fashion if the application for assistance is approved.

(r) An application fee, if required by the department.

(2) The requirement under subsection (1)(a) for a dedicated source of revenue may include a revenue source pledged to repay the debt to the fund from sources including, but not limited to, 1 or more of the following:

(a) Ad valorem taxes.

(b) Special assessments.

(c) User-based revenue collections.

(d) General funds of the municipality.

(e) Benefit charges.

(f) Tap-in fees, or other 1-time assessments.

(3) The department shall accept applications for assistance from municipalities in the fundable range of the priority list that have approved planning documents. The department shall determine whether an application for assistance is administratively complete and notify the applicant within 30 days after receipt of the application specifying any additional information necessary to complete the application.

(4) The department shall approve or disapprove an application within 30 days of the determination that the application is complete.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5309 Segmentation of a project.

Sec. 5309. When the department prepares the priority list under section 5303, to ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single project, the department may segment a project if the cost of the proposed project is more than 30% of the amount available in the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5310 Project subject to bypass; notice to municipality; extension of schedule; effect of bypass.

Sec. 5310. (1) The department may bypass a project that fails to meet the schedule established under section 5306, or that does not have an approved planning document and application 90 days before the last day of the fiscal year, whichever comes first. The department must provide a municipality with written notice of the department's intent to bypass not less than 30 days before a project is bypassed under this section.

(2) If demand exceeds funding availability, a municipality may submit a written request to the department to extend the schedule established under section 5306 for not more than 60 days. A municipality must include in its written request the reason or reasons for its noncompliance with the schedule. A municipality may submit 1 additional written request to the department to extend the schedule established under section 5306 for not more than 30 days.

(3) A project bypassed under this section must not be considered for an order of approval until all other projects in the fundable range have been funded or rejected. This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle.

(4) A bypass action under this section does not modify any compliance dates established in a permit, order, or other document issued by the department or entered as part of an action brought by this state or a federal agency.

(5) After a project is bypassed under this section, the department may award assistance to projects outside the fundable range. The department shall make assistance available to projects outside the fundable range in priority order contingent on the municipality's satisfaction of all applicable requirements for assistance under section 5308 within the time period established by the department, but not to exceed 60 days from the date of notice of bypass. The department shall notify a municipality with a project outside the fundable range of bypass action, of the amount of the bypassed funds available for obligation, and of the deadline for submitting

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a complete, approvable application.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5311 Order of approval; certification of eligibility; establishment of interest rates.

Sec. 5311. (1) The department shall review a complete application for assistance for a project in the fundable range. If the department approves the application for assistance, the department shall issue, subject to section 5310, an order of approval to establish the specific terms of the assistance. The order of approval must include, but is not limited to, all of the following:

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

(c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the premium charged.

(2) The order of approval must incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) After issuance of the order, the department shall certify to the authority that the municipality is eligible to receive assistance.

(4) The department shall annually establish the interest rates to be assessed for projects receiving assistance under this part. In establishing interest rates under this section, the department may provide for a different level of subsidy. The interest rates must be in effect for loans made during the next state fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5312 Termination of assistance; determination; causes; notice; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5312. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(3) The department shall give written notice to the municipality by certified letter of the intent to issue an order recommending that assistance be terminated. This notification must be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of assistance under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5313 Petition; orders; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5313. (1) A municipality may petition the department to make a determination and issue an order under section 5312(1) for cause.

(2) The department may issue an order to terminate the project for cause that is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order to the authority recommending appropriate action.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's

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requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of the loan under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5313b Project responsibilities of municipality; departmental guidance.

Sec. 5313b. (1) A municipality is responsible for obtaining any federal, state, or local permits necessary for the project and shall perform any surveys or studies that are required under the permits.

(2) A municipality shall incorporate all appropriate provisions, conditions, and mitigative measures included in the studies, surveys, permits, and licenses into the construction documents. The construction documents are subject to review by the department for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures must be enforced by the municipality or its designated representative and apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

(4) A municipality may seek guidance from the department regarding the requirements under this part or the rules promulgated under this part.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5313c State revolving administration fund.

Sec. 5313c. (1) The state revolving administration fund is created within the state treasury. The state treasurer may receive money or other assets for any source for deposit into the state revolving administration fund. The state treasurer shall direct the investment of the state revolving administration fund and credit to the fund interest and earnings from fund investments. Money in the state revolving administration fund at the end of the fiscal year remains in the fund and does not lapse to the general fund. The department is the administrator of the state revolving administration fund for auditing purposes.

(2) Not more than 0.25% of the interest charged on a loan issued under this part or part 54 may be deposited into the state revolving administration fund.

(3) The department shall expend money from the fund only for the reasonable costs of administering and conducting activities under this part and part 54.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5314 Costs of administering and implementing part; payment.

Sec. 5314. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal water pollution control act.

(b) Loan fees, not to exceed the ratio that the annual appropriation for administration of this part bears to the total value of loans awarded for the fiscal year in which the appropriation was made, as estimated in the intended use plan.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5315 Repealed. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: The repealed section pertained to duration of current priority list.

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Popular name: Act 451

Popular name: NREPA

324.5316 Powers of department.

Sec. 5316. The department has the powers necessary or convenient to carry out and effectuate the purpose, objectives, and provisions of this part, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of his or her powers.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, to enter into agreements with any person or the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(d) Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(e) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(f) Review and approve all necessary documents in a municipality's application for assistance and issue an order authorizing assistance to the authority.

(g) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(h) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(i) Make application requesting a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(j) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and to select projects to be funded.

(k) Prepare and submit an annual report required by the federal water pollution control act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.5317 Repealed. 2022, Act 132, Imd. Eff. June 30, 2022

Compiler's note: The repealed section pertained to the creation of the state water pollution control revolving fund advisory committee.

Popular name: Act 451

Popular name: NREPA

PART 54
(Safe Drinking Water Assistance)

324.5401 Definitions; A to C.

Sec. 5401. As used in this part:

(a) "Act 399" means the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) "Annual user costs" means an annual charge levied by a water supplier on users of the waterworks system to pay for each user's share of the cost for operation, maintenance, and replacement of the waterworks system. These costs may also include a charge to pay for the debt obligation.

(c) "Assistance" means 1 or more of the following activities to the extent authorized by the federal safe drinking water act:

(*i*) Provision of loans for the planning, design, and construction or alteration of waterworks systems.

(*ii*) Project refinancing assistance.

(*iii*) The guarantee or purchase of insurance for local obligations, if the guarantee or purchase action would

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improve credit market access or reduce interest rates.

(*iv*) Use of the proceeds of the fund as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by this state, if the proceeds of the sale of the bonds will be deposited into the fund.

(*v*) Provision of loan guarantees for sub-state revolving funds established by water suppliers that are municipalities.

(*vi*) The use of deposited funds to earn interest on fund accounts.

(*vii*) Provision for reasonable costs of administering and conducting activities under this part.

(*viii*) Provision of technical assistance under this part.

(*ix*) Provision of loan forgiveness for certain planning costs incurred by overburdened communities.

(d) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1077.

(e) "Capitalization grant" means the federal grant made to this state by the United States Environmental Protection Agency, as provided in the federal safe drinking water act.

(f) "Community water supply" means a public water supply that provides year-round service to not less than 15 living units or that regularly provides year-round service to not less than 25 residents.

(g) "Construction activities" means any actions undertaken in the planning, designing, or building of a waterworks system. Construction activities include, but are not limited to, all of the following:

(*i*) Engineering services.

(*ii*) Legal services.

(*iii*) Financial services.

(*iv*) Preparation of plans and specifications.

(*v*) Acquisition of land or structural components, or both, if the acquisition is integral to a project authorized by this part and the purchase is from a willing seller at fair market value.

(*vi*) Building, erection, alteration, remodeling, or extension of waterworks systems, providing the extension is not primarily for the anticipation of future population growth.

(*vii*) Reasonable expenses of supervision of the project activities described in subparagraphs (*i*) to (*vi*).

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5402 Definitions; D to N.

Sec. 5402. As used in this part:

(a) "Department" means the department of environment, Great Lakes, and energy or its authorized agent or representative.

(b) "Director" means the director of the department or his or her designated representative.

(c) "Federal safe drinking water act" means the safe drinking water act, 42 USC 300f to 300j-25, and the rules promulgated under that act.

(d) "Fund" means the state drinking water revolving fund established under section 16b of the shared credit rating act, 1985 PA 227, MCL 141.1066b.

(e) "Fundable range" means those projects, taken in descending order on the priority list, for which the department estimates sufficient funds exist to provide assistance during each annual funding cycle.

(f) "Municipality" means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law.

(g) "Noncommunity water supply" means a public water supply that is not a community water supply, but that has not less than 15 service connections or that serves not less than 25 individuals on an average daily basis for not less than 60 days per year.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5403 Definitions; P to W.

Sec. 5403. As used in this part:

(a) "Priority list" means the annual ranked listing of projects developed by the department in section 5406.

(b) "Project" means a project related to the planning, design, and construction or alteration of a waterworks system and may include utilization of more efficient energy and resources as described in any of the

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following:

(*i*) The cost-effective governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725.

(*ii*) Section 11c of 1851 PA 156, MCL 46.11c.

(*iii*) Section 75b of 1846 RS 16, MCL 41.75b.

(*iv*) Section 5f of the home rule city act, 1909 PA 279, MCL 117.5f.

(*v*) Section 24b of the home rule village act, 1909 PA 278, MCL 78.24b.

(*vi*) Section 36 of the general law village act, 1895 PA 3, MCL 68.36.

(c) "Project refinancing assistance" means buying or refinancing the debt obligations of water suppliers if construction activities commenced, and the debt obligation was incurred, after June 17, 1997.

(d) "Public water supply" means a waterworks system that provides water for drinking or household purposes to persons other than the water supplier, except for those waterworks systems that supply water to only 1 house, apartment, or other domicile occupied or intended to be occupied on a day-to-day basis by an individual, family group, or equivalent.

(e) "State drinking water standards" means rules promulgated under section 5 of Act 399, MCL 325.1005, that establish water quality standards necessary to protect public health or that establish treatment techniques to meet these water quality standards.

(f) "Water supplier" or "supplier" means a municipality or its designated representative accepted by the director, a legal business entity, or any other person that owns a public water supply. However, water supplier does not include a water hauler.

(g) "Waterworks system" or "system" means a system of pipes and structures through which water is obtained or distributed and includes any of the following that are actually used or intended to be used for the purpose of furnishing water for drinking or household purposes:

(*i*) Wells and well structures.

(*ii*) Intakes and cribs.

(*iii*) Pumping stations.

(*iv*) Treatment plants.

(*v*) Storage tanks.

(*vi*) Pipelines, service lines, and appurtenances.

(*vii*) A combination of any of the items specified in subparagraphs (*i*) to (*vi*).

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2021, Act 45, Imd. Eff. July 1, 2021;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5404 Water suppliers; qualifications for assistance.

Sec. 5404. (1) Water suppliers that own the following types of public water supplies qualify to receive assistance under this part:

(a) A community water supply.

(b) A noncommunity water supply that operates as a nonprofit entity.

(2) Water suppliers identified in subsection (1) that serve 10,000 people or less may qualify for assistance from funds prescribed in section 1452(a)(2) of the federal safe drinking water act, 42 USC 300j-12.

(3) On completion and submittal of approved planning documents by an overburdened community to the department, if the overburdened community incurred planning costs related to the proposed project, the overburdened community must be directly reimbursed by the department to the extent funds are available. Technical assistance funds identified in section 1452(g)(2)(D) or section 1452(d)(1) of the federal safe drinking water act, 42 USC 300j-12, must be used to the extent available, to forgive repayment of the planning loan.

(4) Only water suppliers that have no outstanding prior year fees as prescribed in Act 399 may receive assistance under this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5405 Water suppliers; application for assistance; planning document requirements.

Sec. 5405. (1) A water supplier that is interested in applying for assistance under this part shall prepare and submit to the department a planning document as provided in this section. The department shall use the planning documents submitted under this section to develop a priority list for assistance as provided under this part. A water supplier may submit as part of the planning document for a project either of the following:

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(a) Any preexisting documents or plans that were prepared for other projects or purposes.

(b) Any preexisting documents that were developed under another local, state, or federal program, as applicable.

(2) During the development of a planning document, a water supplier that is a municipality shall consider and utilize, where practicable, cooperative regional or intermunicipal projects, and a water supplier that is not a municipality shall consider and utilize, where practicable, connection to, or ownership by, a water supplier that is a municipality.

(3) A planning document must include documentation that demonstrates all of the following:

(a) The project is needed to ensure maintenance of or progress toward compliance with the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(b) An analysis of alternatives including the cost of each alternative.

(c) A description of project costs and how the project will be paid for including, but not limited to, an explanation of how the debt will be repaid.

(d) A list of the environmental and public health implications and mitigation plans.

(e) Consideration of opportunities to utilize more efficient energy and resources as described in any of the following:

(*i*) The cost-effective governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725.

(*ii*) Section 11c of 1851 PA 156, MCL 46.11c.

(*iii*) Section 75b of 1846 RS 16, MCL 41.75b.

(*iv*) Section 5f of the home rule city act, 1909 PA 279, MCL 117.5f.

(*v*) Section 24b of the home rule village act, 1909 PA 278, MCL 78.24b.

(*vi*) Section 36 of the general law village act, 1895 PA 3, MCL 68.36.

(4) A planning document must describe the public participation activities conducted during planning and must include all of the following:

(a) Significant issues raised by the public and any changes to the project that were made as a result of the public participation process.

(b) A demonstration that there were adequate opportunities for public consultation, participation, and input in the decision-making process during alternative selection.

(c) A demonstration that before the adoption of the planning document, the water supplier held a public meeting on the proposed project not less than 10 days after advertising the public meeting in local media of general circulation including, but not limited to, the water supplier's website, and at a time and place conducive to maximizing public input.

(d) A demonstration that, concurrent with advertisement of the public meeting, a notice of public meeting was sent to all affected local, state, and federal agencies and to any public or private parties that expressed an interest in the proposed project.

(e) A summary of the public meeting, including a list of all attendees and any specific concerns that were raised.

(5) A planning document must include either of the following, as appropriate:

(a) For a water supplier that is a municipality, a resolution adopted by the governing board of the municipality approving the planning document.

(b) For a water supplier that is not a municipality, a statement of intent to implement the planning document.

(6) A planning document must not have as a primary purpose the construction of or expansion of a waterworks system to accommodate future development or fire protection.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2021, Act 45, Imd. Eff. July 1, 2021;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5406 Priority list of projects eligible for assistance; effective first day of fiscal year.

Sec. 5406. (1) The department shall annually develop a priority list of projects eligible for assistance under this part. The priority list must be based on planning documents and the scoring criteria developed under section 5406a.

(2) For purposes of providing assistance, the priority list takes effect on the first day of each fiscal year.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

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Popular name: NREPA

324.5406a Scoring criteria for the prioritization of projects; departmental duties.

Sec. 5406a. (1) The department shall develop scoring criteria that assign points to and prioritize projects under section 5406 and definitions of overburdened community and significantly overburdened community. In developing scoring criteria and the definitions under this subsection, the department shall do all of the following:

(a) Consult with members of statewide local government associations and drinking water, wastewater, stormwater, and environmental organizations regarding the content of the scoring criteria and definitions.

(b) Publish, hold at least 1 public hearing, and allow for public comment.

(c) Review the scoring criteria and the definitions not more than once every 3 years, unless otherwise directed by the United States Environmental Protection Agency.

(d) Publish, hold at least 1 public hearing, and allow for public comment on any changes made after a review under subdivision (c).

(2) The scoring criteria developed under subsection (1) must address the following:

(a) Drinking water regulatory compliance.

(b) Public health.

(c) Drinking water quality.

(d) Improving infrastructure.

(e) Impacts on overburdened communities and significantly overburdened communities.

(3) The definitions of overburdened community and significantly overburdened community developed under subsection (1) must address the following:

(a) Income and unemployment data.

(b) Population trends.

(c) Housing costs and values.

(d) Annual user costs, allocation of costs across customer classes, and historical and projected trends in user costs.

(e) Existing public health, environmental, and affordability impacts.

(f) Other data considered relevant by the department.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

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324.5407 Identification of projects in fundable range.

Sec. 5407. The department shall annually identify those projects in the fundable range of the priority list. Following the identification of projects in the fundable range, the department shall review, generally in priority order, the planning documents for these projects and, following completion of the environmental review process described in section 5408, either approve or disapprove the planning documents.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5407a Segmentation of a project.

Sec. 5407a. When the department prepares the priority list under section 5406, to ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single project, the department may segment the project if the cost of the proposed project is more than 30% of the amount available in the fund.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5408 Planning documents; environmental review; categorical exclusion; criteria; environmental assessment; finding of no significant impact; environmental impact statement; record of decision; project reevaluation for compliance with national environmental policy act requirements; action prohibited during public comment period.

Sec. 5408. (1) The department shall conduct an environmental review of the planning documents of each project in the fundable range of the priority list to determine whether any significant impacts are anticipated and whether any changes can be made in the project to eliminate significant adverse impacts. As part of this

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review, the department may require the water supplier to submit additional information or meet additional public participation and coordination requirements to justify the environmental determination.

(2) Based on the environmental review under subsection (1), the department may issue a categorical exclusion for categories of actions that do not individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions have a significant adverse effect on the quality of the human environment or public health. Additional environmental information documentation, environmental assessments, and environmental impact statements will not be required for excluded actions.

(3) Following receipt of the planning document, the director shall determine if the proposed project qualifies for a categorical exclusion and document the decision.

(4) The director may revoke a categorical exclusion and require a complete environmental review if, after the determination, the director finds any of the following:

(a) The proposed project no longer qualifies for a categorical exclusion due to changes in the proposed plan.

(b) New evidence exists documenting a serious health or environmental issue.

(c) Federal, state, local, or tribal laws will be violated by the proposed project.

(5) The proposed project must not qualify for a categorical exclusion if the director determines any of the following criteria are applicable:

(a) The proposed project will result in an increase in residuals and sludge generated by drinking water processes, either volume or type, that would negatively impact the performance of the waterworks system or the disposal methods, or would threaten an aquifer recharge zone.

(b) The proposed project will provide service to a population greater than 30% of the existing population.

(c) The proposed project is known, or expected, to directly or indirectly affect cultural areas, fauna or flora habitats, endangered or threatened species, or environmentally important natural resource areas.

(d) The proposed project directly or indirectly involves the extension of transmission systems to new service areas.

(e) The proposed project is shown not to be the cost-effective alternative.

(f) The proposed project will cause significant public controversy.

(6) If, based on the environmental review under subsection (1), the department determines that an environmental assessment is necessary, the department may describe the following:

(a) The purpose and need for the project.

(b) The project, including its costs.

(c) The alternatives considered and the reasons for their acceptance or rejection.

(d) The existing environment.

(e) Any potential adverse impacts and mitigative measures.

(f) How mitigative measures will be incorporated into the project, as well as any proposed conditions of financial assistance and the means for monitoring compliance with the conditions.

(7) The department may issue a finding of no significant impact, based on an environmental assessment that documents that potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(8) An environmental impact statement may be required when the department determines any of the following:

(a) The project will have a significant impact on the pattern and type of land use or the growth and distribution of the population.

(b) The effects of the project's construction or operation will conflict with local or state laws or policies.

(c) The project will have significant adverse impacts on any of the following:

(*i*) Wetlands.

(*ii*) Flood plains.

(*iii*) Threatened or endangered species or habitats.

(*iv*) Cultural resources, including any of the following:

(A) Park lands.

(B) Preserves.

(C) Other public lands.

(D) Areas of recognized scenic, recreational, agricultural, archeological, or historical value.

(d) The project will cause significant displacement of population.

(e) The project will directly or indirectly, such as through induced development, have a significant adverse effect on any of the following:

(*i*) Local ambient air quality.

(*ii*) Public health.

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(*iii*) Local noise levels.
(*iv*) Surface water and groundwater quantity or quality.
(*v*) Shellfish.
(*vi*) Fish.
(*vii*) Wildlife.
(*viii*) Wildlife natural habitats.
(f) The project will generate significant public controversy.
(9) Based on the environmental impact statement, a record of decision summarizing the findings of the environmental impact statement must be issued identifying those conditions under which the project can proceed and maintain compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347.
(10) If 5 or more years have elapsed since a determination of compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347, or if significant changes in the project have taken place, the department shall reevaluate the project for compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347, requirements. The department may do any of the following:
(a) Reaffirm the original finding of no significant impact or the record of decision through the issuance of a public notice or statement of finding.
(b) Issue an amendment to a finding of no significant impact or revoke a finding of no significant impact and issue a public notice that the preparation of an environmental impact statement is required.
(c) Issue a supplement to a record of decision or revoke a record of decision and issue a public notice that financial assistance will not be provided.
(11) Action regarding approval of a planning document or provision of financial assistance must not be taken during a 30-day public comment period after the issuance of a finding of no significant impact or record of decision.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5409 Application for fund assistance; contents; availability of revenue sources; acceptance of applications by department; liability for incurred costs.

Sec. 5409. (1) A water supplier whose planning document is approved or under review by the department under section 5407 may apply for assistance from the fund by submitting an application to the department. A completed application must include all of the following, if applicable, as determined by the department:
(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with obligations of debt instruments existing at the time assistance is requested, and pledged to both of the following purposes:
(*i*) The timely repayment of principal and interest.
(*ii*) Adequate revenues to fund the operation and maintenance of the project.
(b) Evidence of an approved planning document.
(c) A certified resolution from a water supplier that is a municipality, or a letter of appointment from a water supplier that is not a municipality, designating an authorized representative for the project.
(d) A certification by an authorized representative of the water supplier affirming that the water supplier has the legal, institutional, technical, financial, and managerial capability to build, operate, and maintain the project.
(e) A letter of credit, insurance, or other credit enhancement to support the credit position of the water supplier, as required by the department.
(f) A set of plans and specifications developed in accordance with Act 399 that is suitable for bidding.
(g) A certification from an authorized representative of the water supplier that it has, or will have before the start of construction, all applicable state and federal permits required for construction of the project.
(h) A certification from an authorized representative of the water supplier that an undisclosed fact or event, or pending litigation, will not materially or adversely affect the project, the prospects for its completion, or the water supplier's ability to make timely loan repayments, if applicable.
(i) If applicable, all executed service contracts or agreements.
(j) An agreement that the water supplier will operate the waterworks system in compliance with applicable state and federal laws.
(k) An agreement that the water supplier will not sell, lease, abandon, or otherwise dispose of the

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waterworks system without an effective assignment of obligations and prior written approval of the department and the authority.

(*l*) An agreement that:

(*i*) For water suppliers that are municipalities, all accounts must be maintained in accordance with generally accepted accounting practices, generally accepted government auditing standards, and 31 USC 7501 to 7507, as required by the federal safe drinking water act.

(*ii*) For water suppliers that are not municipalities, all accounts must be maintained in accordance with generally accepted accounting practices and generally accepted auditing standards.

(m) An agreement that all water supplier contracts with contractors will require them to maintain project accounts in accordance with the requirements of this subsection and provide notice that any subcontractor may be subject to a financial audit as part of an overall project audit.

(n) An agreement that the water supplier will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial records of the project, and that the water supplier will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

(o) An agreement that all pertinent records must be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation or a claim, appeal, or audit is begun before the end of the 3-year period, records must be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer. As used in this subdivision, "initiation of the operation" means the date certain set by the water supplier and accepted by the department, on which use of the project begins for the purposes for which it was constructed.

(p) An agreement that the project will proceed in a timely fashion if the application for assistance is approved.

(q) An application fee, if required by the department.

(2) A demonstration that a dedicated source of revenue will be available for operating and maintaining the waterworks system and repaying the incurred debt.

(3) The department shall accept applications for assistance from water suppliers in the fundable range of the priority list and determine whether an application for assistance is complete.

(4) This state is not liable to a water supplier, or any other person performing services for the water supplier, for costs incurred in developing or submitting an application for assistance under this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5410 Water suppliers; responsibility to obtain permits or clearances; incorporation of provisions, conditions, and mitigative measures; review of documents by department; enforcement.

Sec. 5410. (1) A water supplier who receives assistance under this part is responsible for obtaining any federal, state, or local permits or clearances required for the project and shall perform any surveys or studies that are required in conjunction with the permits or clearances.

(2) A water supplier who receives assistance under this part shall incorporate all appropriate provisions, conditions, and mitigative measures included in the applicable studies, surveys, permits, clearances, and licenses into the construction documents. These documents are subject to review by the department for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures shall be enforced by the water supplier or its designated representative and shall apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5411 Application for assistance; review by department; order of approval; incorporation of other documents; use of project assistance as matching requirements; eligibility certification.

Sec. 5411. (1) The department shall review a complete application for assistance for a proposed project submitted under section 5409. If the department approves the application for assistance, the department shall issue an order of approval to establish the specific terms of the assistance. The order of approval shall include,

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but need not be limited to, all of the following:

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

(c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the premium charged.

(2) The order of approval under subsection (1) shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) The department shall not prohibit a water supplier from using assistance for a project to meet match requirements for federal loans or grants for that project.

(4) After issuance of the order of approval under subsection (1), the department shall certify to the authority that the water supplier is eligible to receive assistance.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.5412 Bypassed projects.

Sec. 5412. (1) The department may bypass projects that fail to meet the schedule negotiated and agreed upon between the water supplier and the department, or that do not have approved planning documents and specifications and an approvable application 90 days before the last day of the state fiscal year, whichever comes first.

(2) A water supplier may submit a written request to the department to extend a project schedule for not more than 60 days. The request must provide the reason for the noncompliance with the schedule. A water supplier may file 1 additional 30-day extension request to its schedule.

(3) A project bypassed under this section must not be considered for an order of approval until all other projects have either been funded or rejected. This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle.

(4) The department shall provide affected water suppliers with a written notice of intent to bypass not less than 30 days before the bypass action.

(5) For projects bypassed under this section, the department shall transmit to the water supplier an official notice of bypass for the fundable project.

(6) A bypass action under this section does not modify any compliance dates established under a permit, order, or other document issued by the department or entered as part of an action brought by this state or a federal agency.

(7) After a project is bypassed, the department may award assistance to projects outside the fundable range. Assistance must be made available to projects outside the fundable range in priority order contingent upon the water supplier's satisfaction of all applicable requirements for assistance within the time period established by the department, but not to exceed 60 days from the date of notification. The department shall notify water suppliers with projects outside the fundable range of bypass action, of the amount of bypassed funds available for obligation, and of the deadline for submittal of a complete, approvable application.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5413 Determination to terminate assistance; issuance of order by department; cause; written notice to water supplier; repayment of outstanding loan balance not affected; other state and federal requirements not relieved; responsibility for settlement costs.

Sec. 5413. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

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(e) Failure to accept an offer of assistance from the fund within a period of 30 days after receipt of a proposed loan agreement from the authority.

(3) The department shall give written notice to the water supplier by certified letter of the intent to issue an order of termination. This notification shall be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5414 Determination to terminate assistance; petition by water supplier; issuance of order by department; cause; repayment of outstanding loan balance not affected; other state or federal laws not relieved; responsibility for settlement costs.

Sec. 5414. (1) A water supplier may petition the department to make a determination that assistance to that water supplier should be terminated.

(2) Upon receipt of a petition under subsection (1), the department may issue an order recommending the authority to take appropriate action to terminate the assistance for a project for cause. The order is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order of termination to the authority recommending appropriate action.

(4) The termination of assistance by the authority does not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5415 Annual establishment of interest rates.

Sec. 5415. The department shall annually establish the interest rates to be assessed for projects receiving assistance under this part. In establishing interest rates under this section, the department may provide for a different level of subsidy for projects. The interest rates must be in effect for loans made during the next state fiscal year. The interest rates must be in effect for loans made during the next state fiscal year.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5415a Project responsibilities of water supplier; departmental guidance.

Sec. 5415a. (1) A water supplier is responsible for obtaining any federal, state, or local permits necessary for the project and shall perform any surveys or studies that are required under the permits.

(2) A water supplier shall incorporate all appropriate provisions, conditions, and mitigative measures included in the studies, surveys, permits, and licenses into the construction documents. The construction documents are subject to review by the department for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures must be enforced by the municipality or its designated representative and apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

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(4) A water supplier may seek guidance from the department regarding the requirements under this part or the rules promulgated under this part.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5416 Administration and implementation costs; payment sources.

Sec. 5416. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount allowed under the federal safe drinking water act.

(b) A local match provided by the water supplier receiving assistance not to exceed the department's administrative costs associated with providing the assistance.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Collection of fees and charges by the department in connection with a transaction authorized under this part.

(f) Any other money appropriated by the legislature.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5417 Powers of department.

Sec. 5417. In implementing this part, the department may do 1 or more of the following:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient for the implementation of this part.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, enter into agreements with any person or the federal, state, or a local government, or participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Expend federal and state money allocated under the federal safe drinking water act for any of the following purposes, in accordance with that act:

(*i*) Fund activities authorized under section 1452(g)(2) of the federal safe drinking water act, 42 USC 300j-12, which may include fund administration and the provision of set-asides annually identified as part of an intended use plan.

(*ii*) Fund implementation of a technical assistance program created in Act 399 and used by the state to provide technical assistance to public water systems serving not more than 10,000 persons.

(*iii*) Fund activities authorized under section 1452(k) of the federal safe drinking water act, 42 USC 300j-12, which may include the lending of money for certain source water protection efforts, assisting in the implementation of capacity development strategies, conducting source water assessments, and implementing wellhead protection programs.

(d) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(e) Employ personnel as is necessary, and contract for the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(f) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(g) Review and approve all necessary documents in a water supplier's application for assistance and issue an order authorizing assistance to the authority.

(h) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(i) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and

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responsibilities of the fund.

(j) Apply for a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(k) Establish priority lists and fundable ranges for projects and the scoring criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and select projects to be funded.

(*l*) Prepare and submit an annual intended use plan and an annual report as required under the federal safe drinking water act. The department shall annually invite stakeholders including, but not limited to, representatives of water utilities, local units of government, agricultural interests, industry, public health organizations, medical organizations, environmental organizations, consumer organizations, and drinking water consumers who are not affiliated with any of the other represented interests, to 1 or more public meetings to provide recommendations for the development of the annual intended use plan as it relates to the set-asides allowed under the federal safe drinking water act. The intended use plan must describe and identify all of the following:

(*i*) Additional subsidization that will be allocated to projects.

(*ii*) The projects that will receive additional subsidization identified under subparagraph (*i*).

(*iii*) The reasons why a project will receive additional subsidization.

(m) Perform other functions necessary or convenient for the implementation of this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5418 Appeal; judicial review.

Sec. 5418. Determinations made by the department may be appealed in writing to the director. Determinations made by the director are final. Judicial review may be sought under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997.

Popular name: Act 451

Popular name: NREPA

324.5419 Repealed. 2002, Act 451, Eff. Sept. 30, 2003.

Compiler's note: The repealed section pertained to implementation of arsenic testing program.

Popular name: Act 451

Popular name: NREPA

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AIR RESOURCES PROTECTION

PART 55
AIR POLLUTION CONTROL

324.5501 Definitions.

Sec. 5501. As used in this part:

(a) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.

(b) "Air pollution" means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics, under conditions and circumstances, and of a duration that are or can become injurious to human health or welfare, to animal life, to plant life, or to property, or that interfere with the enjoyment of life and property in this state. Air pollution does not mean any health or safety hazard that is an aspect of employer-employee relationships. With respect to any mode of transportation, nothing in this part or in the rules promulgated under this part shall be inconsistent with the federal regulations, emission limits, standards, or requirements on various modes of transportation. Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices.

(c) "Air pollution control equipment" means any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(d) "Category A facility" means a fee-subject facility that is an electric provider and is any of the following:

(*i*) A major stationary source as defined in 42 USC 7602.

(*ii*) An affected source as defined pursuant to 42 USC 7651a.

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(*iii*) A major stationary source as defined in 42 USC 7491.

(e) "Category B facility" means a fee-subject facility that is not an electric provider and is any of the following:

(*i*) A major stationary source as defined in 42 USC 7602.

(*ii*) An affected source as defined pursuant to 42 USC 7651a.

(*iii*) A major stationary source as defined in 42 USC 7491.

(f) "Category C facility" means a fee-subject facility that is not a category A or category B facility and that is a major source as defined in 42 USC 7412.

(g) "Category D facility" means a fee-subject facility that is not a category A, category B, or category C facility and that is subject to requirements of 42 USC 7411.

However, a source is not a category D facility if any of the following apply:

(*i*) All equipment at the source meets a permit to install exemption in R 336.1280 to R 336.1291 of the Michigan Administrative Code and does not have an active permit to install.

(*ii*) The source is stripper well property as defined in 26 USC 613A(c)(6)(E).

(h) "Category E facility" means a fee-subject facility that is not a category A, category B, category C, or category D facility and that has an active title V opt-out permit.

(*i*) "Category F facility" means a fee-subject facility that is not a category A, category B, category C, category D, or category E facility.

(j) "Clean air act" means chapter 360, 69 Stat 322, 42 USC 7401 to 7671q, and regulations promulgated under the clean air act.

(k) "Electric provider" means that term as defined in section 5 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1005.

(*l*) "Emission" means the emission of an air contaminant.

(m) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(n) "Fee-subject air pollutant" means particulates, expressed as PM-10 pursuant to R 336.1116(k) of the Michigan Administrative Code, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under 42 USC 7411 or 7412 or title III of the clean air act, chapter 360, 77 Stat 400, 42 USC 7601 to 7628.

(o) "Fee-subject emissions" means emissions of fee-subject air pollutants.

(p) "Fee-subject facility" means the following sources:

(*i*) Any major source as defined in 40 CFR 70.2.

(*ii*) Any source, including an area source, subject to a standard, limitation, or other requirement under 42 USC 7411, when the standard, limitation, or other requirement becomes applicable to that source.

(*iii*) Any source, including an area source, subject to a standard, limitation, or other requirement under 42 USC 7412, when the standard, limitation, or other requirement becomes applicable to that source. However, a source is not a fee-subject facility solely because it is subject to a regulation, limitation, or requirement under 42 USC 7412(r).

(*iv*) Any affected source under title IV.

(*v*) Any other source in a source category designated by the administrator of the United States Environmental Protection Agency as required to obtain an operating permit under title V, when the standard, limitation, or other requirement becomes applicable to that source.

(*vi*) Any source with an active title V opt-out permit.

(q) "Fund" means the emissions control fund created in section 5521.

(r) "General permit" means a permit to install, permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, for a category of similar sources, processes, or process equipment. General provisions for issuance of general permits shall be provided for by rule.

(s) "Generally accepted agricultural and management practices" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(t) "Major emitting facility" means a stationary source that emits 100 tons or more per year of any of the following:

(*i*) Particulates.

(*ii*) Sulfur dioxides.

(*iii*) Volatile organic compounds.

(*iv*) Oxides of nitrogen.

(u) "Process", unless the context requires a different meaning, means an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.

(v) "Process equipment" means all equipment, devices, and auxiliary components, including air pollution

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control equipment, stacks, and other emission points, used in a process.

(w) "Responsible official" means, for the purposes of signing and certifying as to the truth, accuracy, and completeness of permit applications, monitoring reports, and compliance certifications, any of the following:

(*i*) For a corporation: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or an authorized representative of that person if the representative is responsible for the overall operation of 1 or more manufacturing, production, or operating facilities applying for or subject to a permit under this part and either the facilities employ more than 250 persons or have annual sales or expenditures exceeding $25,000,000.00, or if the delegation of authority to the representative is approved in advance by the department.

(*ii*) For a partnership or sole proprietorship: a general partner or the proprietor.

(*iii*) For a county or municipality or a state, federal, or other public agency: a principal executive officer or ranking elected official. For this purpose, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(*iv*) For sources affected by the acid rain program under title IV: the designated representative insofar as actions, standards, requirements, or prohibitions under that title are concerned.

(x) "Schedule of compliance" means, for a source not in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months. Schedule of compliance means, for a source in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a statement that the source will continue to comply with these requirements. With respect to any applicable requirement of this part, rules promulgated under this part, and the clean air act effective after the date of issuance of an operating permit, the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis, unless the underlying applicable requirement requires a more detailed schedule.

(y) "Source" means a stationary source as defined in 42 USC 7602, and has the same meaning as stationary source when used in comparable or applicable circumstances under the clean air act. A source includes all the processes and process equipment under common control that are located within a contiguous area, or a smaller group of processes and process equipment as requested by the owner or operator of the source, if in accordance with the clean air act.

(z) "Title IV" means title IV of the clean air act, pertaining to acid deposition control, 42 USC 7651 to 7651o.

(aa) "Title V" means title V of the clean air act, 42 USC 7661 to 7661f.

(bb) "Title V opt-out permit" means a permit to install that includes all of the following:

(*i*) Specified emission limits below thresholds for title V applicability.

(*ii*) Operational restriction.

(*iii*) Monitoring or record-keeping requirements to make subparagraphs (*i*) and (*ii*) practically enforceable through a permit.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998;—Am. 2019, Act 119, Imd. Eff. Nov. 15, 2019.

Compiler's note: In this section, the reference to "(*i*) "Category F facility" evidently should read "(i) "Category F facility"."

Popular name: Act 451

Popular name: NREPA

324.5502 Issuance of permit to install or operating permit to municipal solid waste incinerator; applicability of subsection (1); municipal solid waste incinerator existing prior to June 15, 1993.

Sec. 5502. (1) Except as provided in subsection (2), the department shall not issue a permit to install or an operating permit to a municipal solid waste incinerator unless the municipal solid waste incinerator is located at least 1,000 feet from all of the following:

(a) A residential dwelling.

(b) A public or private elementary or secondary school.

(c) A preschool facility for infants or children.

(d) A hospital.

(e) A nursing home.

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(2) Subsection (1) does not apply to a municipal solid waste incinerator that existed prior to June 15, 1993, or to the modification; alteration; expansion, including, but not limited to, the addition of 1 or more combustion units and any accompanying features or fixtures; or retrofit of such a municipal solid waste incinerator after June 15, 1993, regardless of whether the activity requires a permit.

(3) For the purposes of this section, a municipal solid waste incinerator existed prior to June 15, 1993 if either of the following applies:

(a) It was issued a permit to operate or a permit to install for installation, construction, modification, alteration, or retrofit prior to June 15, 1993, unless it was denied a permit to operate prior to June 15, 1993.

(b) It is located at a geographical site at which 1 or more incinerator units incinerated waste during the 6 months prior to June 15, 1993.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 227, Imd. Eff. Dec. 14, 1995;—Am. 1998, Act 6, Imd. Eff. Feb. 6, 1998.

Popular name: Act 451

Popular name: NREPA

324.5503 Powers of department.

Sec. 5503. The department may do 1 or more of the following:

(a) Promulgate rules to establish standards for ambient air quality and for emissions.

(b) Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(c) In accordance with this part and rules promulgated under this part, deny, terminate, modify, or revoke and reissue permits for cause. If an application for a permit is denied or is determined to be incomplete by the department, the department shall state in writing with particularity the reason for denial or the determination of incompleteness, and, if applicable, the provision of this part or a rule promulgated under this part that controls the decision.

(d) Compel the attendance of witnesses at proceedings of the department upon reasonable notice.

(e) Make findings of fact and determinations.

(f) Make, modify, or cancel orders that require, in accordance with this part, the control of air pollution.

(g) Enforce permits, air quality fee requirements, and the requirements to obtain a permit.

(h) Institute in a court of competent jurisdiction proceedings to compel compliance with this part, rules promulgated under this part, or any determination or order issued under this part.

(i) Enter and inspect any property as authorized under section 5526.

(j) Receive and initiate complaints of air pollution in alleged violation of this part, rules promulgated under this part, or any determination, permit, or order issued under this part and take action with respect to the complaint as provided in this part.

(k) Require reports on sources and the quality and nature of emissions, including, but not limited to, information necessary to maintain an emissions inventory.

(*l*) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution.

(m) Encourage voluntary cooperation by all persons in controlling air pollution and air contamination.

(n) Encourage the formulation and execution of plans by cooperative groups or associations of municipalities, counties or districts, or other governmental units, industries, and others who severally or jointly are or may be the source of air pollution, for the control of pollution.

(o) Cooperate with the appropriate agencies of the United States or other states or any interstate or international agencies with respect to the control of air pollution and air contamination or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(p) Conduct or cause to be conducted studies and research with respect to air pollution control, abatement, or prevention.

(q) Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to air pollution control.

(r) Determine by means of field studies and sampling the degree of air pollution in the state.

(s) Provide advisory technical consultation services to local communities.

(t) Serve as the agency of the state for the receipt of money from the federal government or other public or private agencies and the expenditure of that money after it is appropriated for the purpose of air pollution control studies or research or enforcement of this part.

(u) Do such other things as the department considers necessary, proper, or desirable to enforce this part, a

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rule promulgated under this part, or any determination, permit, or order issued under this part, or the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Air Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16 , compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5504 Medical waste incineration facility; operating permit required; form and contents of application; compliance; validity and renewal of permit; review of operating permits; retrofitting facility; interim operating permit; rules; receipt of pathological or medical wastes generated off-site; records; definitions.

Sec. 5504. (1) Beginning on June 6, 1991 or on the effective date of the rules promulgated under subsection (5), whichever is later, a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the department.

(2) An application for an operating permit under subsection (1) shall be submitted in the form and contain the information required by the department. The department shall issue an operating permit only if the facility is in compliance with this part and the rules promulgated under this part.

(3) A permit issued under this section shall be valid for 5 years. Upon expiration, a permit may be renewed.

(4) Within 2 years after the effective date of the rules promulgated under subsection (5), the department shall review all operating permits issued under this part for facilities that incinerate medical waste that were issued permits prior to the promulgation of the rules under subsection (5). If, upon review, the department determines that the facility does not meet the requirements of the rules promulgated under subsection (5) and cannot be retrofitted to comply with these rules, the department shall issue an interim operating permit that is valid for 2 years only. If the facility only needs retrofitting in order to comply with the rules, the facility shall be granted an interim permit that is valid for 1 year only. However, in either case the facility shall comply with this part and all other rules promulgated under this part for the interim period. An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with the rules promulgated under subsection (5), the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility, at a facility owned and operated by the person who owns and operates that facility, or at the private practice office of a physician who has privileges to practice at that facility, if the facility is a hospital. The department shall renew an operating permit for a facility only if the facility is in compliance with this part and the rules promulgated under this part.

(5) The department shall promulgate rules to do both of the following:

(a) Regulate facilities that incinerate medical waste. These rules shall cover at least all of the following areas:

(*i*) Incinerator design and operation.

(*ii*) Ash handling and quality.

(*iii*) Stack design.

(*iv*) Requirements for receiving medical waste from generators outside the facility.

(*v*) Air pollution control requirements.

(*vi*) Performance monitoring and testing.

(*vii*) Record keeping and reporting requirements.

(*viii*) Inspection and maintenance.

(b) Regulate the operation of facilities that incinerate only pathological waste and limited other permitted solid waste.

(6) A permit issued under this section may allow a facility to receive pathological or medical wastes that were generated off the site of the facility. However, the owner or operator of the facility shall keep monthly records of the source of the wastes and the approximate volume of the wastes received by the facility.

(7) As used in this section:

(a) "Medical waste" means that term as it is defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(b) "Pathological waste" means that term as it is defined in part 138 of the public health code.

History: 1994, Act 451, Eff. Mar. 30, 1995.

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Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1901 et seq. of the Michigan Administrative Code.

324.5505 Installation, construction, reconstruction, relocation, alteration, or modification of process or process equipment; permit to install or operate required; rules; trial operation; rules for issuance of general permit or certain exemptions; temporary locations; nonrenewable permits; failure of department to act on applications; appeal of permit actions.

Sec. 5505. (1) Except as provided in subsection (4), a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the department a permit to install, or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity.

(2) The department shall promulgate rules to establish a permit to install program to be administered by the department. Except as provided in subsections (4) and (5), the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant. The start date for emissions offsets eligible to be applied to a permit to install shall be the date established by federal rule or, if a date is not established by federal rule, January 1 of the year after the emissions baseline year used for the purpose of preparing the relevant state implementation plan. The department shall make available information in the permit database and the air emissions inventory established under section 5503(k), to identify emissions reductions that may be used as emissions offsets. This subsection does not authorize the department to seek permit changes to make emissions reductions available for use as emissions offsets.

(3) A permit to install may authorize the trial operation of a process or process equipment to demonstrate that the process or process equipment is operating in compliance with the permit to install issued under this section.

(4) The department may promulgate rules to provide for the issuance of general permits and to exempt certain sources, processes, or process equipment or certain modifications to a source, process, or process equipment from the requirement to obtain a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6). However, the department shall not exempt any new source or modification that would meet the definition of a major source or major modification under parts C and D of title I of the clean air act, 42 USC 7470 to 7515.

(5) The department may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) if applicable, that authorizes installation, operation, or trial operation, as applicable, of a source, process, or process equipment at numerous temporary locations. Such a permit shall do both of the following:

(a) Include terms and conditions necessary to ensure compliance with all applicable requirements of this part, the rules promulgated under this part, and the clean air act, including those necessary to ensure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to part C of title I of the clean air act, 42 USC 7470 to 7492, at each location.

(b) Require the owner or operator of the process, source, or process equipment to notify the department at least 10 days in advance of each change in location. However, if electronic notification is used, the notification shall be given at least the following number of business days before the change of location:

(*i*) 5 business days unless subparagraph (*ii*) applies.

(*ii*) 2 business days, if, at least 10 days before the change of location, the owner provided the department a list of anticipated operating locations for that calendar year and if the change of location is on that list.

(6) The department may promulgate rules to establish a program that authorizes issuance of nonrenewable permits to operate for sources, processes, or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to section 5506.

(7) The failure of the department to act on an administratively and technically complete application for a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6), in accordance with a time requirement established pursuant to this part, rules promulgated under this part, or the clean air act may be treated as a final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department on the application without additional delay.

(8) Any person may appeal the issuance or denial by the department of a permit to install, a general permit, or a permit to operate authorized in rules promulgated under subsection (6), for a new source in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the

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final permit action, except that a petition may be filed after that deadline only if the petition is based solely on grounds arising after the deadline for judicial review. Such a petition shall be filed no later than 90 days after the new grounds for review arise. Appeals of permit actions for existing sources are subject to section 5506(14).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2005, Act 57, Imd. Eff. June 30, 2005;—Am. 2019, Act 120, Eff. Feb. 13, 2020.

Popular name: Act 451

Popular name: NREPA

324.5506 Operating permit.

Sec. 5506. (1) After the date established pursuant to subsections (3) and (4)(n), if an application for an operating permit is required to be submitted, a person shall not operate a source that is required to obtain an operating permit under section 502a of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, and which is thereby subject to the requirements of this section except in compliance with an operating permit issued by the department. A permit issued under this section does not convey a property right or an exclusive privilege.

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit, including an application for renewal of an operating permit, but final action has not been taken on the application, the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application. A source required to have a permit under this section is not in violation of subsection (1) before the date on which the source is required to submit an application pursuant to subsections (3) and (4)(n). Except as otherwise provided in subsection (5), expiration of an operating permit terminates a person's right to operate a source. This subsection does not waive an applicable requirement to obtain a permit under section 5505.

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the department within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1), or on an earlier date specified by rule, a compliance plan and an administratively complete application for an operating permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a timely and administratively complete application, and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application, except that the department shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit program becomes effective. The schedule shall assure that at least 1/3 of the applications will be acted on by the department annually over a period not to exceed 3 years after the operating permit program becomes effective.

(4) The department shall promulgate rules to establish an operating permit program required under title V to be administered by the department. This permit program shall include all of the following and, at a minimum, shall be consistent with the requirements of title V:

(a) Provisions defining the categories of sources that are subject to the operating permit requirements of this section. Operating permits under this section are not required for any source category that is not required to obtain an operating permit under section 502(a) of the clean air act, title V of chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a.

(b) Requirements for operating permit applications, including standard application forms, the minimum information that must be submitted with an administratively complete application, and criteria for determining in a timely fashion the administrative completeness of an application.

(c) A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(d) Provisions for inspection, entry, monitoring, record keeping, and reporting applicable to each operating permit issued under this section.

(e) Requirements and provisions for expeditiously determining when applications are technically complete, for processing applications.

(f) Provisions for transmitting copies of each operating permit application and proposed and final permits, including each modification or renewal, to the administrator of the United States environmental protection agency, and for notifying all other states whose air quality may be affected and are contiguous to this state and for providing an opportunity for those states to provide written recommendations on each operating permit application and proposed permit, pursuant to the requirements of section 505(a) and (d) of the clean air

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act, title V of chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(g) Provisions for issuance of operating permits and, in accordance with this part and rules promulgated under this part, for denial, termination, modification, revocation, renewal, and revision of operating permits for cause.

(h) Provisions to allow for changes within a permitted source without a revision to the operating permit, if the changes are not modifications under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, and the changes do not exceed the emissions allowed under the operating permit, if the owner or operator of the source provides the department and the administrator of the United States environmental protection agency with written notification at least 7 days in advance of the proposed changes. However, the department may provide a different time frame for an emergency as defined in section 5527. The emissions allowed under the operating permit include any enforceable emission limitation, standard, or other condition, including a work practice standard, determined by the department to be required by an applicable requirement of this part, rules promulgated under this part, or the clean air act, or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this part, rules promulgated under this part, or the clean air act, to which the source would otherwise be subject. These provisions shall include the following:

(*i*) Changes that contravene an express permit condition. Such changes shall not include changes that would violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act, or changes that would contravene any applicable requirement for monitoring, record keeping, reporting, or compliance certification.

(*ii*) Changes that involve emissions trading if trading has been approved by the administrator of the United States environmental protection agency as a part of the state implementation plan.

(i) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.4(b)(14), that are not addressed or prohibited by the operating permit, if all of the following criteria are met:

(*i*) The change meets all applicable requirements of this part, the rules promulgated under this part, and the clean air act and does not violate any existing emission limitation, standard, or other condition of the operating permit.

(*ii*) The change does not affect any applicable requirement of the acid rain program under title IV and is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(*iii*) The source provides prompt written notice to the department and the administrator of the United States environmental protection agency, except for changes that qualify as insignificant processes or activities pursuant to section 5507(2).

(j) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.7(e)(2), that may be made immediately after the source files an application with the department, if all of the following criteria are met:

(*i*) The change does not violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act.

(*ii*) The change does not significantly affect an existing monitoring, record keeping, or reporting requirement in the operating permit.

(*iii*) The change does not require or modify a case-by-case determination of an emission limitation or other standard, or a source-specific determination, for temporary sources, of ambient air impacts, or a visibility or increment analysis.

(*iv*) The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this part, the rules promulgated under this part, or the clean air act, to which the source would otherwise be subject.

(*v*) The change is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(k) Provisions for expeditiously handling administrative changes within a permitted source, pursuant to 40 C.F.R. 70.7(d). These changes are limited to the following:

(*i*) Correction of a typographical error.

(*ii*) A change in the name, address, or phone number of any person identified in the permit, or other similar minor administrative change.

(*iii*) A change that requires more frequent monitoring or reporting by the person owning or operating the source.

(*iv*) A change in ownership or operational control of the source, if the department determines that no other change in the operating permit is necessary, and if a written agreement containing a specific date for transfer

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of operating permit responsibility, coverage, and liability between the current and new owners or operators has been submitted to the department.

(*v*) Incorporation into the operating permit of the requirements of a permit to install issued pursuant to section 5505, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this section, including the content of the permit, and the provisions for participation by the United States environmental protection agency and other affected states and participation of the public under section 5511.

(*l*) Provisions for including reasonably anticipated alternate operating scenarios in an operating permit, pursuant to 40 C.F.R. 70.6(a)(9).

(m) Provisions to allow for the trading of emission increases and decreases within a permitted source solely for the purpose of complying with an enforceable emissions cap that is established in the permit pursuant to 40 C.F.R. part 70.4(b)(12)(*iii*), independent of any otherwise applicable requirements of this part, the rules promulgated under this part, or the clean air act.

(n) A schedule of the dates when submittal of an application for an operating permit is required for the source categories subject to this section and a phased schedule for taking final action on those applications.

(5) Each operating permit issued under this section shall be for a fixed term not to exceed 5 years. A permit applicant shall submit a timely application for renewal of an operating permit at least 6 months, but not more than 18 months, prior to the expiration of the term of the existing operating permit. If a timely and administratively complete application is submitted, but the department has not approved or denied the renewal permit before the expiration of the term of the existing permit, the existing permit shall not expire until the renewal permit is approved or denied.

(6) Each operating permit issued pursuant to this section shall include those enforceable emissions limitations and standards applicable to the source, if any, and other conditions necessary to assure compliance with the applicable requirements of this part, rules promulgated under this part, and the clean air act, a schedule of compliance, and a requirement that the owner or operator of a source submit to the department, at least every 6 months, a report summarizing the results of any required monitoring. Each operating permit issued pursuant to this section shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged.

(7) The department shall require revision of an operating permit prior to the expiration of the permit consistent with section 5506(4)(g), for any of the following reasons or to do any of the following:

(a) To incorporate new applicable emissions limitations, standards, or rules promulgated under this part or regulations promulgated under the clean air act, issued or promulgated after the issuance of the permit, if 3 or more years remain in the term of the permit. A revision shall occur as expeditiously as practicable, but not later than 18 months after the promulgation of the emission limitation, standard, rule, or regulation. A revision is not required if the effective date of the emission limitation, standard, rule, or regulation is after the expiration date of the permit.

(b) To incorporate new applicable standards and requirements of the acid rain program under title IV into the operating permits of sources affected by that program.

(c) If the department determines that the permit contains a material mistake; that information required by this part, rules promulgated under this part, or the clean air act was omitted; or that an inaccurate statement was made in establishing the emissions limitations, standards, or conditions of the permit.

(d) If the department determines that the permit must be revised to assure compliance with the applicable requirements of this part, rules promulgated under this part, or the clean air act.

(8) At the request of the permit holder, a permit revision under subsection (7) may be treated as a permit renewal if it complies with the applicable requirements for permit renewals of this part, rules promulgated under this part, and the clean air act.

(9) A person who owns or operates a source subject to an operating permit issued pursuant to this section shall promptly report to the department any deviations from the emissions limitations, standards, or conditions of the permit and shall annually certify to the department that the source has been and is in compliance with all emissions limitations, standards, and conditions of the permit, except for those deviations reported to the department, during the reporting period. A responsible official shall sign all reports submitted pursuant to this subsection.

(10) The department shall not approve or otherwise issue any operating permit for a source required to obtain an operating permit pursuant to section 502(a) of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, if the administrator of the United States environmental protection agency objects to issuance of the permit in a timely manner pursuant to section 505(b) of title V of the clean air act, chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(11) Each operating permit shall contain a statement that compliance with an operating permit issued in

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accordance with this section is compliance with subsection (1). In addition, the statement shall provide that compliance with the operating permit is compliance with other applicable requirements of this part, rules promulgated under this part, and the clean air act, as of the date of permit issuance if either of the following requirements is met:

(a) The permit specifically includes the applicable requirement.

(b) The permit includes a determination that any other requirements that are specifically referred to in the determination are not applicable.

(12) An application for an operating permit may include a request that the permit include reference to specific requirements of this part, rules promulgated under this part, or the clean air act that the person owning or operating the source believes are not applicable to the source. The operating permit shall include a determination of applicability for the requirements included in the request.

(13) Subsection (11) does not apply to a change at a source made pursuant to subsection (4)(h), (i), or (j). Subsection (11) does not apply to a change in a source made pursuant to subsection (4)(k) until the change is incorporated into the operating permit.

(14) A person who owns or operates an existing source that is required to obtain an operating permit under this section, a general permit, or a permit to operate authorized under rules promulgated under section 5505(6) may file a petition with the department for review of the denial of his or her application for such a permit, the revision of any emissions limitation, standard, or condition, or a proposed revocation of his or her permit. This review shall be conducted pursuant to the contested case and judicial review procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any person may appeal the issuance or denial of an operating permit in accordance with section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws. A petition for judicial review is the exclusive means of obtaining judicial review of a permit and shall be filed within 90 days after the final permit action. Such a petition may be filed after that deadline only if it is based solely on grounds arising after the deadline for judicial review and if the appeal does not involve applicable standards and requirements of the acid rain program under title IV. Such a petition shall be filed within 90 days after the new grounds for review arise.

(15) The failure of the department to act on a technically and administratively complete application or renewal application for an operating permit in accordance with a time requirement established pursuant to subsection (3) and rules promulgated under subsection (4)(n) is final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay on the application or renewal application.

(16) The department may, after notice and opportunity for public hearing, pursuant to the requirements of section 5511, issue a general permit covering numerous similar sources, processes, or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this section. A permit that authorizes operation of a source at numerous temporary locations shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the department at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

(17) As used in this section, "technically complete" means, for the purposes of an application for an operating permit required by this section, all of the information required for an administratively complete application and any other specific information requested by the department that may be necessary to implement and enforce all applicable requirements of this part, the rules promulgated under this part, or the clean air act, or to determine the applicability of those requirements. An application is not technically complete if it omits information needed to determine the applicability of any lawful requirement or to enforce any lawful requirement or any information necessary to evaluate the amount of the annual air quality fee for the source.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5507 Administratively complete action; exemption from information requirements;

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“compliance plan” defined.

Sec. 5507. (1) An administratively complete application means an application for an operating permit required in section 5506 that is submitted on standard application forms provided by the department and includes all of the following:

(a) Source identifying information, including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.

(b) A description of the source's processes and products using the applicable standard industrial classification codes.

(c) A description of all emissions of air contaminants emitted by the source that are regulated under this part, the rules promulgated under this part, and the clean air act.

(d) A schedule for submission of annual compliance certifications during the permit term, unless more frequent certifications are specified by an underlying applicable requirement.

(e) A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(f) For each process, except for any insignificant processes listed by the department pursuant to subsection (2), all of the following:

(*i*) A description of the process using the standard classification code.

(*ii*) Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.

(*iii*) Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards unless such limitation or standard is required to assure compliance with a specific applicable requirement.

(*iv*) Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.

(*v*) Limitations on source operation affecting emissions or any work practice standards, if applicable.

(*vi*) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(*vii*) Identification and description of all emission points in sufficient detail to establish the basis for fees or to determine applicable requirements.

(*viii*) Other information required by any applicable requirement.

(*ix*) A statement of the methods proposed to be used for determining compliance with the applicable requirements under the operating permit, including a description of monitoring, record keeping, and reporting requirements and test methods.

(*x*) An explanation of any proposed exemptions from otherwise applicable requirements.

(*xi*) Information necessary to define any alternative operating scenarios that are to be included in the operating permit or to define permit terms and conditions implementing section 5506(4)(*l*).

(*xii*) A compliance plan.

(*xiii*) A schedule of compliance.

(2) The department shall promulgate a list of insignificant processes or activities, which are exempt from all or part of the information requirements of this section. For any insignificant processes or activities that are exempt because of size or production rate, the application shall include a list of the insignificant processes and activities.

(3) As used in section 5506 and this section, "compliance plan" means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet these requirements on a timely basis.

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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Popular name: NREPA

324.5508 "Section 112" defined; source, process, or process equipment not subject to best available control technology for toxics requirements or health based screening level requirements.

Sec. 5508. (1) As used in this section, "section 112" means section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412.

(2) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(d) or for which a control technology determination has been made pursuant to section 112(g) or 112(j) is not subject to the best available control technology for toxics (T-BACT) requirements of rules promulgated under this part for any of the following:

(a) The hazardous air pollutants listed in section 112(b).

(b) Other toxic air contaminants that are volatile organic compounds, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also volatile organic compounds.

(c) Other toxic air contaminants that are particulate matter, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also particulate matter.

(d) Other toxic air contaminants that are similar to the compounds controlled by the standard promulgated under section 112(d) or controlled by the determination made under section 112(g) or 112(j).

(3) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(f) is not subject to the health based screening level requirements in rules promulgated under this part for the hazardous air pollutants listed in section 112(b).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5509 "Malfunction" defined; rules; prohibition; actions taken by department; enforcement; conditions for applicability of subsections (3) to (5).

Sec. 5509. (1) As used in this section, "malfunction" means any sudden failure of a source, air pollution control equipment, process, or process equipment to operate in a normal or usual manner. A malfunction exists only for the time reasonably necessary to implement corrective measures. Malfunction does not include failures arising as a result of substandard maintenance that does not conform to industry standards, or periods when the source is being operated carelessly or in a manner that is not consistent with good engineering practice or judgment.

(2) By May 13, 1995, the department shall promulgate general rules, and may promulgate rules that pertain to specific categories of sources, that are consistent with, but are not limited to, the requirements of the clean air act, to establish standards of performance, emission standards, and requirements for monitoring, record keeping, and reporting that will apply during start-up, shutdown, and malfunction of a source, process, or process equipment. The rules shall require that during periods of start-up, shutdown, and malfunction, the operator shall to the extent reasonably possible operate a source, process, or process equipment in a manner consistent with good air pollution control practices for minimizing emissions.

(3) During periods of start-up, shutdown, or malfunction of a source, process, or process equipment, the emission of an air contaminant in excess of a standard or emission limitation, or a violation of any other requirement, established by this part, a rule promulgated under this part, or specified in a permit to install, a permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, is prohibited unless the following applicable requirements and any applicable rules promulgated pursuant to subsection (2) are complied with:

(a) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable, operate a source, process, or process equipment in a manner consistent with good air pollution control practice for minimizing emissions.

(b) Notice of a malfunction of a source, process, or process equipment that results in excess emissions of an air contaminant shall be provided to the department if the malfunction results in excess emissions that continue for more than 2 hours. Notice by any reasonable means includes but is not limited to oral, telephonic, or electronic notice, and shall be provided as soon as reasonably possible, but no later than 2 business days after the discovery of the malfunction. Written notice of malfunction shall be provided within 10 days after the malfunction has been corrected. Written notice shall specify all of the following:

(*i*) The cause of the malfunction, if known.

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(*ii*) The date, time, location, and duration of the malfunction.

(*iii*) The actions taken to correct and prevent the reoccurrence of the malfunction.

(*iv*) Actions taken to minimize emissions during the malfunction, if any.

(*v*) The type and, where known or where it is reasonably possible to estimate, the quantity of any excess emissions of air contaminants.

(*vi*) Contemporaneous operational logs and continuous emission monitoring information where continuous emission monitoring is required by the clean air act or rules promulgated under this part or is specified as a condition of a permit issued under this part or an order entered under this part.

(c) The malfunctioning source, process, or process equipment shall have been maintained and operated in a manner consistent with the applicable provisions of a malfunction abatement plan approved under this part, if any.

(d) During start-up or shutdown, the source, process, or process equipment shall be operated in accordance with applicable start-up or shutdown provisions of its installation permit, nonrenewable permit to operate, or operating permit, if any.

(4) Notwithstanding the provisions of subsection (3), the department may take action under section 5518(1) to immediately discontinue and take action to contain an imminent and substantial endangerment to public health, safety, or welfare.

(5) Notwithstanding the provisions of subsection (3), enforcement action may be taken against a person who violates section 5531(4), (5), or (6).

(6) Subsections (3) to (5) do not apply upon the effective date of the general rules required under subsection (2) or November 13, 1996, whichever is first.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: The general rules referenced in subsection (6) were promulgated and became effective July 26, 1995.

Popular name: Act 451

Popular name: NREPA

324.5510 Denial or revocation of permit; circumstances.

Sec. 5510. In accordance with this part and rules promulgated under this part, the department may, after notice and opportunity for public hearing, deny or revoke a permit issued under this part if any of the following circumstances exist:

(a) Installation, modification, or operation of the source will violate this part, rules promulgated under this part, or the clean air act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

(b) Installation, construction, reconstruction, relocation, alteration, or operation of the source presents or may present an imminent and substantial endangerment to human health, safety, or welfare, or the environment.

(c) The person applying for the permit makes a false representation or provides false information during the permit review process.

(d) The source has not been installed, constructed, reconstructed, relocated, altered, or operated in a manner consistent with the application for a permit or as specified in a permit.

(e) The person owning or operating the source fails to pay an air quality fee assessed under this part.

(f) The person proposes a major offset source or the owner or operator of a proposed major offset modification that owns or operates another source in the state that has the potential to emit 100 tons or more per year of any air contaminant regulated under the clean air act and that source is in violation of this part, rules promulgated under this part, the clean air act, or a permit or order issued under this part, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5511 List of permit applications; list of consent order public notices; notice, opportunity for public comment and public hearing required for certain permit actions.

Sec. 5511. (1) The department shall establish and maintain a list of all applications for permits submitted pursuant to sections 5505 and 5506. The list shall report the status of each application. The information on the list shall be updated by the department on a monthly basis. The department shall send a copy of the pertinent sections of the list to the chairperson of the county board of commissioners of each county. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs

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of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. The department may also develop an electronic data base that includes the capability of making this list available to the public. This list shall include all of the following information:

(a) The name of the permit applicant.

(b) The street address, if available, the county, and the municipality in which the source is located or proposed to be located.

(c) The type of application, such as installation, operation, renewal, or general permit.

(d) The date the permit application was received by the department.

(e) The date when the permit application is determined to be administratively complete, if applicable.

(f) A brief description of the source, process, or process equipment covered by the permit application.

(g) Brief pertinent comments regarding the progress of the permit application, including the dates of public comment periods and public hearings, if applicable.

(2) The department shall establish and maintain a list of all proposed consent order public notices. This information shall be updated by the department on a monthly basis. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. This list shall include all of the following information:

(a) The name of the parties to the proposed consent order.

(b) The street address, if available, and the county and municipality in which the source is located.

(c) A brief description of the source.

(d) A brief description of the alleged violation to be resolved by the proposed consent order.

(e) A brief description of the respondent's position regarding the alleged violation if the respondent requests such inclusion and supplies to the department a brief statement of the respondent's position regarding the alleged violation.

(3) The department shall not issue a permit to install or a nonrenewable permit to operate pursuant to section 5505 for a major source or for a major modification under title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under section 5506, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the department shall not issue a permit for which there is a known public controversy without providing public notice including an opportunity for public comment and public meeting. For the purposes of an operating permit issued under section 5506, a significant modification does not include any modifications to a permit made pursuant to section 5506(4)(h), (i), (j), or (k). For a general permit issued pursuant to section 5505(4) or section 5506(16), public notice and opportunity for public comment and a public hearing shall only be provided before the base general permit is approved, not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

(a) Public notice shall be provided by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, and by other means determined to be necessary by the department to assure adequate notice to the public. Notice shall also be provided to persons on a mailing list, developed by the department, including those persons who request in writing to be on that list, and to any other person who requests in writing to be notified of a permit action involving a specific source.

(b) The notice shall identify the source; the name and address of the responsible official; the mailing address of the department; the activity or activities involved in the proposed permit action or consent order; the emissions change involved in any significant permit modification; the name, address, and telephone number of a representative of the department from whom interested persons may obtain additional information, including copies of the draft permit or proposed consent order, the application, all relevant supporting material, and any other materials available to the department that are relevant to the permit or consent order decision; a brief description of the comment procedures required by this section; and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

(c) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(d) The department shall keep a record of the commenters and the issues raised during the public comment period and public hearing, if held, and these records shall be available to the public.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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Popular name: NREPA

324.5512 Rules.

Sec. 5512. (1) Subject to section 5514, the department shall promulgate rules for purposes of doing all of the following:

(a) Controlling or prohibiting air pollution.

(b) Complying with the clean air act.

(c) Controlling any mode of transportation that is capable of causing or contributing to air pollution.

(d) Reviewing proposed locations of stationary emission sources.

(e) Reviewing modifications of existing emission sources.

(f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air quality standards.

(g) Establishing suitable emission standards consistent with federal ambient air quality standards and factors including, but not limited to, conditions of the terrain, wind velocities and directions, land usage of the region, and the anticipated characteristics and quantities of potential air pollution sources. This part does not prohibit the department from denying or revoking a permit to operate a source, process, or process equipment that would adversely affect human health or other conditions important to the life of the community.

(h) Implementing sections 5505 and 5506.

(2) Unless otherwise provided in this part, each rule, permit, or administrative order promulgated or issued under this part prior to November 13, 1993 shall remain in effect according to its terms unless the rule or order is inconsistent with this part or is revised, amended, or repealed.

(3) Section 11522 applies to open burning.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 102, Imd. Eff. Apr. 19, 2012;—Am. 2014, Act 417, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5513 Car ferries and coal-fueled trains.

Sec. 5513. Notwithstanding any other provision of this part or the rules promulgated under this part, car ferries having the capacity to carry more than 110 motor vehicles and coal-fueled trains used in connection with tourism or an historical museum or carrying works of art or items of historical interest are not subject to regulation under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5514 Department of environmental quality; prohibited acts; "wood heater" defined.

Sec. 5514. (1) The department of environmental quality shall not do any of the following:

(a) Promulgate a rule limiting emissions from wood heaters.

(b) Enforce against a manufacturer, distributor, or consumer a federal regulation limiting emissions from wood heaters and adopted after May 1, 2014.

(2) As used in this section, "wood heater" means a wood stove, pellet stove, wood-fired hydronic heater, wood burning forced-air furnace, or masonry wood heater designed for heating a home or business.

History: Add. 2014, Act 417, Eff. Mar. 31, 2015.

Compiler's note: Former MCL 324.5514, which pertained to disposal of United States flag by burning, was repealed by Act 102 of 2012, Imd. Eff. Apr. 19, 2012.

Popular name: Act 451

Popular name: NREPA

324.5515 Investigation; voluntary agreement; order; petition for contested case hearing; final order or determination; review.

Sec. 5515. (1) If the department believes that a person is violating this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a violation of this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part exists, the department shall attempt to enter into a voluntary agreement with the person.

(2) If the department believes that a person is violating an order issued under this part, the department shall

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make a prompt investigation. If after this investigation the department finds that a person has failed to comply with the terms of an order issued under this part, the department may attempt to enter into a voluntary agreement with the person.

(3) If a voluntary agreement is not entered into under subsection (1), the department may issue an order requiring a person to comply with this part, a rule promulgated under this part, a determination made under this part, or a permit issued under this part. If the department issues an order it shall be accompanied by a statement of the facts upon which the order is based.

(4) A person aggrieved by an order issued under subsection (3) may file a petition for a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A petition shall be submitted to the department within 30 days of the effective date of the order. The department shall schedule the matter for hearing within 30 days of receipt of the petition for a contested case hearing. A final order or determination of the department upon the matter following the hearing is conclusive, unless reviewed in accordance with Act No. 306 of the Public Acts of 1969, in the circuit court for the county of Ingham or for the county in which the person resides.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5516 Public hearing; information available to the public; use of confidential information.

Sec. 5516. (1) A public hearing with reference to pollution control may be held before the department. Persons designated to conduct the hearing shall be described as presiding officers and shall be disinterested and technically qualified persons.

(2) A copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report or information required under this part, rules promulgated under this part, or permits or orders issued under this part shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) A person whose activities are regulated under this part may designate a record or other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents, as being only for the confidential use of the department. The department shall notify the person asserting confidentiality of a request for public records under section 5 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, the scope of which includes information that has been designated by the regulated person as being confidential. The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part demonstrates to the satisfaction of the department that the information should not be disclosed. If there is a dispute between the person asserting confidentiality and the person requesting information under Act No. 442 of the Public Acts of 1976, the department shall make the decision to grant or deny the request. After the department makes a decision to grant a request, the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the department's decision. This does not prevent the use of the information by the department in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section. This section does not render data on the quantity, composition, or quality of emissions from any source confidential. Data on the amount and nature of air contaminants emitted from a source shall be available to the public.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5517 Petition for relief from rule.

Sec. 5517. Application for relief from a rule promulgated by the department shall be made by petition to the circuit court for the county of Ingham or for the county in which the petitioner resides. The petition shall be verified as in a civil action. Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies, shall set forth the rule or part of the rule that the petitioner claims is

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unreasonable or prejudicial to the petitioner, and shall specify the grounds for the claim. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled, in the alternative or otherwise. The petition may be made by 1 or more persons, jointly or severally, who are aggrieved by a rule, whether or not the petitioner is or was a party to the proceeding in which the rule was promulgated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5518 Notice to discontinue pollution; hearing; suit brought by attorney general in circuit court; effectiveness and duration of order; notice to county emergency management coordinator.

Sec. 5518. (1) If the department finds that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the department shall notify the person by written notice that he or she must immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both. The written notice shall specify the facts that are the basis of the allegation. Within 7 days, the department shall provide the person the opportunity to be heard and to present any proof that the discharge does not constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment.

(2) Notwithstanding any other provision of this part, upon receipt of evidence that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the attorney general may bring suit on behalf of the state in the appropriate circuit court to immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both.

(3) An order issued by the department under subsection (1) is effective upon issuance and shall remain in effect for a period of not more than 7 days, unless the attorney general brings a civil action to restrain the alleged endangerment pursuant to subsection (2) or section 5530 before the expiration of that period. If the attorney general brings such an action within the 7-day period, the order issued by the department shall remain in effect for an additional 7 days or such other period as is authorized by the court in which the action is brought.

(4) Prior to taking an action under subsection (1), the department shall attempt to notify the emergency management coordinator for the county in which the source is located who is appointed pursuant to the emergency management act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.5519.added THIS ADDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

324.5519.added Asbestos emissions program; inspections; fees.

Sec. 5519. (1) The department shall establish a program to implement the National Emission Standard for Asbestos, 40 CFR part 61, subpart M.

(2) Each year, the department shall complete inspections for compliance with 40 CFR part 61, subpart M, of at least the following applicable percentage of asbestos renovations and demolitions for which original notice of intention was received under 40 CFR 61.145:

(a) 15% for 2025 and 2026.

(b) 20% for 2027 and 2028.

(c) 25% for 2029 and thereafter.

(3) An owner or operator that submits a notice of intention of asbestos removal or demolition is responsible for payment of a notification fee of $100.00. In addition, the owner or operator is responsible for payment of a $10.00 modification fee each time the submitted notice is modified. Fees under this subsection shall be paid electronically in the manner provided for by the department. A public entity may pass through

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the cost for the notice fee and any modification fee to the asbestos abatement contractor, unless the pass through would violate the terms of a contract entered into before the effective date of the amendatory act that added this section. The department shall assess and collect the fees and shall transmit fee revenue to the state treasurer for deposit in the asbestos inspection fund created in section 5519a.

(4) As used in this section, "asbestos abatement contractor" means that term as defined in section 103 of the asbestos abatement contractors licensing act, 1986 PA 135, MCL 338.3103.

History: Add. 2024, Act 56, Eff. (sine die).

Compiler's note: Former MCL 324.5519, which pertained to submission of emissions information to the department, was repealed by Act 245 of 1998, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

***** *324.5519a.added THIS ADDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE* *****

324.5519a.added Asbestos inspection fund.

Sec. 5519a. (1) The asbestos inspection fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the asbestos inspection fund. The state treasurer shall direct the investment of money in the fund and credit to the fund interest and earnings from the investments.

(3) The department is the administrator of the asbestos inspection fund for audits of the fund. The department shall expend money from the fund, upon appropriation, only to conduct inspections and related activities under section 5519.

History: Add. 2024, Act 56, Eff. (sine die).

Popular name: Act 451

Popular name: NREPA

***** *324.5519b.added THIS ADDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE* *****

324.5519b.added Annual asbestos program report.

Sec. 5519b. (1) Subject to subsection (3), by March 1 annually, the department shall prepare and submit to the legislature a report that includes the following related to the department's asbestos program:

(a) For the previous calendar year, all of the following:

(*i*) The number of inspectors employed by the department.

(*ii*) The number of inspections conducted.

(*iii*) The percentage of original notices of intention received for which inspections were conducted.

(*iv*) The number of enforcement actions taken.

(b) An evaluation and recommendation based on the evaluation of whether the department has a sufficient number of inspectors to carry out National Emission Standard for Asbestos, 40 CFR part 61, subpart M. The evaluation shall be based on metrics established by the department for the percentage of original notices of intention under 40 CFR 61.145 for renovations or demolitions received during a calendar year for which inspections were conducted during that calendar year. The minimum percentage set by the department for a determination of sufficiency shall be at least 15%.

(2) The report prepared under subsection (1) shall be posted on the department's website and published in the Michigan Register.

(3) The report required under subsection (1) may be combined with the report required under section 5522.

History: Add. 2024, Act 58, Eff. (sine die).

Popular name: Act 451

Popular name: NREPA

324.5520 Repealed. 1998, Act 245, Imd. Eff. July 8, 1998.

Compiler's note: The repealed section pertained to payment of emission fees.

Popular name: Act 451

Popular name: NREPA

324.5521 Emissions control fund.

Sec. 5521. (1) The emissions control fund is created within the state treasury. The state treasurer may

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receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(2) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) Upon the expenditure or appropriation of funds raised through fees in this part for any purpose other than those specifically listed in this part, authorization to collect fees under this part is suspended until such time as the funds expended or appropriated for purposes other than those listed in this part are returned to the emissions control fund.

(4) Beginning October 1, 1994 and thereafter money shall be expended from the fund, upon appropriation, only for the following purposes as they relate to implementing the operating permit program required by title V:

(a) Preparing generally applicable rules or guidance regarding the operating permit program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit, permit revision, or permit renewal, the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal.

(c) General administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry.

(d) Implementing and enforcing the terms of any operating permit, not including any court costs or other costs associated with an enforcement action.

(e) Emissions and ambient monitoring.

(f) Modeling, analysis, or demonstration.

(g) Preparing inventories and tracking emissions.

(h) Providing direct and indirect support to facilities under the small business clean air assistance program created in part 57.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

***** *324.5522 THIS SECTION MAY NOT APPLY: See subsection (11)* *****

324.5522 Fee-subject facility; air quality fees; calculation of emissions charge and facility charge; annual report detailing activities of previous fiscal year; action by attorney general for collection of fees; applicability of section; condition.

Sec. 5522. (1) Until October 1, 2027, the owner or operator of each fee-subject facility shall pay air quality fees as required and calculated under this section. The department may levy and collect an annual air quality fee from the owner or operator of each fee-subject facility in this state. The legislature intends that the fees required under this section meet the minimum requirements of the clean air act and that this expressly stated fee system serve as a limitation on the amount of fees imposed under this part on the owners or operators of fee-subject facilities in this state.

(2) The annual air quality fee is calculated for each fee-subject facility, according to the following procedure:

(a) Except as provided in subdivisions (g) and (h), for category A facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (i) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(*i*) If the amount of fee-subject emissions is capped under subdivision (i), $45,000.00.

(*ii*) For 1,000 or more tons, $30,000.00.

(*iii*) For 100 or more tons but less than 1,000 tons, $15,750.00.

(*iv*) For 60 or more tons but less than 100 tons, $12,500.00.

(*v*) For 6 or more tons but less than 60 tons, $10,500.00.

(*vi*) For zero or more tons but less than 6 tons, $5,250.00.

(b) For category B facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(*i*) For 2,000 or more tons, $21,000.00.

(*ii*) For 200 or more tons but less than 2,000 tons, $15,750.00.

(*iii*) For 60 or more tons but less than 200 tons, $10,500.00.

(*iv*) For 6 or more tons but less than 60 tons, $7,500.00.

(*v*) For zero or more tons but less than 6 tons, $5,250.00.

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(c) For category C facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(*i*) For 60 or more tons, $4,500.00.

(*ii*) For 6 or more tons but less than 60 tons, $3,500.00.

(*iii*) For zero or more tons but less than 6 tons, $2,500.00.

(d) For category D facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(*i*) For 60 or more tons, $2,500.00.

(*ii*) For 6 or more tons but less than 60 tons, $2,000.00.

(*iii*) For zero or more tons but less than 6 tons, $1,795.00.

(e) For category E facilities, the annual air quality fee is as follows, based on the amount of fee-subject emissions:

(*i*) For 60 or more tons, $1,795.00.

(*ii*) For zero or more tons but less than 60 tons, $250.00.

(f) For category F facilities, the annual air quality fee is $250.00.

(g) For municipal electric generating facilities with 646 or more tons of fee-subject air emissions, the annual air quality fee is $50,000.00.

(h) For municipal electric generating facilities with less than 646 tons of fee-subject emissions, the annual air quality fee is determined in the same manner as provided in subdivision (b).

(i) The emissions charge for a category A facility that is not covered by subdivision (g) or (h) equals the emission charge rate multiplied by the actual tons of fee-subject emissions. The emission charge rate for fee-subject air pollutants is $53.00. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class is charged only once. The actual tons of fee-subject emissions is considered to be the sum of all fee-subject emissions at the fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(*i*) 6,100 tons.

(*ii*) 1,500 tons per pollutant, if the sum of all fee-subject emissions except carbon monoxide at the fee-subject facility is less than 6,100 tons.

(j) The emissions charge for facilities that are not electric providers must be calculated in the same manner as provided in subdivision (i). However, the actual tons of fee-subject emissions is considered to be the sum of all fee-subject emissions at a fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(*i*) 4,500 tons.

(*ii*) 1,250 tons per pollutant, if the sum of all fee-subject emissions except carbon monoxide at the fee-subject facility is less than 4,500 tons.

(3) After January 1, but before January 15 of each year, the department shall notify the owner or operator of each fee-subject facility of its assessed annual air quality fee. Payment is due within 90 calendar days after the mailing date of the air quality fee notification. If an assessed fee is challenged under subsection (5), payment is due within 90 calendar days after the mailing date of the air quality fee notification or within 30 days after receipt of a revised fee or statement supporting the original fee, whichever is later. However, to combine fee assessments, the department may adjust the billing date and due date under this subsection for category F facilities that are dry cleaning facilities also subject to the licensing requirements of section 13305 of the public health code, 1978 PA 368, MCL 333.13305, or the certification requirements of section 5i of the fire prevention code, 1941 PA 207, MCL 29.5i. The department shall deposit all fees collected under this section to the credit of the fund.

(4) If the owner or operator of a fee-subject facility fails to submit the amount due within the time period specified in subsection (3), the department shall assess the owner or operator a penalty of 5% of the amount of the unpaid fee for each month that the payment is overdue up to a maximum penalty of 25% of the total fee owed. However, to combine fee assessments, the department may waive the penalty under this subsection for dry cleaning facilities described in subsection (3).

(5) To challenge its assessed fee, the owner or operator of a fee-subject facility shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department within 45 calendar days after the mailing date of the air quality fee notification described in subsection (3). A challenge must identify the facility and state the grounds on which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or statement setting forth the reason or

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reasons why the fee was not revised. Payment of the challenged or revised fee is due within the time frame described in subsection (3). If the owner or operator of a facility desires to further challenge its assessed fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

(6) If requested by the department, by March 15 of each year, or within 45 days after the request, whichever is later, the owner or operator of each fee-subject facility shall submit to the department information regarding the facility's previous year's emissions. The information must be sufficient for the department to calculate the facility's emissions for that year and meet the requirements of 40 CFR 51.320 to 51.327.

(7) By July 1 of each year, the department shall provide the owner or operator of each fee-subject facility required to pay an emission charge under this section with a copy of the department's calculation of the facility emissions for the previous year. Within 60 days after this notification, the owner or operator of the facility may provide corrections to the department. The department shall make a final determination of the emissions by December 15 of that year. If the owner or operator disagrees with the determination of the department, the owner or operator may request a contested case hearing as provided for under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

(8) By March 1 each year, the department shall prepare and submit to the governor, the legislature, the chairpersons of the standing committees of the senate and house of representatives with primary responsibility for environmental protection issues related to air quality, and the chairpersons of the subcommittees of the senate and house of representatives appropriations committees with primary responsibility for appropriations to the department a report that details the department's activities of the previous fiscal year funded by the fund. This report must include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing title V and non-title V air quality enforcement, compliance, or permitting activities.

(b) All of the following information related to the permit to install program authorized under section 5505:

(*i*) The number of permit to install applications received by the department.

(*ii*) The number of permit to install applications for which a final action was taken by the department. The number of final actions must be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The number of permits to install approved that were required to complete public participation under section 5511(3) before final action and the number of permits to install approved that were not required to complete public participation under section 5511(3) before final action.

(*iv*) The average number of final permit actions per permit to install reviewer full-time equivalent position.

(*v*) The percentage and number of permit to install applications that were reviewed for administrative completeness within 10 days after receipt by the department.

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

(*vii*) The percentage and number of permit to install applications for which a final action was taken by the department within 180 days after receipt for those applications not required to complete public participation under section 5511(3) before final action, or within 240 days after receipt for those applications required to complete public participation under section 5511(3) before final action.

(*viii*) The percentage and number of permit to install applications for which a processing period extension was requested and granted.

(c) All of the following information for the renewable operating permit program authorized under section 5506:

(*i*) The number of renewable operating permit applications received by the department.

(*ii*) The number of renewable operating permit applications for which a final action was taken by the department. The number of final actions must be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The percentage and number of initial permit applications processed within the required time.

(*iv*) The percentage and number of permit renewals and modifications processed within the required time.

(*v*) The number of permit applications reopened by the department.

(*vi*) The number of general permits issued by the department.

(d) The number of letters of violation sent.

(e) The amount of penalties collected from all consent orders and judgments.

(f) For each enforcement action that includes payment of a penalty, a description of what corrective actions were required by the enforcement action.

(g) The number of inspections done on sources required to obtain a permit under section 5506 and the

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number of inspections of other sources.

(h) The number of air pollution complaints received, investigated, not resolved, and resolved by the department.

(i) The number of contested case hearings and civil actions initiated, the number of contested case hearings and civil actions completed, and the number of voluntary consent orders, administrative penalty orders, and emergency orders entered or issued, for sources required to obtain a permit under section 5506.

(j) The amount of revenue in the fund at the end of the fiscal year.

(9) A report under subsection (8) must also include the amount of revenue for programs under this part received during the prior fiscal year from fees, from federal funds, and from general fund appropriations. Each of these amounts must be expressed as a dollar amount and as a percent of the total annual cost of programs under this part.

(10) The attorney general may bring an action for the collection of the fees imposed under this section.

(11) This section does not apply if the administrator of the United States Environmental Protection Agency determines that the department is not adequately administering or enforcing the renewable operating permit program and the administrator promulgates and administers a renewable operating permit program for this state.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998;—Am. 2001, Act 49, Imd. Eff. July 23, 2001;—Am. 2005, Act 169, Imd. Eff. Oct. 10, 2005;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 164, Imd. Eff. Oct. 4, 2011;—Am. 2015, Act 60, Eff. Oct. 1, 2015;—Am. 2019, Act 119, Imd. Eff. Nov. 15, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.5523 Issuance of permits and administration and enforcement of part, rules, and state implementation plan; delegation granted by department to certain counties.

Sec. 5523. (1) A county in which a city with a population of 750,000 or more is located may apply for a delegation from the department to issue state permits and administer and enforce the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. After a public hearing, the department shall grant the delegation if the department finds that the county's application demonstrates all of the following:

(a) That the county program complies with the applicable provisions of this part, the rules promulgated under this part, the clean air act, and the state implementation plan.

(b) That the county has, and will continue to have, the capacity to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan including, but not limited to, adequate and qualified staff to do all of the following:

(*i*) Monitor ambient air at locations specified by the department using equipment and procedures specified by the department.

(*ii*) Process and review applications for installation permits, operating permits, tax exemptions, and construction waivers pursuant to sections 5505 and 5506, part 59, and the clean air act, demonstrating a thorough knowledge of permit applicability, procedures, and regulations by developing permits that are free of significant errors and inaccuracies as defined in the performance standards section of the annual contract between the department and participating counties.

(*iii*) Perform necessary sampling and laboratory analyses.

(*iv*) Conduct regular and complete inspections and record reviews of all significant sources of air pollution.

(*v*) Respond to citizen complaints related to air pollution.

(*vi*) Notify sources of identified violations of applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan and conduct appropriate enforcement, up to and including administrative, civil, and criminal enforcement.

(*vii*) Perform dispersion modeling analyses, collect emissions release information, and develop necessary state implementation plan demonstrations.

(*viii*) Carry out other activities required by this part, rules promulgated under this part, the clean air act, and the state implementation plan.

(c) That the county has adequate funding to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. This shall include identification of funding from air quality fees and any federal, state, or county funds along with an identification of the activities that are funded by each funding source. The county funding shall be sufficient to provide the required grantee match for any federal air pollution grant.

(d) That the county has performed in accordance with the terms of the most recent contract, if any, between

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the state and the county that describes the work activities and program to be carried out by the county. This shall be demonstrated through state audit reports and the county's prompt and permanent correction of any deficiencies identified in state audit reports.

(e) That the county program contains provisions for public notice and public participation consistent with this part, the rules promulgated under this part, and the clean air act.

(f) That the county has the capacity to administer the state air quality fee program in the manner prescribed in section 5522 for all fee-subject facilities subject to this part, located within the county, and subject to the delegated program of the county. This shall include an ability to identify fee-subject facilities, calculate and assess fees, implement collections, maintain a dedicated account, and process fee challenges.

(2) A delegation under this section shall be for a term of not more than 5 years and not less than 2 years, and may be renewed by the department. The delegation shall be in the form of a written contract that does all of the following:

(a) Describes the activities the county shall carry out during the term of the delegation.

(b) Provides for the delegated program to be consistent with implementation of the state's air program, using state procedures, forms, databases, and other means.

(c) Provides for ongoing communication between the county and state to assure consistency under subdivision (b).

(3) One hundred eighty days prior to the expiration of the term of delegation, the county may submit an application to the department for renewal of their delegation of authority. The department shall hold a public hearing and following the public hearing make its decision on a renewal of delegation at least 60 days prior to the expiration of the term of the delegation. The department shall deny the renewal of a delegation of authority upon a finding that the county no longer meets the criteria described in subsection (1) or provisions of the delegation contract. The county may appeal a finding under subsection (1) or this subsection to a court of competent jurisdiction.

(4) A county delegated authority under this section annually shall submit a report to the department that documents the county's ability to meet the criteria described in subsection (1) and the delegation contract during the past 12 months.

(5) In addition to the report of the county under subsection (4), the auditor general of the state shall annually submit to the governor, the legislature, and the department an independent report regarding whether a county meets the criteria provided in subsection (1) and a review of the fiscal integrity of a county delegated authority under this section. The auditor general's report shall also determine the county's pro rata share of the state's support services for title V programs that are attributable to and payable by a county.

(6) Within 60 days after a county delegated authority under this section submits its annual report as required under subsection (4), the department shall notify the county, in writing, whether the report of the county meets the requirements of this section or states, with particularity, the deficiencies in that report or any findings in the auditor general's report that render the county in noncompliance with the criteria in subsection (1). The county shall have 90 days to correct any stated deficiencies. If the department finds that the deficiencies have not been corrected by the county, the department shall notify the county, in writing, within 30 days of the submission of the county's corrections and may terminate a county's delegation. The county shall have 21 days from receipt of the decision of termination in which to appeal the department's decision to a court of competent jurisdiction. If the department fails to notify the county within 60 days, the report shall be considered satisfactory for the purposes of this subsection.

(7) Notwithstanding any other statutory provision, rule, or ordinance, a county delegated authority under this section to administer and enforce this part shall issue state permits and implement its responsibilities only in accordance with its delegation, the delegation contract, this part, rules promulgated under this part, the clean air act, and the applicable provisions of the state implementation plan. State permits issued by a county that is delegated authority under this section have the same force and effect as permits issued by the department, and if such a county issues a state permit pursuant to section 5505 or 5506, no other state or county permit is required pursuant to section 5505 or 5506, respectively.

(8) Upon receipt of a permit application, prior to taking final action to issue a state permit or entering into a consent order, the county shall transmit to the department a copy of each administratively complete permit application, application for a permit modification or renewal, proposed permit, or proposed consent order. The county shall transmit to the department a copy of each state permit issued by the county and consent order entered within 30 days of issuance of the state permit or entry of the consent order.

(9) Notwithstanding a delegation under this part, the department retains the authority to bring any appropriate enforcement action under sections 5515, 5516, 5518, 5526, 5527, 5528, 5529, 5530, 5531, and 5532 as authorized under this part and the rules promulgated under this part to enforce this part and the rules promulgated under this part. The department may bring any appropriate action to enforce a state permit issued

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or a consent order entered into by a county to which authority is delegated.

(10) Notwithstanding any other provision of this part, in a county that has been delegated authority under this section, that county shall impose and collect fees in the manner prescribed in section 5522 on all fee-subject facilities subject to this part and located within the corporate boundaries and subject to the delegated program of the county. The department shall not levy or collect an annual air quality fee from the owner or operator of a fee-subject facility who pays fees pursuant to this section. A county that is delegated authority under this section shall not assess a fee for a program or service other than as provided for in this part or title V or assess a fee covered by this part or title V greater than the fees set forth in section 5522. A county that is delegated authority under this section shall pay to the state the pro rata share of the state's support services for title V programs attributable to the county.

(11) Fees imposed and collected by a county with delegated authority under this section shall be paid to the county treasury.

(12) The county treasurer of a county delegated authority under this section shall create a clean air implementation account in the county treasury, and the county treasurer shall deposit all fees received pursuant to the delegation authorized under this section in the account. The fees shall be expended only in accordance with section 5521(6), the rules promulgated under this part, and the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

324.5524 Fugitive dust sources or emissions.

Sec. 5524. (1) The provisions of this section, including subsection (2), shall apply to any fugitive dust source at all mining operations, standard industrial classification major groups 10 through 14; manufacturing operations, standard industrial classification major groups 20 through 39; railroad transportation, standard industrial classification major group 40; motor freight transportation and warehousing, standard industrial classification major group 42; electric services, standard industrial classification group 491; sanitary services, standard industrial classification group 495; and steam supply, standard industrial classification group 496, which are located in areas listed in table 36 of R 336.1371 of the Michigan administrative code.

(2) Except as provided in subsection (8), a person responsible for any fugitive dust source regulated under this section shall not cause or allow the emission of fugitive dust from any road, lot, or storage pile, including any material handling activity at a storage pile, that has an opacity greater than 5% as determined by reference test method 9d. Except as otherwise provided in subsection (8) or this section, a person shall not cause or allow the emission of fugitive dust from any other fugitive dust source that has an opacity greater than 20% as determined by test method 9d. The provisions of this subsection shall not apply to storage pile material handling activities when wind speeds are in excess of 25 miles per hour (40.2 kilometers per hour).

(3) In addition to the requirements of subsection (2), and except as provided in subdivisions (e), (f), and (g), a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions:

(a) Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions:

(*i*) All storage piles of materials, where the total uncontrolled emissions of fugitive dust from all such piles at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year, shall be protected by a cover or enclosure or sprayed with water or a surfactant solution, or treated by an equivalent method, in accordance with the operating program required by subsection (4).

(*ii*) All conveyor loading operations to storage piles specified in subparagraph (*i*) shall utilize spray systems, telescopic chutes, stone ladders, or other equivalent methods in accordance with the operating program required by subsection (4). Batch loading operations to storage piles specified in subparagraph (*i*) shall utilize spray systems, limited drop heights, enclosures, or other equivalent methods in accordance with the operating program required by subsection (4). Unloading operations from storage piles specified in subparagraph (*i*) shall utilize rake reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods in accordance with the operating program required by subsection (4).

(*iii*) All traffic pattern access areas surrounding storage piles specified in subparagraph (*i*) and all traffic pattern roads and parking facilities shall be paved or treated with water, oils, or chemical dust suppressants. All paved areas, including traffic pattern access areas surrounding storage piles specified in subparagraph (*i*), shall be cleaned in accordance with the operating program required by subsection (4). All areas treated with

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water, oils, or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection (4).

(*iv*) All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying, pelletizing, screw conveying, or other equivalent methods.

(*v*) Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding, or be treated by an equivalent method in accordance with an operating program required under subsection (4). This subparagraph shall not apply to high-lines at steel mills.

(b) If particulate collection equipment is operated pursuant to this section, emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter).

(c) A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% without employing 1 or more of the following control methods:

(*i*) The use of completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20% or more by weight.

(*ii*) The use of tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5% but less than 20%.

(*iii*) Loading trucks so that no part of the load making contact with any sideboard, side panel, or rear part of the load comes within 6 inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%.

(d) All vehicles for transporting bulk materials off-site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws, and with R 28.1457 of the Michigan administrative code.

(e) The provisions of subdivisions (c) and (d) do not apply to vehicles with less than a 2-ton capacity that are used to transport sand, gravel, stones, peat, or topsoil.

(f) The provisions of subdivision (c)(*i*) and (*ii*) do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying.

(g) The provisions of subdivision (c) do not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees fahrenheit or greater.

(4) All fugitive dust sources subject to the provisions of this section shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the department and with applicable provisions of this section. Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility. The operating program shall be implemented with the approval of the department.

(5) The operating program required by subsection (4) is subject to review and approval or disapproval by the department and shall be considered approved if not acted on by the department within 90 days of submittal. All programs approved by the department shall become a part of a legally enforceable order or as part of an approved permit to install or operate. At a minimum, the operating program shall include all of the following:

(a) The name and address of the facility.

(b) The name and address of the owner or operator responsible for implementation of the operating program.

(c) A map or diagram of the facility showing all of the following:

(*i*) Approximate locations of storage piles.

(*ii*) Conveyor loading operations.

(*iii*) All traffic patterns within the facility.

(d) The location of unloading and transporting operations with pollution control equipment.

(e) A detailed description of the best management practices utilized to achieve compliance with this section, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals, and dust suppressants utilized, and equivalent methods utilized.

(f) A test procedure, including record keeping, for testing all waste or recycled oils used for fugitive dust control for toxic contaminants.

(g) The frequency of application, application rates, and dilution rates if applicable, of dust suppressants by location of materials.

(h) The frequency of cleaning paved traffic pattern roads and parking facilities.

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(i) Other information as may be necessary to facilitate the department's review of the operating program.

(6) Except for fugitive dust sources operating programs approved by the department pursuant to R 336.1373 of the Michigan administrative code between April 23, 1985 and May 12, 1987, the owner or operator of a source shall submit the operating program required by subsection (4) to the department by August 12, 1987.

(7) The operating program required by subsection (4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this section and shall be submitted to the department for its review and approval or disapproval.

(8) Upon request by the owner or operator of a fugitive dust source, the department may establish alternate provisions to those specified in this section, if all of the following conditions are met:

(a) The fugitive dust emitting process, operation, or activity is subject to either of the following:

(*i*) The opacity limits of subsection (2).

(*ii*) The spray requirements of subsection (3)(a)(*i*) to (*v*).

(b) An alternate provision shall not be established by the department unless the department is reasonably convinced of all of the following:

(*i*) That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the department.

(*ii*) That compliance with the provisions of this section is not technically or economically reasonable.

(*iii*) That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the department.

(9) Any alternate provisions approved by the department pursuant to subsection (8) shall be submitted to the United States environmental protection agency as an amendment to the state implementation plan.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5525 Definitions.

Sec. 5525. As used in section 5524:

(a) "Control equipment or pollution control equipment" has the meaning ascribed to control equipment in R 336.1103 of the Michigan administrative code.

(b) "Fine product" means materials which will pass through a 20-mesh screen or those particles with aerodynamic diameters of 830 microns or less.

(c) "Fugitive dust" has the meaning ascribed to it in R 336.1106 of the Michigan administrative code.

(d) "Fugitive dust source" means any fugitive dust emitting process, operation, or activity regulated under section 5524.

(e) "Opacity" has the meaning ascribed to it in R 336.1115 of the Michigan administrative code.

(f) "Particulate" means any air contaminant existing as a finely divided liquid or solid, other than uncombined water, as measured by a reference test specified in subsection (5) of R 336.2004 of the Michigan administrative code or by an equivalent or alternative method.

(g) "Potential particulate emissions" means those emissions of particulate matter expected to occur without control equipment, unless such control equipment is, aside from air pollution control requirements, vital to the production of the normal product of the source or to its normal operation. Annual potential particulate emissions shall be based on the maximum annual-rated capacity of the source, unless the source is subject to enforceable permit conditions or enforceable orders which limit the operating rate or the hours of operation or both. Enforceable agreements or permit conditions on the type or amount of materials combusted or processed shall be used in determining the potential particulate emission rate of a source.

(h) "Process" or "process equipment" has the meaning ascribed to it in R 336.1116 of the Michigan administrative code.

(i) "Silt content" means that portion, by weight, of a particulate material which will pass through a number 200 (75 micron) wire sieve as determined by the American society of testing material, test C-136-76.

(j) "Test method 9D" means the method by which visible emissions of fugitive dust shall be determined according to test method 9 as set forth in appendix A-reference methods in 40 CFR, part 60, with the following modifications:

(*i*) The data reduction provisions of section 2.5 of method 9 shall be based on an average of 12 consecutive readings recorded at 15-second intervals.

(*ii*) For roadways and parking lots, opacity observations shall be made from a position such that the

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observer's line of vision is approximately perpendicular to the plume direction and approximately 4 feet directly above the surface of the road or parking area from which the emissions are being generated. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals at the point of maximum plume density. Consecutive readings must be suspended for any 15-second period if a vehicle is in the observer's line of sight. If this occurs, a "V" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "V" signifies that the observer's view was obstructed by a vehicle. Readings shall continue at the next 15-second period, and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by a "V". Consecutive readings also shall be suspended for any 15-second period if a vehicle passes through the area traveling in the opposite direction and creates a plume that is intermixed with the plume being read. If this occurs, an "I" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "I" signifies that the readings were terminated due to interference from intermixed plumes. Readings shall continue when, in the judgment of the observer, the plume created by the vehicle traveling in the opposite direction no longer interferes with the plume originally being read; and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by an "I". Intermixing of plumes from vehicles traveling in the same direction represents the road conditions, and reading shall continue in the prescribed manner. A reading encompassing an unusual condition (such as a broken bag of cement on the pavement) cannot be used to represent the entire surface condition involved. In such cases, another set of readings, encompassing the average surface condition, must be conducted. For all other fugitive dust sources except roadways and parking lots, opacity observations shall be made from a position that provides the observer a clear view of the source and the fugitive dust with the sun behind the observer. A position at least 15 feet from the source is recommended. To the extent possible, the line of sight should be approximately perpendicular to the flow of fugitive dust and to the longer axis of the emissions. Opacity observations shall be made for the point of highest opacity within the fugitive dust. Since the highest opacity usually occurs immediately above or downwind of the source, the observer should normally concentrate on the area or areas of the plume close to the source.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.5526 Investigation; inspection; furnishing duplicate of analytical report; powers of department or authorized representative; entry or access to records refused; powers of attorney general; "authorized representative" defined.

Sec. 5526. (1) The department may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. If in connection with an investigation or inspection, samples of air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing the air pollution. In implementing this subsection, the department or its authorized representative may do any of the following:

(a) Have access to and copy, at reasonable times, any records that are required to be maintained pursuant to this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(b) Inspect at reasonable times any facility, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(c) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. The department may enter into a contract with a person to sample and monitor as authorized under this subdivision.

(2) If the department, or an authorized representative of the department, is refused entry or access to records and samples under subsection (1) for the purposes of utilizing this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing entry or access to records and samples pursuant to this section.

(b) Commence a civil action to compel compliance with a request for entry and access to records and

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samples pursuant to this section, to authorize entry and access to records and samples provided for in this section, and to enjoin interference with the utilization of this section.

(3) As used in this section, "authorized representative" means any of the following:

(a) A full- or part-time employee of the department of natural resources or other state department or agency to which the department delegates certain duties under this section.

(b) A county to which authority is delegated under section 5523.

(c) For the purpose of utilizing the powers conferred in subsection (1)(c), a contractor retained by the state or a county to which authority is delegated under section 5523.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5527 Emergency; definition; affirmative defense; burden of proof.

Sec. 5527. (1) As used in this section, "emergency" means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other condition as to which negligence on the part of the person was not the proximate cause, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part due to unavoidable increases in emissions attributable to the situation. An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part if the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes all of the following:

(a) An emergency occurred and that the defendant can identify the cause or causes of the emergency.

(b) The source was properly operated at the time of the emergency.

(c) During the emergency the defendant took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

(d) The defendant submitted notice of the emergency to the department within 2 working days after the emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the defendant seeking to establish the occurrence of an emergency has the burden of proof.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2000, Act 474, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.5528 Violation of part, rule, terms of permit, or order; agreement to correct violation; consent order; public notice and opportunity for public comment; providing copy of proposed consent order.

Sec. 5528. (1) If the department believes that a violation of this part or a rule promulgated under this part exists, or a violation of the terms of a permit issued under this part exists, the department shall provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(2) If the department believes that a violation of an order issued under this part exists, the department may provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit or order issued under this part. In addition, each consent order shall contain a compliance schedule that provides

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for reasonable progress toward full compliance by a designated date.

(3) The department shall provide public notice and an opportunity for public comment on the terms and conditions of a consent order. Upon the request of any person the department shall provide a copy of the proposed consent order.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5529 Administrative fine; limitation; petition for review of fine.

Sec. 5529. (1) The department may assess an administrative fine of up to $10,000.00 for each instance of violation and, if the violation continues, for each day of continued noncompliance, if the department, on the basis of available information, finds that the person has violated or is in violation of this part or a rule promulgated under this part, has failed to obtain a permit required under this part, violates an order under this part, or has failed to comply with the terms of a permit issued under this part. If a single event constitutes an instance of violation of any combination of this part, a rule promulgated under this part, or a permit issued or order entered under this part, the amount of the administrative fine for that single event shall not exceed $10,000.00 for that violation. The assessment of an administrative fine may be either a part of a compliance order or a separate order issued by the department.

(2) The authority of the department under this section is limited to matters where the total administrative fine sought does not exceed $100,000.00 and the first alleged date of violation occurred within 12 months prior to initiation of the administrative action. Except as may otherwise be provided by applicable law, the department shall not condition the issuance of a permit on the payment of an administrative fine assessed pursuant to this section.

(3) Within 28 days of being assessed an administrative fine from the department, a person may file a petition with the department for review of this fine. Review of the fine shall be conducted pursuant to the contested case procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. If issued as part of a consent order issued pursuant to section 5528, only the amount of the administrative fine and the alleged violation on which the fine is based are subject to the contested case procedures of Act No. 306 of the Public Acts of 1969.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5530 Commencement of civil action by attorney general; relief; costs; jurisdiction; defenses; fines.

Sec. 5530. (1) The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) for any of the following:

(a) Violating this part or a rule promulgated under this part.

(b) Failure to obtain a permit under this part.

(c) Failure to comply with the terms of a permit or an order issued under this part.

(d) Failure to pay an air quality fee or comply with a filing requirement under this part.

(e) Failure to comply with the inspection, entry, and monitoring requirements of this part.

(f) A violation described in section 5518(2).

(2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation continues, for each day of continued violation.

(3) In addition to other relief authorized under this section, the attorney general may, at the request of the department, file an action in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state.

(4) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including, but not limited to, reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines that such an award is appropriate.

(5) A civil action brought under this section may be brought in the county in which the defendant is located, resides, or is doing business, or in the circuit court for the county of Ingham, or in the county in which the registered office of a defendant corporation is located, or in the county where the violation occurred.

(6) General defenses and affirmative defenses, that may otherwise apply under state law may apply in an action brought under this section as determined to be appropriate by a court of competent jurisdiction.

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(7) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5531 Violations as misdemeanors; violations as felonies; fines; defenses; definitions.

Sec. 5531. (1) A person who knowingly violates any requirement or prohibition of an applicable requirement of this part or a rule promulgated under this part or who fails to obtain or comply with a permit or comply with a final order or order of determination issued under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 per day, for each violation.

(2) A person who knowingly makes a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file any notice, application, record, report, plan, or other document required to be submitted pursuant to this part or a rule promulgated under this part, or who knowingly fails to notify or report information required to be submitted under this part or a rule promulgated under this part, or who knowingly falsifies, tampers with, renders inaccurate, or knowingly fails to install any monitoring device or method required under this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not more than $10,000.00 per day, for each violation.

(3) A person who knowingly fails to pay any air quality fee owed under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00.

(4) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and because of the quantities or concentrations of the substance released knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.

(5) A person who knowingly releases or causes the release into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury, and the release results in death or serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 6 years or a fine of not more than $25,000.00, or both.

(6) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who intended at that time to place another person in imminent danger of death or serious bodily injury, and whose actions do result in death or cause serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $250,000.00, or both.

(7) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury as required under subsections (4), (5), and (6), the defendant is responsible only for actual awareness or actual belief possessed, and knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant. However, in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(8) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(9) A defendant may establish an affirmative defense to a prosecution under this section by showing by a preponderance of the evidence that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of any of the following:

(a) An occupation, a business, or a profession.

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person had been made aware of the risks involved prior to giving consent.

(10) All general defenses, affirmative defenses, and bars to prosecution that may otherwise apply with

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respect to state criminal offenses may apply under this section and shall be determined by the courts of this state having jurisdiction according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed by the courts in the light of reason and experience.

(11) Fines shall not be imposed pursuant to this section for a violation that was caused by an act of God, war, strike, riot, catastrophe, or other condition to which negligence or willful misconduct on the part of the person was not the proximate cause.

(12) As used in this section:

(a) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) "Specific chemical" means a hazardous air pollutant listed in section 112(b)(1) of Part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, except for the following compounds:

(*i*) Antimony compounds.
(*ii*) Arsenic compounds (inorganic including arsine).
(*iii*) Beryllium compounds.
(*iv*) Cadmium compounds.
(*v*) Chromium compounds.
(*vi*) Cobalt compounds.
(*vii*) Coke oven emissions.
(*viii*) Cyanide compounds.
(*ix*) Glycol ethers.
(*x*) Lead compounds.
(*xi*) Manganese compounds.
(*xii*) Mercury compounds.
(*xiii*) Fine mineral fibers.
(*xiv*) Nickel compounds.
(*xv*) Polycyclic organic matter.
(*xvi*) Radionuclides (including radon).
(*xvii*) Selenium compounds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.5532 Civil or criminal fines; factors to be considered in determining amount.

Sec. 5532. (1) A civil or criminal fine assessed, sought, or agreed upon under this part shall be appropriate to the violation.

(2) In determining the amount of any fine levied under this part, all of the following factors shall be considered:

(a) The size of the business.

(b) The economic impact of the penalty on the business.

(c) The violator's full compliance history and good faith efforts to comply.

(d) The duration of the violation as established by any credible evidence, including evidence other than the applicable test method.

(e) Payment by the violator of penalties previously assessed for the same violation.

(f) The economic benefit of noncompliance.

(g) The seriousness of the violation.

(h) Such other factors as justice may require.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5533 Award; eligibility; rules.

Sec. 5533. The department may pay an award of up to $10,000.00 to an individual who provides information resulting in the assessment of a civil fine by a court in an action brought by the attorney general pursuant to section 5530, or leading to the arrest and conviction of a person under section 5531. An officer or employee of the United States, state of Michigan, an authorized representative of the department as defined in section 5526(3), or any other state or local government who furnishes information described in this section in

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the performance of an official duty is ineligible for payment under this section. In addition, an employee of the department of natural resources, a designee of the department of natural resources, or a person employed by the department of attorney general is ineligible to receive an award under this section regardless of whether the reported information came to his or her attention while functioning in an official capacity or as a private citizen. A person may not receive an award under this section for a violation of this part made by that person alone or in conjunction with others. An award shall not be made under this section until rules are promulgated by the department prescribing the criteria for making awards.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5534 Repealed. 1999, Act 231, Imd. Eff. Dec. 28, 1999.

Compiler's note: The repealed section pertained to certain violations exempt from penalties.

Popular name: Act 451

Popular name: NREPA

324.5535 Suspension of enforcement; reasons; variance.

Sec. 5535. Notwithstanding any other provision of this part, the department may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person, or the department may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the enforcement of the rule would be an unreasonable hardship upon the person. Upon any suspension of the whole or any part of the rule the department shall grant to the person a variance from that rule. The department shall not suspend enforcement or grant a variance under this section that would violate the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5536 Variance; considerations effecting.

Sec. 5536. In determining under what conditions and to what extent a variance from a rule or regulation that would not violate the clean air act may be granted, the department shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution. The department shall consider the reasonableness of granting a variance conditioned upon the person effecting a partial control of the particular air pollution or a progressive control of the air pollution over a period of time that it considers reasonable under all the circumstances or the department may prescribe other and different reasonable requirements with which the person receiving the variance shall comply.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5537 Variance; granting for undue hardship.

Sec. 5537. The department shall grant a variance from any rule to, and suspend the enforcement of the rule as it applies to, any person who shows in the case of the person and of the source, process, or process equipment that the person operates that his or her compliance with the rule or regulation, and that the acquisition, installation, operation and maintenance of a source or process, or process equipment required or necessary to accomplish the compliance, would constitute an undue hardship on the person and would be out of proportion to the benefits to be obtained by compliance. A variance shall not be granted under this section if the person applying for the variance is causing air pollution that is injurious to the public health or if the granting of the variance would violate the clean air act. Any variance granted shall not be construed as relieving the person who receives it from any liability imposed by other law for the maintenance of a nuisance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5538 Variance; period granted; report; conditions.

Sec. 5538. Any variance granted pursuant to sections 5535, 5536, and 5537 shall be granted for a period of time, that does not exceed 1 year, as is specified by the department at the time of granting it, but any variance

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may be continued from year to year. Any variance granted by the department may be granted on the condition that the person receiving it shall report to the department periodically, as the department specifies, as to the progress which the person has made toward compliance with the rule of the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5539 Variance; revocation or modification of order; public hearing and notice required.

Sec. 5539. The department may revoke or modify any order permitting a variance by written order, after a public hearing held upon not less than 10 days' notice.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5540 Purpose of part; alteration of existing rights of actions or remedies.

Sec. 5540. It is the purpose of this part to provide additional and cumulative remedies to prevent and abate air pollution. This part does not abridge or alter rights of action or remedies now or hereafter existing. This part or anything done by virtue of this part shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5541 Construction of part; evidentiary effect of determination by commission.

Sec. 5541. This part does not repeal any of the laws relating to air pollution which are not by this part expressly repealed. This part is ancillary to and supplements the laws now in force, except as they may be in direct conflict with this part. The final order or determination of the department shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5542 Effect on existing ordinances or regulations; local enforcement; cooperation with local governmental units.

Sec. 5542. (1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of the political subdivision, may take such appropriate action as may be necessary for enforcement of the applicable provisions of this part.

(3) The department shall counsel and advise local units of government on the administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 57
SMALL BUSINESS CLEAN AIR ASSISTANCE

324.5701 Definitions.

Sec. 5701. As used in this part:

(a) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q and the regulations promulgated under that act.

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(b) "Office" means the office of the small business clean air ombudsman.

(c) "Ombudsman" means the small business clean air ombudsman.

(d) "Program" means the small business clean air assistance program.

(e) "Small business" means a business that is independently owned and operated and that is not dominant in its field as defined in 13 C.F.R. 121 and, unless adjusted as authorized under this section or section 5702, is a stationary source that meets all of the following requirements:

(*i*) Is owned or operated by a person that employs 100 or fewer individuals.

(*ii*) Is a small business concern as defined in the small business act, Public Law 85-536, 72 Stat. 384.

(*iii*) Is not a major stationary source as defined in Titles I and III of the clean air act or is a major stationary source as defined in Titles I and III of the clean air act because of its location in a nonattainment area.

(*iv*) Emits less than 50 tons per year of any air contaminant or air pollutant regulated pursuant to part 55 or the clean air act.

(*v*) Emits less than 75 tons per year of all air contaminants or air pollutants regulated pursuant to part 55 or the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5702 "Small business stationary source" explained.

Sec. 5702. (1) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source that does not meet the criteria of subparagraph (*iii*), (*iv*), or (*v*) of section 5701(e) but which does not emit more than 100 tons per year of all air contaminants and air pollutants regulated pursuant to part 55 or the clean air act.

(2) The department, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the clean air act and part 55 without the application of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5703 Office of small business clean air ombudsman; creation; exercise of powers and duties; appointment of executive officer.

Sec. 5703. (1) The office of the small business clean air ombudsman is created within the department of commerce. The office shall exercise its powers and duties independently of any state department or entity.

(2) The principal executive officer of the office is the small business clean air ombudsman, who shall be appointed by the governor.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5704 Office of ombudsman; responsibilities and duties.

Sec. 5704. The office of the ombudsman is responsible for assessing and ensuring that the goals of the program are being met and in addition shall coordinate or do all of the following:

(a) Conduct independent evaluations of all aspects of the program.

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(b) Review and provide comments and recommendations to the United States environmental protection agency and state and local air pollution control authorities regarding the development and implementation of requirements that impact small businesses.

(c) Facilitate and promote the participation of small businesses in the development of rules that impact small businesses.

(d) Assist in providing reports to the governor and legislature and the public regarding the applicability of the requirements of this part, part 55, and the clean air act to small business.

(e) Aid in the dissemination of information, including, but not limited to, air pollution requirements and control technologies, to small businesses and other interested parties.

(f) Participate in or sponsor meetings and conferences with state and local regulatory officials, industry groups, and small business representatives.

(g) Aid in investigating and resolving complaints and disputes from small businesses against the state or local air pollution control authorities, or both.

(h) Periodically review the work and services provided by the program with trade associations and representatives of small business.

(i) Refer small businesses to the appropriate specialist in the program where they may obtain information and assistance on affordable alternative technologies, process changes, and products and operational methods to help reduce air pollution and accidental releases.

(j) Arrange for and assist in the preparation of guideline documents by the program and ensure that the language is readily understandable by laypersons.

(k) Work with trade associations and small businesses to bring about voluntary compliance with the clean air act and part 55.

(*l*) Work with regional and state offices of the small business administration, the United States department of commerce and state department of commerce, and other federal and state agencies that may have programs to financially assist small businesses in need of funds to comply with environmental requirements.

(m) Work with private sector financial institutions to assist small businesses in locating sources of funds to comply with state and local air pollution control requirements.

(n) Conduct studies to evaluate the impacts of the clean air act and part 55 on the state's economy, local economies, and small businesses.

(o) Work with other states to establish a network for sharing information on small businesses and their efforts to comply with the clean air act and the pertinent air pollution act for their state.

(p) Make recommendations to the department and the legislature concerning the reduction of any fee required under the clean air act or part 55 to take into account the financial resources of small businesses.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5705 Small business clean air assistance program; creation; purpose.

Sec. 5705. The program is created in the department of commerce. The program shall develop adequate mechanisms for all of the following:

(a) Developing, collecting, and coordinating information on compliance methods and technologies for small businesses.

(b) Encouraging lawful cooperation among small businesses and other persons to further compliance with the clean air act and part 55.

(c) Assisting small business with information regarding pollution prevention and accidental release detection and prevention, including, but not limited to, providing information concerning alternative technologies, process changes, and products and methods of operation that help reduce air pollution.

(d) Establishing a compliance assistance program that assists small businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under the clean air act or part 55, or both.

(e) Providing mechanisms and access to information so that small businesses receive notification of their rights under the clean air act and part 55 in a manner and form that assures reasonably adequate time for small

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businesses to evaluate their compliance methods or applicable proposed or final rules or standards under the clean air act and part 55.

(f) Informing small businesses of their obligations under the clean air act and part 55, including mechanisms for referring small businesses to qualified auditors or to the state if the state elects to provide audits to determine compliance with the clean air act and part 55. To the extent permissible by state and federal law, audits shall be separate from the formal inspection and compliance program.

(g) Providing information on how to obtain consideration from the department on requests from small businesses for modifications of any work practice, technological method of compliance, or the schedule of milestones for reductions of emissions preceding an applicable compliance date.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5706 Access to information, records, and documents; assistance to ombudsman.

Sec. 5706. Upon request, the ombudsman shall be given access to all information, records, and documents in the possession of the commission and the department that the ombudsman considers necessary to fulfill the responsibilities of the office other than information described in section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws. The commission and the department shall also assist the ombudsman in fulfilling his or her responsibilities under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5707 Information obtained from small businesses; confidentiality.

Sec. 5707. Information obtained by the office or the program from small businesses that utilize their services shall be held in confidence by those employed by the office or the program to the extent authorized under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, including, but not limited to, those provisions pertaining to exemptions from disclosure for trade secrets and commercial and financial information.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5708 Small business clean air compliance advisory panel.

Sec. 5708. (1) The small business clean air compliance advisory panel is created within the program.

(2) The advisory panel shall be broadly representative of the regulated small business community and shall include women members and members who are minorities. The advisory panel shall consist of the following members:

(a) Two members appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources.

(b) One member appointed by the republican leader of the senate who is an owner or a representative of owners of small business stationary sources.

(c) One member appointed by the democratic leader of the senate who is an owner or a representative of owners of small business stationary sources.

(d) One member appointed by the republican leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

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(e) One member appointed by the democratic leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

(f) One member appointed by the department.

(3) Members of the advisory panel shall serve for terms of 4 years, or until a successor is appointed, whichever is later. However, of the members first appointed, the members appointed by the governor shall serve for 3 years, the members appointed by the senate shall serve for 1 year, and the members appointed by the house of representatives and the member appointed by the department shall serve for 2 years.

(4) If a vacancy occurs on the advisory panel, the governor, the department, or the appropriate legislative leader who made the appointment shall make an appointment for the unexpired term in the same manner as the original appointment.

(5) The first meeting of the advisory panel shall be called within 90 days of the appointment of all advisory panel members. At the first meeting the advisory panel shall elect from among its members a chairperson and other officers as it considers necessary or appropriate.

(6) A majority of the members of the advisory panel constitutes a quorum for the transaction of business at a meeting of the advisory panel. A majority of the members present and serving are required for official action of the advisory panel.

(7) Members of the advisory panel shall serve without compensation. However, members of the advisory panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the advisory panel.

(8) The advisory panel shall do all of the following:

(a) Consult with the ombudsman and the head of the program to plan the work of the panel, including the frequency of meetings, agenda items, and reports to be issued by the panel.

(b) Determine whether the program should utilize private contractors hired by the program or utilize expertise within the program, or both, to meet the requirements of this part that pertain to providing technical assistance to small businesses.

(c) Prepare advisory reports concerning all of the following:

(*i*) The effectiveness of the office and program.

(*ii*) The difficulties encountered and degree and severity of enforcement of part 55.

(*iii*) The costs of operating the office and the program.

(*iv*) The average costs of different categories of small businesses in complying with the air quality enforcement program of this state.

(d) Periodically report to the administrator of the United States environmental protection agency regarding compliance by the program with the broad intent of all of the following acts as may be applicable:

(*i*) Chapter 35 of title 44 of the United States Code, 44 U.S.C. 3501 to 3520, relating to paperwork reduction.

(*ii*) Sections 601 to 612 of title 5 of the United States Code, 5 U.S.C. 601 to 612, relating to regulatory flexibility.

(*iii*) Section 504 of title 5 of the United States Code, 5 U.S.C. 504, and section 2412 of title 28 of the United States Code, 28 U.S.C. 2412, relating to equal access to justice.

(e) Review information prepared by the program for small businesses to assure that the information is understandable to laypersons.

(f) Utilize the program to act as staff to develop and disseminate the work product of the advisory panel.

(9) The advisory panel shall provide copies of advisory reports prepared by the advisory panel to the United States environmental protection agency, the department, the legislature, and the department of commerce. In addition, the reports shall be made available to any person upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

PART 59
AIR POLLUTION CONTROL FACILITY; TAX EXEMPTION

324.5901 “Facility” defined.

Sec. 5901. As used in this part, "facility" means machinery, equipment, structures, or any part or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of

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controlling or disposing of air pollution that if released would render the air harmful or inimical to the public health or to property within this state. Facility includes an incinerator equipped with a pollution abatement device in effective operation. Facility does not include an air conditioner, dust collector, fan, or other similar facility for the benefit of personnel or of a business. Facility also means the following, if the installation was completed on or after July 23, 1965:

(a) Conversion or modification of a fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(b) Installation of a new fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(c) A process change involving production equipment made to satisfy the requirements of part 55 and rules promulgated under that part. The maximum cost allowed shall be 25% of the cost of the new process unit but shall not exceed the cost of the conventional control equipment applied on the basis of the new process production rate on the preexisting process.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5902 Tax exemption certificate; application; contents; approval; notice; hearing; tax exemption.

Sec. 5902. (1) An application for a pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any air pollution control facility as defined in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5903 Tax exemption certificate; findings of department; notice to state tax commission; issuance and effective date of certificate.

Sec. 5903. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of pollutants from the air, and is suitable, reasonably adequate, and meets the intent and purposes of part 55 and rules promulgated under that part, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5904 Tax exemptions; statement in certificate.

Sec. 5904. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) Tangible personal property purchased and installed as a component part of the facility is exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5905 Tax exemption certificate; issuance; mailing to applicant, local tax assessors, and treasury department; filing; notice of refusal.

Sec. 5905. The state tax commission shall send an air pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the assessor.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5906 Tax exemption certificate; modification or revocation; grounds; notice and hearing; statute of limitations.

Sec. 5906. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, shall, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(d) Substantial noncompliance with part 55 or any rule promulgated under that part.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificate shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5907 Tax exemption certificate; refusal; appeal.

Sec. 5907. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.5908 State tax commission; rules; administration of part.

Sec. 5908. The state tax commission may adopt rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not air pollution control exists within the meaning of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 61

EMISSIONS FROM VESSELS

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324.6101 Vessels; blowing flues prohibited; exceptions.

Sec. 6101. A marine vessel while navigating in the waters of this state within 1 mile of land shall not blow flues unless necessary under an emergency condition for the safe navigation of the vessel or to alleviate or extinguish a flash fire in the boiler up-takes or during departure-arrival operations.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6102 Violation; penalty; separate offenses.

Sec. 6102. A person who is convicted of violating this part is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00. Each occurrence is a separate offense.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 63
MOTOR VEHICLE EMISSIONS TESTING FOR WEST MICHIGAN

324.6301 Meanings of words and phrases.

Sec. 6301. For the purposes of this part, the words and phrases contained in sections 6302 to 6304 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.6302 Definitions; A to D.

Sec. 6302. (1) "Alternative fuel" means the following fuel sources used to propel a motor vehicle:

(a) Compressed natural gas.

(b) Diesel fuel.

(c) Electric power.

(d) Propane.

(e) Any other source as defined by rule promulgated by the department.

(2) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part. The department shall consult with the department of natural resources when appropriate to determine that rules and standards will comply with federal requirements and sound environmental considerations.

(3) "Certificate of waiver" means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to this part.

(4) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(5) "Consumer protection" means protecting the public from unfair or deceptive practices.

(6) "Contractor" means a person who enters into a contract with the department to operate public motor vehicle inspection stations under this part.

(7) "Cut point" means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(8) "Department" means the state transportation department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6303 Definitions; E to N.

Sec. 6303. (1) "Emission control device" means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

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(2) "Initial inspection" means an inspection performed on a motor vehicle for the first time in a test cycle.

(3) "Inspection" means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(4) "Maintenance" means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(5) "Motor vehicle" or "vehicle" means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, of 10,000 pounds or less gross vehicle weight, which is required to be registered for use upon the public streets and highways of this state under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(6) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6304 Definitions; P to T.

Sec. 6304. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Public inspection station" means a facility for motor vehicle inspection operated under contract with the department as provided in this part.

(3) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(4) "Test-only network" means a network of inspection stations that perform official vehicle emissions inspections and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6305 Motor vehicle emissions inspection and maintenance program fund; account.

Sec. 6305. (1) There is established a motor vehicle emissions inspection and maintenance program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for vehicle emissions inspections under this part shall be deposited in the state treasury to the credit of the motor vehicle emissions inspection and maintenance program fund.

(2) The vehicle emissions inspection account is created in the motor vehicle emissions inspection and maintenance program fund. Money in the vehicle emissions inspection account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions inspection and maintenance program under this part, administration and oversight by the department, enforcement of the motor vehicle emissions inspection and maintenance program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions inspection and maintenance program.

(3) Funds remaining in the motor vehicle emissions inspection and maintenance program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions inspection and maintenance program fund for appropriation in the following year.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6306 Operation of motor vehicle; prohibition; testing; enforcement; inspection and maintenance program; implementation in Kent, Ottawa, and Muskegon counties;

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exclusion; test procedures and components; vehicles subject to inspection; rules; suspension of vehicle registration; suspension of program.

Sec. 6306. (1) Each motor vehicle subject to this part shall be inspected for emissions as provided in this part. A person shall not operate a motor vehicle subject to this part whose certificate of compliance has expired or who has not received a time extension or waiver and whose vehicle fails to meet emission cut points established by the department or other emission control requirements established by the department in this part. If a vehicle subject to testing under this part has not been tested within the previous 12 months, the prospective seller of the vehicle shall have the vehicle tested and complete necessary repairs before offering the vehicle for sale.

(2) To enforce this section, the department shall implement and administer a motor vehicle emissions inspection and maintenance program designed to meet the performance standards for a motor vehicle emissions inspection and maintenance program as established by the United States environmental protection agency in 40 C.F.R. 51.351 in the counties of Kent, Ottawa, and Muskegon in those areas that are not in attainment of the national ambient air quality standards for ozone. However, those counties that would be in attainment of the national ambient air quality standards for ozone, given base line emissions for that county, but for emissions emanating from outside of the state, are excluded from implementation of such a program unless the department of environmental quality shall affirmatively determine by clear and convincing evidence, based on study of formation and transport of ozone, that the control of motor vehicle emissions would significantly contribute to the attainment of the national ambient air quality standards for ozone as promulgated under the clean air act. The motor vehicle emissions inspection and maintenance program shall include the following test procedures and components:

(a) Biennial testing.

(b) Test-only network.

(c) Transient mass-emission evaporative system, purge, and pressure testing on 1981 and later model year vehicles using the IM240 driving cycle.

(d) Two-speed idle testing, antitampering, and pressure test on 1975 to 1980 vehicles in accordance with the following:

(*i*) Visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(*ii*) Pressure test of the evaporative system for light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(e) On-board diagnostic check for vehicles so equipped.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this part.

(4) Equipment and test procedures shall meet the requirements of appendices A through E to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) Vehicles shall be subject to inspection according to the following:

(a) The first initial inspection under this part for each even numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an even numbered calendar year.

(b) The first initial inspection under this part for each odd numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an odd numbered calendar year.

(6) The department, in consultation with the department of state and the department of environmental quality, may promulgate rules for the administration of the motor vehicle emissions inspection and maintenance program, including, but not limited to, all of the following:

(a) Standards for public inspection station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(*i*) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(*ii*) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the

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District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(7) The department may promulgate rules to require the inspection of motor vehicles through the use of remote sensing devices. These rules may provide for use of remote sensing devices for research purposes, but shall not provide for any checklanes or other measures by which motorists will be stopped on highways or other areas open to the general public.

(8) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this part and the rules promulgated under this part and for which the required certificate of compliance has not been obtained.

(9) If any area in this state subject to this part is redesignated by the United States environmental protection agency as being in attainment with the national ambient air quality standards for ozone, a motor vehicle emissions inspection and maintenance program authorized by this part is suspended and shall only be reimplemented if required as a contingency measure included in a maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period.

(10) Implementation of a motor vehicle emissions inspection and maintenance program authorized by this part shall be suspended if the classification of the Grand Rapids and Muskegon ozone nonattainment areas is adjusted from moderate ozone nonattainment areas to transitional or marginal nonattainment areas by the United States environmental protection agency pursuant to its authority under section 181 of the clean air act, 42 U.S.C. 7511, or if the United States environmental protection agency determines that a motor vehicle emissions inspection and maintenance program is not applicable or is not necessary for either of these areas to meet the requirements of the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 564, Imd. Eff. Jan. 16, 1997.

Popular name: Act 451

Popular name: NREPA

324.6307 Registration renewal; vehicle inspection and certificate of compliance or waiver required; validity; prohibition.

Sec. 6307. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 2 years.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a motor vehicle emissions inspection and maintenance program without a valid certificate of compliance or certificate of waiver.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6308 Repealed. 1996, Act 564, Imd. Eff. Jan. 16, 1997.

Compiler's note: The repealed section pertained to exemption of certain areas to requirements of part.

Popular name: Act 451

Popular name: NREPA

324.6309 Judicial relief.

Sec. 6309. The state should pursue judicial relief, either alone or in cooperation with other states, from the requirements or penalties imposed by the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6310 Inspection fee; initial inspections; free reinspections; remittance and deposit of inspection fee.

Sec. 6310. (1) The department, in consultation with the department of state, may establish an inspection fee not to exceed $24.00 adjusted annually by the percentage increase or decrease in the Detroit consumer price

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index rounded to the nearest whole dollar. In establishing the fee or other funding sources, the department shall include the direct and indirect costs of the vehicle emissions inspection, estimated start-up costs, estimated cost for a public information program, administration and oversight by the department, and enforcement costs by the department of state. The fee, if established, shall be paid by the motor vehicle owner to the operator of the inspection station at the time of an initial vehicle emissions inspection.

(2) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each biennial inspection period at a time set by the department.

(3) The owner of a motor vehicle subject to this part that has failed an initial vehicle emissions inspection is entitled to 1 free reinspection after the completion of necessary repairs designed to bring the vehicle into compliance with clean air act standards.

(4) By the fifteenth day of each month, each inspection station shall remit the amount of the inspection fee required for administration and oversight under the contractual agreement entered into with the department to the department of treasury for deposit in the motor vehicle emissions inspection and maintenance program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6311 Vehicles exempt from inspection requirements of part.

Sec. 6311. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) Vehicles that are licensed as historic vehicles under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(d) A motor vehicle that has as its only fuel source an alternative fuel.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the year of the next biennial inspection for the vehicle model year according to section 6306(5).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6312 Public inspection stations; contracts with private entities to conduct inspections; competitive evaluation process; notice of requests for proposals and contract awards; factors to be considered during contractor evaluation process.

Sec. 6312. (1) The department shall contract with a private entity or entities for the design, construction, equipment, establishment, maintenance, and operation of public inspection stations to conduct vehicle emissions inspections as required by this part.

(2) The department shall seek to obtain the highest quality service for the lowest cost through a competitive evaluation process for contractors.

(3) The department shall provide adequate public notice of the requests for proposals by advertising in a newspaper of general circulation in the state not later than November 13, 1993. The department shall award the contract with reasonable promptness by written notice to the responsible offeror whose proposal has been evaluated and is determined to be the most advantageous to the state, taking into consideration the requirements of this part and rules promulgated under this part, or as otherwise required by the department of management and budget.

(4) In addition to the other requirements of this part, the director of the department shall give balanced consideration during the contractor evaluation process to all of the following factors:

(a) The public convenience of the inspection station, including the provisions for average mileage to an inspection station and the waiting time at a station.

(b) The unit cost per inspection.

(c) The degree of technical content of the proposal, including test-accuracy specifications and quality of testing services, and the data and methodology used to prepare the network design, and other technological

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aspects of the proposal.

(d) The experience of the contractor and the probability of a successful performance by the contractor, including an evaluation of the capacity, resources, and technical and management skills to adequately construct, equip, operate, and maintain a sufficient number of public inspection stations to meet the demand.

(e) The financial stability of the contractor. The department may make reasonable inquiries to determine the financial stability of an offeror. The failure of an offeror to promptly supply information in connection with such an inquiry is grounds for a determination of nonresponsibility with respect to that offeror.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6313 Contract provisions.

Sec. 6313. In addition to any other provisions of this part, the contract authorized by section 6312 shall contain all of the following provisions:

(a) The minimum requirements for adequate staff, equipment, management, and hours of operation of inspection stations.

(b) The submission of reports and documentation concerning the operation of official inspection stations as required by this part.

(c) Surveillance to ensure compliance with vehicular emissions standards, procedures, rules, regulations, and laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6314 Public inspection stations.

Sec. 6314. (1) The number and locations of the public inspection stations shall provide convenient service for motorists and shall be consistent with all of the following:

(a) The network of stations shall be sufficient to assure short driving distances and to assure that waiting times to get a vehicle inspected do not exceed 15 minutes more than 4 times a month.

(b) When there are more than 4 vehicles in a queue waiting to be tested, spare lanes shall be opened and additional staff employed to reduce wait times.

(c) A person shall not be required to make an appointment for a vehicle inspection.

(d) There shall be adequate queuing space for each inspection lane at each inspection station to accommodate on the station property all motor vehicles waiting for inspection.

(e) There shall be at least 2 inspection stations located within each county subject to the motor vehicle emissions inspection and maintenance program under this part.

(2) Public inspection stations shall inspect and reinspect motor vehicles in accordance with this part.

(3) A public inspection station shall inspect and reinspect motor vehicles in accordance with the rules promulgated under this part by the department. The inspection station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under section 6305. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection and, if appropriate, the repairs needed or likely to be needed to bring the vehicle into compliance with the standards and criteria.

(4) Stations shall provide a process by which vehicles being reinspected shall be accommodated before vehicles waiting for an initial inspection.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6315 Certificate of waiver.

Sec. 6315. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air act standards in accordance with the inspection report is at least $300.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative

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shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Owners of vehicles subject to a transient IM240 emission test may apply to the department for a certificate of waiver after failing an initial inspection and a subsequent reinspection even though the dollar limit stated in subsection (1) for the cost of maintenance already performed has not been met. The department shall perform a complete, documented physical and functional diagnosis and inspection. If the diagnosis and inspection shows that no additional emission-related repairs are needed or that the vehicle presents prohibitive inspection problems or is inappropriate for inspection, the department may issue a certificate of waiver.

(4) Issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(5) A temporary certificate of waiver, valid for not more than 15 days, may be issued to a motor vehicle to allow time for necessary maintenance and reinspection. A temporary certificate of waiver may be issued not more than twice for the same motor vehicle.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6316 Implementation of continuing education programs; protection of public from fraud and abuse; ensuring proper and accurate emission inspection results; evaluation; compilation of data; report.

Sec. 6316. (1) The department, directly or by contract, shall implement continuing education programs to begin 6 months before the commencement of the public inspection program in a county. A continuing education program shall consist of a component designed to educate the general public about the motor vehicle emissions inspection and maintenance program and a component to inform those who will perform maintenance requirements under this part.

(2) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. This shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty-covered repairs for eligible vehicles that fail a test.

(3) The department shall evaluate, inspect, and provide quality assurance for the inspection and maintenance program established under this part to ensure proper and accurate emission inspection results. The department shall be responsible for issuance of certificates of waiver and time extensions.

(4) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6317 Certificate of compliance; issuance.

Sec. 6317. A contractor shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6318 Furnishing certain information about repair facility; guidelines; failure of vehicle to pass inspection; availability of certificates of waiver.

Sec. 6318. (1) An employee, owner, or operator of a public inspection station shall not furnish information about the name or other description of a repair facility or other place where maintenance may be obtained. The department shall develop guidelines for provision of this information in cooperation with the department of state, and shall provide the house and senate standing committees dealing with transportation matters with

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those guidelines before January 1, 1995.

(2) Each public inspection station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice which states the following:

"A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.".

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6315.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6319 Tampering with motor vehicle.

Sec. 6319. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6320 Providing false information to public inspection station or department.

Sec. 6320. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6321 Violations as misdemeanor; fine; separate offenses.

Sec. 6321. (1) A person who violates section 6317, forges, counterfeits, or alters an inspection certificate, or knowingly possesses an unauthorized inspection certificate is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6318, 6319, or 6320 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 65

MOTOR VEHICLE EMISSIONS TESTING FOR SOUTHEAST MICHIGAN

324.6501 Meanings of words and phrases.

Sec. 6501. For the purposes of this part, the words and phrases contained in sections 6502 to 6504 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6502 Definitions; C, D.

Sec. 6502. (1) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part.

(2) "Certificate of waiver" means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to the requirements of

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this part.

(3) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(4) "Consumer protection" means protecting the public from unfair or deceptive practices.

(5) "Cut point" means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(6) "Department" means the state transportation department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6503 Definitions; E to N.

Sec. 6503. (1) "Emission control device" means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) "Fleet testing station" means a testing station that is authorized to conduct inspections on 10 or more vehicles owned or leased by 1 person.

(3) "Initial inspection" means an annual inspection performed on a motor vehicle for the first time in a test cycle.

(4) "Inspection" means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(5) "Maintenance" means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(6) "Motor vehicle" means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, that has a gross vehicle weight rating of 10,000 pounds or less and which is required to be registered for use upon the public streets and highways of this state under Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(7) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.6504 Definitions; P to T.

Sec. 6504. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(3) "Test cycle" means a 12-month period corresponding with the expiration date for registration of the vehicle.

(4) "Testing station" means a facility for motor vehicle inspection as provided in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6505 Access to records; requests in writing; identification of record; reasonable charge.

Sec. 6505. (1) Access to records of the department and the department of state shall be in accordance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Requests for access to records shall be in writing and shall identify the specific record.

(3) There shall be a reasonable charge for the reproduction and mailing of identifiable records.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.6506 Testing or repair of motor vehicles; implementation of emissions inspection test program in Wayne, Oakland, and Macomb counties.

Sec. 6506. On and after the effective date of the 1996 amendatory act that amended this section, the owner of a motor vehicle who resides in Wayne, Oakland, or Macomb county shall not be required to have the motor vehicle tested or repaired under this act unless an emissions inspection test program is implemented under the conditions described in section 6507.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6507 Emissions inspection test program in Wayne, Oakland, and Macomb counties; conditions for implementation; contingency measures; adoption of cut points; equipment and test procedures; rules; suspension of vehicle registration.

Sec. 6507. (1) The department may implement and administer only under the conditions set forth in subsection (2) an emissions inspection test program designed to meet the performance standards for a motor vehicle emissions testing program as established by the United States environmental protection agency in 40 C.F.R. 51.352 in the counties of Wayne, Oakland, and Macomb, using bar 90 testing equipment, including a visual antitampering check, or an equivalent system approved by the United States environmental protection agency. This inspection and maintenance program, if implemented, shall be carried out by licensed testing stations as authorized by the department. The visual antitampering check described in this subsection includes visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light duty gas vehicles and light duty gas trucks with a gross vehicle weight rating of 10,000 pounds or less.

(2) The decentralized test and repair program described in subsection (1) shall only be implemented as a contingency measure included in the maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The contingency measure shall include authority to expand the program to Washtenaw county in addition to the counties described in subsection (1) if other measures are not sufficient to meet the maintenance plan. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period. The department may only exercise the contingency measure set forth in this subsection if:

(a) The department notifies the legislature that the event set forth in this subsection has occurred and that the contingency will be implemented after a period of 45 days.

(b) The legislature fails to adopt any amendments to this part that alter the requirements of this section within the 45-day period.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this section.

(4) Equipment and test procedures for the program described in subsection (1) shall meet the requirements of appendices A through D to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) The department, in consultation with the department of state and the department of natural resources, may promulgate rules for the administration of the inspection and maintenance program under this section including, but not limited to:

(a) Standards for testing station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(*i*) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(*ii*) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the

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District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(6) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this section and the rules promulgated under this section and for which the required certificate of compliance has not been obtained.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6508 Motor vehicle emissions testing program fund; account.

Sec. 6508. (1) There is established a motor vehicle emissions testing program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for motor vehicle emissions inspections and for delinquency charges under this part and from any other source shall be deposited in the state treasury to the credit of the motor vehicle emissions testing program fund.

(2) The motor vehicle emissions inspection account is created in the motor vehicle emissions testing program fund. Money in this account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions testing program under this part, administration and oversight by the department and the independent third-party organization, enforcement of the motor vehicle emissions testing program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions testing program.

(3) Funds remaining in the motor vehicle emissions testing program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions testing program fund for appropriation in the following year.

(4) If any of the funds collected from the fee in section 6511(1) for administration and oversight including reimbursement of independent third-party organizations are appropriated or expended for any purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532, the authority to collect fees granted under section 6511(1) shall be suspended until the funds appropriated or expended for purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532 are returned to the fund established in subsection (1).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6509 Renewal of registration; issuance of certificate of compliance or certificate of waiver required; validity of certificate.

Sec. 6509. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 1 test cycle.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a vehicle emission and maintenance program without a valid certificate of compliance or certificate of waiver.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6510 Testing station; prohibited conduct.

Sec. 6510. (1) A testing station shall not falsely represent that the motor vehicle has passed or failed an inspection or reinspection.

(2) A testing station shall not falsely represent repairs or falsely estimate the price for repairs that are necessary to allow a person to obtain a certificate of compliance or a certificate of waiver.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.6511 Testing station; fee; use of fee; conditions requiring free reinspection or issuance of certificate of compliance; initial inspections; remittance and disposition of fee.

Sec. 6511. (1) A testing station may charge a person a fee of not more than $13.00. This part or the rules promulgated under this part do not prohibit a testing station from providing inspections for a fee of less than $13.00. However, the fee charged shall not be less than $3.00. Three dollars from the fee charged under this subsection shall be remitted by the testing station to the department of treasury as provided in subsection (7) and shall be used by the department for administration and oversight. One dollar from the $3.00 shall be used by the department to reimburse the independent third-party organization pursuant to section 6520. A testing station shall not make a separate charge for issuing a certificate of compliance, notice of failure, or certificate of waiver.

(2) A testing station shall provide 1 free reinspection of a motor vehicle if the motor vehicle failed a previous inspection performed by the testing station and if the motor vehicle is presented for reinspection within 90 days of the previous inspection, except that a testing station is not obligated to perform a free reinspection if the person presenting the motor vehicle for reinspection does not present the notice of failure previously issued by the testing station.

(3) A testing station that has performed repairs to bring into compliance a motor vehicle that has failed an inspection at another testing station within the previous 90 days, as evidenced by the notice of failure, shall provide to the person presenting the motor vehicle a free reinspection and shall provide a certificate of compliance for the motor vehicle if it passes the reinspection.

(4) A testing station shall provide 1 free reinspection of a motor vehicle if a fee was charged by the testing station for an initial inspection of the motor vehicle that was not completed under any condition described in the rules.

(5) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each annual inspection test cycle at a time set by the department.

(6) By the fifteenth day of each month, each testing station shall remit the amount of the fee required for administration and oversight under subsection (1) to the department of treasury for deposit in the motor vehicle emissions testing program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

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324.6512 Vehicles exempt from inspection requirements.

Sec. 6512. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) A motor vehicle that has as its only fuel source compressed natural gas, diesel fuel, propane, electric power, or any other source as defined by rule promulgated by the department.

(d) A vehicle that is licensed as a historic vehicle under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the next annual inspection for the vehicle model year.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6513 Motor vehicles subject to part and rules; exceptions.

Sec. 6513. (1) The motor vehicles subject to this part and the rules promulgated under this part include the following:

(a) Each registered motor vehicle for the model years 1975 and later that is owned by a person whose permanent place of residence is in a county subject to this part.

(b) All motor vehicles for the model years 1975 and later that belong to a fleet and that are predominately garaged, operated, or maintained in a county subject to this part.

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(2) A vehicle identified on a certificate of title issued by the department of state as an assembled vehicle is not subject to this part and the rules promulgated under this part.

(3) A motor vehicle is not subject to this part and the rules promulgated under this part if its application for registration renewal is accompanied by both a memorandum of federal clean air act exemption issued pursuant to federal regulation and a certification by the applicant identifying the vehicle, and if the application for registration is filed with the department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.6514 Motor vehicles purchased as new vehicles; evidence.

Sec. 6514. Any 1 of the following shall be accepted by the department of state as evidence that a motor vehicle was purchased as a new motor vehicle within the previous 12 months:

(a) A registration or certificate of title indicating the motor vehicle is of a model year which has been offered for sale in this state for not more than 12 months.

(b) A record of the department of state indicating that the motor vehicle was purchased as new within the previous 12 months.

(c) A seller's statement to the buyer that indicates that the motor vehicle being sold is a new motor vehicle and that is dated within the previous 12 months.

(d) A manufacturer's statement of origin showing the first retail sale as being within the previous 12 months.

(e) A bill of sale from a manufacturer or a dealer franchised to sell new motor vehicles of that particular make that indicates that the motor vehicle being sold is new and that is dated within the previous 12 months.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6515 Application for motor vehicle registration as evidence of owner's permanent place of residence.

Sec. 6515. An application for a motor vehicle registration shall be accepted by the department of state as evidence of a motor vehicle owner's permanent place of residence.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6516 Inspection of motor vehicles; license to operate testing station; separate license and fee; mobile or temporary location; remote sensing devices; use of other instruments; display of license.

Sec. 6516. (1) A person shall not engage in the business of inspecting motor vehicles under this part except as authorized by a license to operate a testing station issued by the department pursuant to part 13.

(2) A person shall not be licensed to operate a testing station unless the person has an established place of business where inspections are to be performed during regular business hours, where records required by this part and the rules promulgated under this part are to be maintained, and that is equipped with an instrument or instruments of a type that comply with and are capable of performing inspections of motor vehicles under this part.

(3) A person licensed as a testing station shall perform inspections under this part at the established place of business for which the person is licensed. A person shall inform the department immediately of a change in the address of an established place of business at which the person is licensed as a testing station.

(4) A person shall obtain a separate license and pay a separate fee for each established place of business at which a testing station is to be operated.

(5) A testing station may establish and operate mobile or temporary testing station locations if they meet all of the following conditions:

(a) The instrument used at the mobile or temporary location is capable of meeting the performance specifications for instruments set forth in rules promulgated under this part while operating in the mobile or temporary station environment.

(b) The owner of a motor vehicle inspected at the mobile or temporary location shall be provided with a free reinspection of the motor vehicle, at the established place of business of the testing station or at any

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mobile or temporary testing station location operated by the testing station.

(c) Personnel at the licensed established place of business location shall, at all times, know the location and hours of operation of the mobile or temporary testing station or stations.

(d) The records required by this part and the rules promulgated under this part relating to inspections performed and the instrument or instruments used at a mobile or temporary testing station shall be maintained at a single established place of business that is licensed as a testing station.

(e) The documents printed as required by the rules promulgated under this part by an instrument used at a mobile or temporary testing station location shall contain the testing station number and the name, address, and telephone number of the testing station's established place of business.

(6) A testing station may use remote sensing devices as a complement to testing otherwise required by this part.

(7) A testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(8) A testing station shall display a valid testing station license issued by the department in a place and manner conspicuous to its customers.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.6517 Testing station license; application; information; fee; effective date and duration of license; reinstatement of surrendered, revoked, or expired repair facility registration; resumption of operation.

Sec. 6517. (1) An application for a testing station license shall include a description of the business to be licensed. The description shall include, in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The repair facility registration number issued to the applicant if the applicant is licensed under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(b) The name of the business and the address of the business location for which a testing station license is being sought.

(c) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(d) The name of and identification number issued by the department for each emission inspector employed by the applicant.

(e) A description, including the model and serial number, of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part and the date the instrument was purchased by the applicant.

(f) The estimated capacity of the applicant to perform inspections.

(2) The fee for a testing station license is $50.00 and shall accompany the application for a license submitted to the department.

(3) A testing station license shall take effect on the date it is approved by the department and shall remain in effect until this part expires, the license is surrendered by the station, revoked or suspended by the department, or until the motor vehicle repair facility registration of the business has been revoked or suspended by the department of state, surrendered by the facility, or has expired without timely renewal.

(4) If a testing station license has expired by reason of surrender, revocation, or expiration of repair facility registration, the business shall not resume operation as a testing station until the repair facility registration has been reinstated and a new, original application for a testing station license has been received and approved by the department and a new license fee paid.

(5) When the repair facility registration has been suspended, the testing station may resume operation without a new application when the repair facility registration suspension has ended.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.6518 Testing station; change of ownership; notice.

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Sec. 6518. (1) If the ownership of a testing station changes, a new original license and payment of a new license fee is required, and the station shall not operate until its application is approved by the department. For the purposes of this section, "change of ownership" means a change in the ownership of a station which is either a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of a change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6519 Display of certain information; prohibited conduct.

Sec. 6519. (1) A testing station shall display at the established place of business an information sign that bears an identifying symbol developed by the department and is worded as follows: "OFFICIAL EMISSION TESTING STATION".

(2) The sign shall be displayed on the outside premises of the testing station so that it is clearly and readily visible and readable to persons in motor vehicles as they enter the testing station property.

(3) A testing station shall also conspicuously display the price charged by the station for an inspection preceded by a dollar sign and printed in Arabic numerals.

(4) A testing station shall maintain posted business hours during which time representatives of the independent third party required to make certifications of the equipment used by the testing station and the emission inspectors used by the testing station may conduct inspections of the station, instruments and records required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the testing station.

(5) A testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6520 Testing station; certification by third-party organization.

Sec. 6520. (1) A testing station shall submit annually to the department evidence of certification of its testing equipment and emission inspectors by an independent third-party organization. The certification shall provide that the testing equipment and emission inspectors meet the requirements of this part and the rules promulgated under this part and the requirements of the clean air act. If deficiencies are noted by the third-party certifying organization, the testing station shall submit a written explanation of corrective action accepted by the third-party organization with the certification.

(2) The department shall contract with the third-party organization to establish a random inspection system for testing stations. Funds from the fee imposed pursuant to section 6511 shall be used for this purpose.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6521 Fleet testing station; permit; requirements.

Sec. 6521. (1) A fleet owner or lessee shall not perform inspections under this part or the rules promulgated under this part except as authorized under a permit to operate a fleet testing station issued by the department pursuant to part 13.

(2) A person shall not receive a permit to operate a fleet testing station unless the person has an established location where inspections are to be performed, where records required by this part and the rules promulgated under this part are to be maintained, that is equipped with an instrument or instruments of a type that comply with this part or the rules promulgated under this part, and that is capable of performing inspections of motor vehicles under this part and the rules promulgated under this part.

(3) A person with a permit to operate a fleet testing station shall perform inspections under this part and the rules promulgated under this part only at the established location for which the person has the permit. A person shall inform the department immediately of a change in the address of the established location for which the person has a permit to operate a fleet testing station.

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(4) A fleet testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(5) An application for a fleet testing station shall include a description of the operation to be licensed. The description shall include, in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The name of the business and the address of the location for which a fleet testing station permit is being sought.

(b) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(c) The name of and identification number issued by the department for each emission inspector employed by the applicant.

(d) A description, including the model and serial number of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part, and the date the equipment was purchased by the applicant.

(e) A description of the fleet to be inspected, including the number and types of motor vehicles.

(f) A statement signed by the applicant certifying that the applicant maintains and repairs, on a regular basis, the fleet vehicles owned by the applicant.

(6) A fleet testing station permit shall take effect on the date it is approved by the department and shall expire 1 year from that date. A fleet testing station permit shall be renewed automatically, unless the fleet testing station informs the department not to renew it or unless the department has revoked the permit.

(7) A person shall obtain a separate permit for each location at which fleet inspections are performed.

(8) By the fifteenth day of each month, each fleet testing station shall remit $1.00 for each vehicle inspected during the preceding month to the department of treasury for deposit in the motor vehicle emissions testing program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.6522 Fleet testing station; change of ownership; notice.

Sec. 6522. (1) If the ownership of a fleet testing station changes, a new permit is required, and the fleet testing station shall not operate until its application for a new permit is approved by the department. For purposes of this section, "change of ownership" means a change in the ownership of a station that is a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of any change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6523 Fleet testing station; limitation.

Sec. 6523. A fleet testing station shall perform inspections under this part and the rules promulgated under this part only upon its own fleet motor vehicles, unless separately licensed as a testing station.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6524 Fleet testing station; inspection by independent third party; prohibited conduct.

Sec. 6524. (1) A fleet testing station, its records, equipment required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the fleet testing station shall be open to inspection by an independent third party as otherwise required by this part.

(2) A fleet testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6525 False representations.

Sec. 6525. A fleet testing station shall not falsely represent that a motor vehicle has passed or failed an inspection or reinspection.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6526 Fleet testing station; issuance of certificate of compliance.

Sec. 6526. A fleet testing station shall issue a certificate of compliance for a vehicle that has passed an inspection or reinspection or received a low emission tune-up.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6527 Inspection appointment; issuance of certificate of compliance; report describing reason for rejection.

Sec. 6527. (1) A person shall not be required to make an appointment for a vehicle inspection.

(2) A testing station shall inspect and reinspect motor vehicles in accordance with this part and the rules promulgated under this part by the department. The station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under this part. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6528 Certificate of waiver; issuance; conditions; certain costs not considered in determining eligibility; criteria; temporary certificate; fee.

Sec. 6528. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air standards in accordance with the inspection report is at least $200.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index and rounded off to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Except for the program described in section 6506, issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(4) A temporary certificate of waiver, valid for not more than 14 days, may be issued to the owner of a motor vehicle by the secretary of state to allow time for necessary maintenance and reinspection. The secretary of state may charge the fee permitted for a temporary registration under section 802(5) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.802 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6529 Approval as emission inspector.

Sec. 6529. (1) A person shall not perform inspections under this part or the rules promulgated under this part unless the person receives approval from the department as an emission inspector.

(2) Before a person is approved as an emission inspector, the person shall have passed an examination approved by the department that is designed to test the person's competency to perform inspections.

(3) A person who fails an examination to obtain approval as an emission inspector may retake the

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examination when it is next offered.

(4) A person's approval by the department as an emission inspector shall take effect on the date it is issued by the department and shall expire upon surrender by the person or upon revocation by the department.

(5) The department, after notice and opportunity for a hearing, may deny, suspend, or revoke a person's approval as an emission inspector if the department finds that an applicant or an emission inspector does any of the following:

(a) Commits fraud, misrepresentation, trickery, or deceit in connection with the inspection or repair of a motor vehicle under this part or a rule promulgated under this part.

(b) Violates this part or a rule promulgated under this part.

(c) Improperly performs an instrument maintenance, recordkeeping, or inspection procedure required by the rules promulgated under this part.

(d) Incompetently performs an inspection.

(e) Is denied certification by the independent third party responsible for certifications under this part.

(6) Instead of proceeding under subsection (5), or as a means of settling a matter pursuant under subsection (5), the department may do any of the following:

(a) Enter into an assurance of discontinuance with an applicant or an emission inspector.

(b) Enter into a probation agreement with an applicant or an emission inspector.

(c) Enter into a suspension, revocation, or denial agreement with an applicant or an emission inspector.

(d) Require an applicant or an emission inspector to take training or an examination, or both.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6530 Inspection; certificate of compliance or waiver obtained at licensed testing station.

Sec. 6530. Unless the person is licensed as a fleet testing station, a person who owns a motor vehicle required to be inspected under this part and the rules promulgated under this part shall have the motor vehicle inspected and shall obtain a certificate of compliance or a waiver only at a testing station licensed under this part and the rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6531 Compliance; determination by department; system for selection of qualified vehicles.

Sec. 6531. The department may issue a certificate of compliance for a motor vehicle when the department makes a determination that the motor vehicle complies with the requirements of this part and the rules promulgated under this part. The department shall establish a system for selecting which motor vehicles qualify for the department's determination as to compliance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6532 Protection of public from fraud and abuse; quality assurance; evaluation of cost; effectiveness and benefits of inspection program; report.

Sec. 6532. (1) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. These procedures and mechanisms shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test.

(2) The department shall provide quality assurance for the inspection and maintenance program established under this part through certification of competency by a third party to ensure proper and accurate emission inspection results. The third party each year shall certify the testing equipment and the emission inspectors employed by a testing station.

(3) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R.

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51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6533 Testing station; fleet testing station; issuance of certificate of compliance; conditions.

Sec. 6533. A testing station or a fleet testing station shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6534 Information to be provided by public inspection station; availability of certificate of waiver.

Sec. 6534. (1) An employee, owner, or operator of a public inspection station shall not furnish information, except information provided by the state or otherwise required by this part, about the name or other description of a repair facility or other place where maintenance may be obtained.

(2) Each testing station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice that states the following:

"A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.".

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6528.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.6535 Tampering with motor vehicle.

Sec. 6535. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6536 Providing false information about repair costs prohibited.

Sec. 6536. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6537 Violations as misdemeanor; fine.

Sec. 6537. (1) A person who violates section 6533 or forges, counterfeits, or alters an inspection certificate or who knowingly possesses an unauthorized inspection certificate, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6534, 6535, or 6536 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6538 Transfer and availability of vehicle emissions inspection and maintenance fund.

Sec. 6538. Funds remaining in the vehicle emissions inspection and maintenance fund created by former Act No. 83 of the Public Acts of 1980 shall be transferred on January 1, 1996 to the motor vehicle emissions testing program fund created in this part. These funds shall be available for appropriation to the department for start-up costs to implement the motor vehicle emissions testing program in this part, to conduct a public information program to educate the general public about requirements of this part, and for other activities related to the motor vehicle emissions testing program.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.6539 Repeal of MCL 257.1051 to 257.1076.

Sec. 6539. Act No. 83 of the Public Acts of 1980, being sections 257.1051 to 257.1076 of the Michigan Compiled Laws, is repealed January 1, 1996.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

CHAPTER 2
NONPOINT SOURCE POLLUTION CONTROL

PART 81
GENERAL NONPOINT SOURCE POLLUTION CONTROL

PART 82
CONSERVATION PRACTICES

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324.8201 Definitions.

Sec. 8201. As used in this part:

(a) "Conservation easement" means that term as it is defined in section 2140.

(b) "Conservation plan" means a plan approved by the department for all or a portion of a parcel of land that specifies the conservation practices to be undertaken and includes a schedule for implementation.

(c) "Conservation practices" means practices, voluntarily implemented by the landowner, that protect and conserve water quality, soil, natural features, wildlife, or other natural resources and that meet 1 or more of the following:

(*i*) The practices comply with United States natural resource conservation service standards and specifications as approved by the department.

(*ii*) The practices are provided in rules promulgated by the department under this part.

(*iii*) The practices have been approved by the commission of agriculture.

(d) "Department" means the department of agriculture or its authorized representatives.

(e) "Fund" means the agriculture pollution prevention fund created in section 8206.

(f) "Verification" or "verify" means a determination by the department that 1 or more conservation practices have been established and are being maintained in accordance with a conservation plan.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.8202 Conservation programs; establishment; purpose; coordination with departments of natural resources and environmental quality.

Sec. 8202. (1) The department may establish conservation programs designed to encourage the voluntary use of conservation practices in the state.

(2) In implementing the conservation programs established under this part, the department, in coordination with the departments of natural resources and environmental quality, may do 1 or more of the following:

(a) Enter into contracts with 1 or more persons for the implementation of conservation practices on his or

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her land.

(b) Enter into contracts or other agreements with 1 or more persons to administer or promote conservation programs, or to implement conservation practices.

(c) Provide payments, financial incentives, or, upon verification of the implementation of conservation practices, reimbursement for rental payments or for costs of conservation practice implementation, or both.

(d) Promote the use of conservation practices.

(e) Recognize and provide awards for persons who have implemented conservation practices.

(f) Monitor and verify compliance with conservation plans.

(g) Enforce contracts or other agreements entered into under this part.

(h) Terminate contracts or other agreements entered into under this part in accord with terms established in the contract or other agreement.

(3) In carrying out its responsibilities under this part, the department shall coordinate with the departments of natural resources and environmental quality and other applicable partners.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.8203 Conservation practice verification; conditions; revocation; penalties and repayment.

Sec. 8203. (1) As part of a conservation program established under this part, the department may provide for conservation practice verification. Conservation practice verification may be granted to a person if all of the following conditions are met:

(a) The person has submitted a conservation plan in compliance with requirements of the department.

(b) The person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

(c) The person has agreed to allow the department, after giving prior notice to the landowner, to conduct inspections of the applicable land and facilities.

(d) The department has conducted an on-site inspection of the conservation practices and has determined that the person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

(2) If the department determines at any time that the conservation practices provided in a conservation plan have not been established or are not being maintained, the department may revoke a person's conservation practice verification.

(3) If a person's conservation practice verification is revoked, the person may be subject to penalties and repayment of all or a portion of the payments, financial incentives, land rental payments, and reimbursement of costs paid for implementation of the conservation practice according to the terms of the contract.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.8204 Conservation easements.

Sec. 8204. (1) The department may purchase or otherwise acquire conservation easements in accordance with subpart 11 of part 21. A conservation easement purchased or otherwise acquired under this section may contain provisions for the allowable or required use of the land subject to the conservation easement, implementation of conservation practices on the land, maintenance of the conservation practices, opportunities for inspection of the land, penalties for noncompliance with the terms of the conservation easement, termination of the easement, and other terms agreed to by the department.

(2) If the department purchases or acquires a conservation easement under this section, the department shall record that conservation easement with the register of deeds for the county in which the land subject to the conservation easement is located. If that conservation easement is subsequently terminated, the department shall record a notice of that termination with the register of deeds for the county in which the land subject to the conservation easement is located.

(3) The department may enter into contracts with 1 or more persons to monitor and enforce the terms of conservation easements purchased or acquired under subsection (1).

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

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324.8205 Disposition of recovered money.

Sec. 8205. Any money recovered by the department under this part, including, but not limited to, money paid to the department due to the termination of a contract, agreement, or conservation easement, shall be deposited into the fund.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.8206 Agriculture pollution prevention fund.

Sec. 8206. (1) The agriculture pollution prevention fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including state and federal revenues, gifts, bequests, and other donations. The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund or in any account within the fund at the close of the fiscal year shall remain in the fund or account and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

(4) Money in the fund shall be expended, upon appropriation, only for 1 or more of the following:

(a) For payments, financial incentives, or reimbursement for rental payments for the implementation of conservation practices.

(b) For payments required under contracts entered into under this part.

(c) For the purchase of conservation easements.

(d) For monitoring and enforcement of conservation easements.

(e) For awards to participants in conservation programs established by the department under this part.

(f) For the promotion of conservation programs established by the department under this part.

(g) Not more than 20% of the annual appropriations from the fund for the administrative costs of the department in implementing this part. As used in this subdivision, administrative costs include, but are not limited to, costs incurred in doing 1 or more of the following:

(*i*) Developing and implementing conservation programs.

(*ii*) Managing payments and financial incentives.

(*iii*) Monitoring and verifying the implementation of conservation practices and enforcing contracts or agreements concerning conservation practices.

(*iv*) Coordinating conservation programs with the United States department of agriculture and other state agencies with jurisdiction over conservation programs.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

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324.8207 Confidentiality; exemption from freedom of information act.

Sec. 8207. Any information voluntarily provided by a person in connection with the development, implementation, or verification of a conservation plan or conservation practices under this part is confidential, is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and is not open to public inspection without the person's consent. Any such information that is released to a legislative body shall not contain information that identifies a specific person. The exemption provided in this section does not extend to any documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.8208 Rules.

Sec. 8208. The department may promulgate rules to implement this part.

History: Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

Popular name: Act 451

Popular name: NREPA

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324.8301 Meanings of words and phrases.

Sec. 8301. For the purposes of this part, the words and phrases defined in sections 8302 to 8306 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8302 Definitions; A to C.

Sec. 8302. (1) "Active ingredient" means an ingredient that will prevent, destroy, repel, or mitigate pests, or that will act as a plant regulator, defoliant, or desiccant or otherwise alter the behavior of plants or products.

(2) "Activity plan" means a plan for the mitigation of groundwater contamination at a specific location, including a time frame for implementation.

(3) "Adulterated" applies to a pesticide if its strength or purity is less than, or significantly greater than, the professed standard or quality as expressed on its labeling or under which it is sold; if any substance was substituted wholly or in part for a pesticide; or if a valuable constituent of the pesticide was wholly or in part abstracted.

(4) "Agricultural commodity" means a plant or part of a plant, or an animal or animal product, produced primarily for sale, consumption, propagation, or other use by human beings or animals.

(5) "Agricultural pesticide" means a pesticide that bears labeling that meets federal worker protection agricultural use requirements established in 40 CFR parts 156 and 170.

(6) "Agricultural pesticide dealer" means a person engaged in distributing, selling, or offering for sale an agricultural pesticide to the ultimate user.

(7) "Animal" means all vertebrate and invertebrate species, including, but not limited to, human beings and other mammals, birds, fish, and shellfish.

(8) "Antimicrobial pesticide" means a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbial organisms, as defined under FIFRA.

(9) "Application season" means a time period of pesticide application, consistent with the category of application, within a calendar year.

(10) "Aquifer" means a geologic formation, a group of formations, or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(11) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of pesticides into that aquifer.

(12) "Avicide" means a pesticide intended for preventing, destroying, repelling, or mitigating pest birds.

(13) "Building manager" means the person who is designated as being responsible for the building's pest management program and to whom any reporting and notification shall be made pursuant to this part or rules promulgated under this part.

(14) "Certified applicator" means an individual who is authorized under this part to use and supervise the use of a restricted use pesticide.

(15) "Commercial applicator" means a person who is required to be a registered or certified applicator under this part, or who holds himself or herself out to the public as being in the business of applying pesticides. A commercial applicator does not include a person using a pesticide for a private agricultural purpose.

(16) "Commercial building" means a portion of a building that is not a private residence, where a business is located, and that is frequented by the public.

(17) "Confirmed contaminant" means a contaminant that has been detected in at least 2 groundwater samples collected from the same groundwater sampling point at an interval of greater than 14 days.

(18) "Contaminant" means a pesticide originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected.

(19) "Contamination" means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

Popular name: Act 451

Popular name: NREPA

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324.8303 Definitions; D to G.

Sec. 8303. (1) "Day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, and which is licensed as a child care organization by the department of human services under 1973 PA 116, MCL 722.111 to 722.128.

(2) "Defoliant" means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) "Department" means the department of agriculture.

(4) "Desiccant" means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(5) "Device" means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest; but does not include equipment used for the application of pesticides when sold separately.

(6) "Direct supervision" means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location as an uncertified applicator, directing the application of a restricted use pesticide by the uncertified applicator.

(b) The private agricultural applicator supervises an uncertified applicator and is physically present during the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(7) "Director" means the director of the department or his or her authorized representative.

(8) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, inventory or receive for others for a period greater than 21 days, or deliver pesticides in this state.

(9) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) "EPA" means the United States environmental protection agency.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y.

(13) "Fungi" means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

(14) "General use pesticide" means a pesticide that is not a restricted use pesticide.

(15) "Groundwater" means underground water within the zone of saturation.

(16) "Groundwater protection rule" means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have contributed or may contribute to the contamination of groundwater and that specifies the standard's scope, region of implementation, and implementation period. As used in this subsection:

(a) "Structures, activities, and procedures" includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) "Scope" means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) "Region of implementation" may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of community health using risk assessment protocol established by rule under this part.

(18) "Groundwater resource response level" means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

Popular name: Act 451

Popular name: NREPA

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324.8304 Definitions; I to M.

Sec. 8304. (1) "Inert ingredient" means an ingredient that is not active.

(2) "Ingredient statement" means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) "Insecticide" means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) "Integrated pest management" means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) "Integrated pest management program" means a program for integrated pest management that includes at least all of the following elements:

(a) The following integrated pest management practices and principles:

(*i*) Site evaluation, including site description, inspection, and monitoring and the concept of threshold levels.

(*ii*) Consideration of the relationship between pest biology and pest management methods.

(*iii*) Consideration of all available pest management methods, including population reduction techniques, such as mechanical, biological, and chemical techniques and pest prevention techniques, such as habitat modification.

(*iv*) Pest control method selection, including consideration of the impact on human health and the environment.

(*v*) Continual evaluation of the integrated pest management program to determine the program's effectiveness and the need for program modification.

(b) Recordkeeping which shall be maintained by the applicator and which shall include all of the following:

(*i*) The site address.

(*ii*) The date of service.

(*iii*) The target pest or pests.

(*iv*) The inspection report, including the number of pests found or reported, and the conditions conducive to pest infestation.

(*v*) The pest management recommendations made by the applicator, such as structural or habitat modification.

(*vi*) The structural or habitat modification or other measures that were initiated as a part of the pest management program.

(*vii*) The name of each pesticide used.

(*viii*) Quantity of each pesticide used.

(*ix*) The location of the area or room or rooms where pesticides were applied.

(*x*) The name of the applicator.

(*xi*) The name of the pest control firm, if a firm is employed, and the emergency telephone number.

(c) Provision of the following information to the building manager:

(*i*) The integrated pest management program and initial service inspection record, which shall be provided at the time of, or made available electronically within 48 hours after, the initial service.

(*ii*) A record that includes the information specified in subdivision (b), which shall be provided upon or made available electronically within 48 hours after the completion of each inspection, application, or service call.

(d) The acceptance of responsibility by the building manager to post signs provided by the pesticide applicator in compliance with rules promulgated under section 8325.

(7) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(8) "Labeling" means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and

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all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(9) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, 42 USC 300f to 300j-25, and regulations promulgated under that act.

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

(11) "Minor use" means the use of a pesticide on a crop, animal, or site where any of the following exist:

(a) The total United States acreage for the crop or site is less than 300,000 acres.

(b) The acreage expected to be treated nationally as a result of that use is less than 300,000 acres annually.

(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use.

(12) "Misbranded" applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(13) "Molluscicide" means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.8305 Definitions; N to P.

Sec. 8305. (1) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, which are unsegmented roundworms with elongated, fusiform, or sac-like bodies covered with cuticle that inhabit soil, water, plants, or plant parts. A nematode may also be called a nema or eelworm.

(2) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(3) "Pest" means an insect, rodent, nematode, fungus, weed, and other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, or any other organism that the director declares to be a pest under section 8322, except viruses, fungi, bacteria, nematodes, or other microorganisms in or on living animals.

(4) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests or intended for use as a plant regulator, defoliant, or desiccant. Pesticide does not include liquid chemical sterilant products, including any sterilant or subordinate disinfectant claims on such products, for use on a critical or semi-critical device, as defined in section 201 of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 321. As used in this subsection:

(a) "Critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body.

(b) "Semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

(5) "Pesticide registration renewal" means the registration of any pesticide that was previously registered by the department.

(6) "Place of business" means a location that is staffed by at least 1 person who independently, without supervision, sells or uses pesticides within this state or where a person exercises the right to control others in the sale or use of pesticides within this state.

(7) "Plant regulator" means a substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(8) "Private agricultural applicator" means a certified applicator who uses or supervises the use of a restricted use pesticide for a private agricultural purpose.

(9) "Private agricultural purpose" means the application of a pesticide for the production of an agricultural commodity on either of the following:

(a) Property owned or rented by the person applying the pesticide or by his or her employer.

(b) Property of another person if applied without compensation, other than trading of personal services

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between producers of agricultural commodities.

(10) "Protect health and environment" means protection against any unreasonable adverse effects on the environment.

(11) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8306 Definitions; R to W.

Sec. 8306. (1) "Registered applicator" means an individual who is authorized to apply general use pesticides for a private or commercial purpose as provided in this part and in the rules promulgated under this part.

(2) "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol insecticide or rodenticide bait pack that does not require mixing or loading prior to application.

(3) "Registrant" means a person who is required to register a pesticide pursuant to this part.

(4) "Restricted use pesticide" means a pesticide classified for restricted use by the EPA or the director.

(5) "Restricted use pesticide dealer" means a person engaged in distributing, selling, or offering for sale restricted use pesticides to the ultimate user.

(6) "Rodenticide" means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) "School" means public and private schools, grades kindergarten through the twelfth grade, but does not include a home school.

(8) "Supervise" means directing the application of a pesticide with or without being physically present during the application.

(9) "Unreasonable adverse effect on the environment" means any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide.

(10) "Use of a pesticide" means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) "Vendor" means a person who sells or distributes pesticides.

(12) "Violates this part" or "violation of this part" means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) "Weed" means a plant which grows where it is not wanted.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.8307 Repealed. 2002, Act 418, Imd. Eff. June 5, 2002.

Compiler's note: The repealed section pertained to procedures for registration of pesticides.

Popular name: Act 451

Popular name: NREPA

324.8307a Pesticide; distribution, sale, exposure, or offer for sale; registration required.

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

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

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

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

(5) A pesticide registration applicant shall submit to the director a complete copy of the pesticide labeling

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and the following, in a format prescribed by the director:

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

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

(c) Other information considered necessary by the director.

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

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

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

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

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8307b Maintenance of registration; renewal; discontinuing registration.

Sec. 8307b. (1) A pesticide that has been registered with the department must continue to be registered as long as the pesticide remains in the channels of trade in this state. It is the registrant's responsibility to maintain the pesticide registration.

(2) It is a violation of this part to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received by the director on or before the last day in June. It is the responsibility of the registrant to obtain and submit an application for renewal of a pesticide registration before the expiration date.

(3) A registrant who intends to discontinue a pesticide registration shall do either of the following:

(a) Terminate further distribution within the state and continue to register the pesticide annually for 2 successive years.

(b) Initiate a recall of the pesticide from distribution in the state prior to the expiration of the registration of the pesticide. Pesticides that do not go through a 2-year discontinuance period and that are found in the channels of trade are subject to registration penalties and all related fees since the product's last year of registration.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307c Registration of pesticide; exception.

Sec. 8307c. Registration is not required under this part if a pesticide is shipped from 1 plant or warehouse to another plant or warehouse operated by the same person and used to make a pesticide that is registered under this part, or if the pesticide is distributed pursuant to an EPA experimental use permit.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307d Prohibited claims.

Sec. 8307d. (1) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide can be used on sites that are not included in the pesticide labeling.

(2) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide has characteristics, ingredients, uses, benefits, or qualities that it does not have or that are not allowed under FIFRA.

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History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307e Registration for special local needs.

Sec. 8307e. To register a pesticide for special local needs pursuant to section 24(c) of FIFRA, 7 U.S.C. 136v, or the regulations promulgated under that section, the director shall require the information required under section 8307a(5). A pesticide may be registered for special local needs if the director determines that all of the following conditions are met:

(a) A special local need exists.

(b) The pesticide's composition warrants the proposed claims for it.

(c) The pesticide's labeling and other submitted material comply with the labeling requirements of FIFRA or regulations promulgated under that act.

(d) It does not cause unreasonable adverse effects on the environment.

(e) The classification for general or restricted use conforms with section 3(d) of FIFRA, 7 U.S.C. 136a.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8307f Information requirements.

Sec. 8307f. (1) Upon the director's request, a person who has registered a pesticide shall provide the information necessary to determine its mobility in the environment and its potential to contaminate groundwater. This information may include any of the following:

(a) Water solubility.

(b) Vapor pressure.

(c) Octanol-water partition coefficient.

(d) Soil absorption coefficient.

(e) Henry's law constant.

(f) Dissipation studies including the rate of hydrolysis, photolysis, or aerobic or anaerobic soil metabolism.

(g) Product formulation.

(h) Other information considered necessary by the director.

(2) Information requested under subsection (1) shall be consistent with product registration information required under FIFRA.

(3) As used in this section:

(a) "Aerobic soil metabolism" means chemical degradation in soil in the presence of oxygen.

(b) "Anaerobic soil metabolism" means chemical degradation in soil in the absence of oxygen.

(c) "Henry's law constant" means the ratio of the partial pressure of a compound in air to the concentration of the compound in water at a given temperature.

(d) "Hydrolysis" means a chemical reaction in which water combines with and splits the original chemical creating degradation products.

(e) "Octanol-water partition coefficient" means the ratio of a chemical's concentration in the water-saturated octanol phase to the chemical's concentration in the octanol-saturated water phase.

(f) "Photolysis" means a chemical reaction in which light or radiant energy serves to split the original compound creating degradation products.

(g) "Soil absorption coefficient" means the ratio of absorbed chemical per unit weight of soil or organic carbon to the aqueous solute concentration.

(h) "Vapor pressure" means the pressure exerted by the vapor of a substance when it is under equilibrium conditions.

(i) "Water solubility" means the maximum amount of a material that can be dissolved in water to give a stable solution.

History: Add. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8308 Powers of director; audits.

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8308a Access to markets for pesticides; certificate of free sale; application; fees; "certificate of free sale" defined.

Sec. 8308a. (1) To facilitate continued access to markets for pesticides, the department may do 1 or both of the following:

(a) At the request of a registrant or based upon records voluntarily supplied by a registrant, inspect, audit, or certify locations where pesticides are manufactured in this state.

(b) Issue certificates of free sale under subsection (3).

(2) A registrant shall submit an application for a certificate of free sale on a form and in a manner prescribed by the department.

(3) The department shall grant or deny an application for a certificate of free sale within 10 business days after the department receives a completed application under subsection (2) and the application fee under subsection (4). If the department determines that the application meets the requirements of this part and the rules promulgated under this part, the department shall issue a certificate of free sale. If the department determines that the application does not meet the requirements of this part or the rules promulgated under this part, the department shall deny the application and send written notice to the registrant stating the reasons for the denial.

(4) If a certificate of free sale is issued under subsection (3), the registrant shall pay the department the following fees, as applicable:

(a) An application fee, $60.00.

(b) A duplicate copy of a certificate of free sale, $10.00.

(5) A fee collected under subsection (4) must be deposited in the agriculture licensing and inspections fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

(6) A certificate of free sale issued under this section is valid for 1 year.

(7) As used in this section, "certificate of free sale" means a document that is issued by the department that verifies that the pesticide listed is registered with the department and is legally sold or distributed in this state and on the open market with the approval of the department.

History: Add. 2022, Act 124, Imd. Eff. June 29, 2022.

Popular name: Act 451

Popular name: NREPA

324.8309 Refusing, canceling, or suspending registration; circumstances.

Sec. 8309. The director may refuse to register or may cancel or suspend registration of a pesticide if any of the following circumstances exist:

(a) The pesticide does not meet its EPA registration and labeling claims.

(b) The pesticide labeling and other material required to be submitted does not comply with this part or the rules promulgated under this part.

(c) The pesticide is in violation of this part.

(d) Based on substantial scientific evidence, the director determines that the use of the pesticide is likely to cause an unreasonable adverse effect on the environment, which cannot be controlled by designating the pesticide as a restricted use pesticide, by limiting the uses for which a pesticide may be used or registered, or by other changes to the registration or pesticide label.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8310 Restricted use pesticide dealer's license; examination; operation of business located outside of state; sales records; summary form of information; sale or distribution

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of restricted use pesticide; denial, suspension, or revocation of license; maintenance and submission of certain records; confidentiality of information; report.

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

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

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

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

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

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

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

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

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

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

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

(a) The product name.

(b) The EPA registration number.

(c) The amount of pesticide sold or distributed.

(d) The wholesale value of pesticide sold or distributed.

(e) The date of sale or distribution.

(f) The sales or distribution invoice number.

(g) The name and address of the consignee.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8310a Agricultural pesticide dealer's license; distribution, sale, or offer for sale; applicant as person in charge; form; information to be provided; out-of-state business location; report; denial, suspension, or revocation of license; exemption from requirements of subsection (1).

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

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issued by the department pursuant to part 13.

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

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

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

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

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

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

(a) The product name.

(b) The EPA registration number.

(c) The amount of pesticide sold or distributed.

(d) The wholesale value of pesticide sold or distributed.

(e) The date of sale or distribution.

(f) The sales or distribution invoice number.

(g) The name and address of the consignee.

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

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

History: Add. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

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324.8311 Certification and other requirements; identification; records of certified commercial applicator; submission of summary to director; supervision; following recommended and accepted good practices; governmental agencies subject to part and rules.

Sec. 8311. (1) A person shall not use a restricted use pesticide without first complying with the certification requirements of this part.

(2) A person is not required to be a certified applicator to apply a restricted use pesticide for a private agricultural purpose if the person is under the direct supervision of a certified applicator, unless prohibited by the pesticide label.

(3) Certification requirements for commercial applicators shall include completion of written examinations prescribed by the director. Certification requirements for private agricultural applicators shall provide optional methods of certification to include 1 of the following:

(a) Self-study and examination.

(b) Classroom training and examination.

(c) An oral fact-finding interview administered by an authorized representative of the director when a person is unable to demonstrate competence by examination or classroom training.

(4) At the time of sale, private applicators shall identify the intended county of application of a restricted use pesticide.

(5) A certified commercial applicator shall maintain records of restricted use pesticide applications for 3 years from the date of application and make those records available upon request to an authorized representative of the director during normal business hours.

(6) A commercial applicator shall keep for 3 years from the date of application a record of the pesticide

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registration number, product name, the formulated amount applied, and application location for all restricted use pesticides used by the commercial applicator. A summary of this information indicating the pesticide registration number, product name, and total formulated amount of pesticide applied to each county during the previous calendar year shall be transmitted to the director before March 1. This summary shall be submitted on forms provided by or approved by the director. Information collected under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) A certified applicator shall directly supervise the application of a restricted use pesticide if prescribed by the label, this part, or rules promulgated under this part.

(8) A commercial applicator is responsible for pesticide applications made by persons under his or her supervision.

(9) Each person shall follow recommended and accepted good practices in the use of pesticides, including, but not limited to, use of a pesticide in a manner consistent with its labeling.

(10) A federal agency, state agency, municipality, county road commission, or any other governmental agency that uses a pesticide classified for restricted use is subject to this part and the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8312 Certified applicator; completion of certification requirements; application for certified applicator certificate; fee; issuance of certificate; restrictions; grounds for refusal to issue or renew certificate; denying, revoking, or suspending certificate; reasons for denial; display of certificate.

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8313 Commercial applicator; license required; qualifications; form and contents of application; fee; proof of financial responsibility; restriction; grounds for refusal to issue or renew license; denying, revoking, or suspending license; reasons for denial; allowable pesticides; limitations; operation of business located outside of state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418,Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8314 Commercial application of pesticide; certified or registered applicator; qualifications; temporary registration; fee; program completion form; authorized applications; exemption; displaying registration certificate; training program; denial, revocation, or suspension of certification or registration; documents and forms.

Sec. 8314. (1) A person shall not apply a pesticide for a commercial purpose or in the course of his or her employment unless that person is either a certified applicator or a registered applicator. A person may apply a general use pesticide for a private agricultural purpose without being a certified applicator or registered applicator.

(2) A person who is not subject to the licensing requirement in section 8313 may apply a general use ready-to-use pesticide without being a certified applicator or a registered applicator.

(3) A commercial certified or registered applicator must be at least 18 years of age.

(4) A person who is not subject to the licensing requirements in section 8313 may apply a general use antimicrobial pesticide without being a certified or registered applicator if there is no potential for movement

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of an antimicrobial pesticide to affect surface water or groundwater.

(5) A commercial applicator shall only make pesticide applications in the category for which he or she is certified or registered.

(6) A registered applicator shall do all of the following:

(a) Complete a training program that is approved by the director and conducted by a trainer who has the minimum qualifications established by rule. The training program for applicators who apply pesticides for private agricultural purposes may utilize other methods of training and testing as provided in section 8311(1).

(b) Pass a test that is approved by the director.

(c) Possess a valid registration certificate issued by the director.

(7) A trainer shall issue a temporary registration to an applicant who completes an approved training program and passes a test administered by the director. A temporary registration is valid from the time it is issued until the applicant receives a registration certificate from the director. The department shall provide the applicant with the registration certificate upon payment of the fee provided for in section 8317 and when the approved trainer completes and submits a program completion form.

(8) A registered applicator who applies general use pesticides and is not subject to commercial pesticide applicator licensing requirements is exempt from the provisions requiring supervision by a certified applicator.

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

(10) A registered applicator shall complete a training program every 3 years to be eligible to renew his or her registration.

(11) The director may at any time deny, revoke, or suspend a certification or registration for a violation of this part or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(12) The director shall develop and provide the documents and forms necessary to implement this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

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324.8315 Aerial application of pesticides; requirements.

Sec. 8315. (1) A private agricultural applicator or a commercial applicator, in addition to complying with the other requirements of this part, shall meet 1 or more of the following requirements before engaging in the aerial application of pesticides:

(a) Attainment of at least 3 years of experience with not fewer than 200 hours of agricultural aerial application under the supervision of a commercial aerial applicator.

(b) Be licensed as a commercial aerial applicator before December 27, 1988.

(c) Successfully complete an aerial applicator training program recognized by the director as sufficient to assure the protection of the public health, safety, and welfare and the environment.

(2) A private agricultural applicator or a commercial applicator authorized under this part to make aerial application of pesticides shall do either of the following once every 3 years:

(a) Demonstrate to the director the applicator's personal participation in a self-regulating application flight efficiency clinic sponsored or recognized by the Michigan cooperative extension service and approved by the department with an aircraft that the applicant operates.

(b) Retake the certification examinations and submit to an inspection of the applicator's aircraft, equipment, and spray operations by an authorized representative of the director.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8316 Notice of pesticide application at school or day care center.

Sec. 8316. (1) Beginning 1 year after the effective date of the amendatory act that added this subsection, a person shall not apply a pesticide in a school or day care center unless the school or day care center has an integrated pest management program in place for the building.

(2) The primary administrator of a school or day care center or his or her designee shall annually notify the parents or guardians of children attending that school or cared for at that day care center that the parents or guardians will receive advance notice of the application of a pesticide, other than a bait or gel formulation, at the school or day care center. The primary administrator of a school or his or her designee shall give the annual notification not more than 30 days after the beginning of the school year, and the primary

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administrator of a day care center or his or her designee shall give the annual notification in September.

(3) An annual notification under subsection (2) shall satisfy all of the following requirements:

(a) Be in writing.

(b) Specify 2 methods by which advance notice of the application of a pesticide will be given at least 48 hours before the application. The first method shall be by posting at the entrances to the school or day care center. Subject to subdivision (c), the second method shall be 1 of the following:

(*i*) Posting in a public, common area of the school or day care center, other than an entrance.

(*ii*) E-mail.

(*iii*) A telephone call by which direct contact is made with a parent or guardian of a student of the school or a child under the care of the day care center or a message is recorded on an answering machine.

(*iv*) Providing students of the school or children under the care of the day care center with a written notice to be delivered to their parents or guardians.

(*v*) Posting on the school's or day care center's website.

(c) State that, in addition to notice under subdivision (b), parents or guardians are entitled to receive the notice by first-class United States mail postmarked at least 3 days before the application, if they so request, and the manner in which such a request shall be made.

(d) For a school, inform parents and guardians that they may review the school's integrated pest management program, if any, and records on any pesticide applications.

(e) For a school, provide the name, telephone number, and, if applicable, e-mail address of the person at the school building responsible for pesticide application procedures.

(4) An advance notice of application of a pesticide, other than a bait or gel formulation, shall contain all of the following information:

(a) A statement that a pesticide is expected to be applied.

(b) The target pest or pests.

(c) The approximate location of the application.

(d) The date of the application.

(e) The name, telephone number, and, if available, e-mail address of a contact person at the school or day care center responsible for maintaining records with specific information on pest infestation and actual pesticide application as required by rules.

(f) A toll-free telephone number for a national pesticide information center recognized by the department and a telephone number for pesticide information from the department.

(5) Before applying a pesticide, other than a bait or gel formulation, a school or day care center shall provide advance notice to parents and guardians consistent with subsections (3)(b) to (e) and (4). However, in an emergency, a school or day care center may apply a pesticide without providing advance notice to parents or guardians. Promptly after the emergency pesticide application, the school or day care center shall give parents or guardians notice of the emergency pesticide application that otherwise meets the requirements of subsection (3)(b) and (c). The notice shall contain a statement that a pesticide was applied and shall meet the requirements of subsection (4)(b) to (f).

(6) Liquid spray or aerosol insecticide applications shall not be made in a room of a school building or day care center building unless the room will be unoccupied by students or children for not less than 4 hours after the application or unless the product label requires a longer reentry period. The building manager shall be notified of the reentry restrictions by the applicator.

(7) The department shall do both of the following:

(a) Within 1 year after the effective date of the amendatory act that added this subsection, develop a model integrated pest management policy for schools, in consultation with the department of education and the pesticide advisory committee created in section 8326, and make the policy available to all school districts, intermediate school districts, public school academies, and private schools.

(b) Encourage local and intermediate school boards and boards of directors of public school academies to do both of the following:

(*i*) Adopt and follow the model integrated pest management policy developed under subdivision (a).

(*ii*) Require appropriate staff to obtain periodic updates and training on integrated pest management from experts on the subject.

(8) Subsections (1) to (7) do not apply to sanitizers, germicides, disinfectants, or antimicrobial agents.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

Popular name: Act 451

Popular name: NREPA

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324.8316b Pesticide notification registry; notification requirements; exclusions; definitions.

Sec. 8316b. (1) The department shall maintain a voluntary registry of individuals who, due to a medically documented condition, are required to be notified before the application of a lawn or ornamental pesticide, other than a general-use ready-to-use pesticide, but only if the application is on property adjacent to or within a physician-recommended distance from the property on which the individual's primary residence is located. The registry shall contain a list of those properties adjacent to or within a physician-recommended distance from the individual's primary residence. The notification to the individual listed in the registry shall be provided by the means provided in the registry and shall state that a pesticide application is scheduled on 1 or more of the properties listed in the registry.

(2) The notification requirements described in subsection (1) and any yard marker requirements provided by rule do not apply if the pesticide is applied only on or within 10 feet of a structure located on the property on which the pesticide application takes place and is applied to prevent, destroy, repel, or mitigate pests on the structure.

(3) As used in subsection (1):

(a) "Adjacent to" means either of the following:

(*i*) Sharing a common boundary line or property corner with.

(*ii*) Located directly across an undivided road, stream, or right-of-way from.

(b) "Physician-recommended distance" means a specified distance, not more than 100 feet from a linear boundary line, considered necessary and substantiated by a physician.

History: Add. 2018, Act 270, Eff. Sept. 27, 2018.

Popular name: Act 451

Popular name: NREPA

324.8317 Fees; certificate; license; registration; validity; duration; expiration; fees nonrefundable; waiver; deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2003, Act 82, Imd. Eff. July 23, 2003;—Am. 2007, Act 78, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2012, Act 316, Imd. Eff. Oct. 1, 2012;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

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324.8318 Repealed. 2007, Act 78, Imd. Eff. Sept. 30, 2007.

Compiler's note: The repealed section pertained to establishment of pesticide control fund.

324.8319 Exemptions; supervision by allopathic or osteopathic physician or doctor of veterinary medicine.

Sec. 8319. (1) The certification and registration of applicators and licensing requirements do not apply to any of the following:

(a) Employees of a certified private agricultural applicator while acting under the level of supervision required in this part.

(b) Persons applying general use pesticides for a private agricultural purpose.

(c) Commercial applicators applying general use microbiocides indoors where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater. However, this subdivision does not exempt from these requirements the application of antimicrobial pesticides by commercial applicators to plants or planting medium indoors.

(d) Persons not subject to licensing requirements in section 8313 that apply general use pesticides to swimming pools.

(e) Indoor applications of general use antimicrobial pesticides by persons on their own premises or employees of those persons when making applications on those premises as a scheduled and required work assignment in the course of their employment, where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(f) Allopathic or osteopathic physicians and doctors of veterinary medicine applying pesticides during the course of their normal practice and their employees and people working under their control while acting under the level of supervision required in subsections (2) and (3).

(g) Persons conducting laboratory type research involving restricted use pesticides.

(2) An allopathic or osteopathic physician or a doctor of veterinary medicine shall supervise the application of a general use pesticide by a competent employee under his or her instruction and control during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine even if the allopathic or osteopathic physician or the doctor of veterinary medicine is not physically present. An allopathic or osteopathic physician or a doctor of veterinary medicine shall directly supervise the application of a restricted use pesticide by an employee under his or her instruction or control during the course of the normal practice of the allopathic or osteopathic physician or doctor of veterinary medicine by being physically present at the time and place the restricted use pesticide is being applied.

(3) An allopathic or osteopathic physician or doctor of veterinary medicine is subject to the requirements, prohibitions, and penalties of this part and rules promulgated under this part for an application of pesticides by the allopathic or osteopathic physician or the doctor of veterinary medicine and for an application of pesticides by an employee directly or indirectly supervised by the allopathic or osteopathic physician or the doctor of veterinary medicine during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 312, Imd. Eff. June 24, 1996;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8320 Reciprocal agreements.

Sec. 8320. The director may enter into reciprocal agreements with other states or federal agencies for the purpose of accepting certification or registration required for pesticide applicators, if those states or federal agencies have an approved program to certify or register applicators, and if the requirements for certification or registration by those states or federal agencies equal or exceed the certification or registration requirements of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8321 Responsibility for damage resulting from misuse of pesticides; filing claim for damages; inspection of damages; collection of samples; effect of failure to file report.

Sec. 8321. (1) A certificate or license issued by the director does not exonerate the holder from responsibility for damage resulting from misuse of pesticides, such as, but not limited to, overdosing, drifting,

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or misapplication.

(2) A person claiming damages from a pesticide application shall file a claim to, and on a reporting form provided by, the director. This report shall be filed within 60 days after the date of the alleged damaging application or first observation of damage by the claimant. If a growing crop is alleged to have been damaged, the report shall be filed before 25% of the crop is harvested. The director shall, within 7 days after receipt of the report, notify the applicator and the owner or lessee of the property or other persons who may be charged with the responsibility of the damages claimed, and furnish them copies of any statements that are requested. The director or his or her representative will inspect damages if the director determines that the complaint has sufficient merit. The director shall make all information pertaining to the complaint available to the person claiming damage and to the person who is alleged to have caused the damage.

(3) The claimant shall permit the director, the applicator, and their representatives, such as a bondsman or insurer, to observe within reasonable hours the property or nontarget organism alleged to have been damaged and to collect samples for further examination in order that damage may be determined.

(4) The filing of a report or the failure to file a report is not required to be alleged in any petition filed in a court of law, and the failure to file the report is not a bar to the maintenance of a criminal or civil action.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8322 Additional powers of director; preliminary order; program on pesticide container recycling and disposal.

Sec. 8322. (1) The director may do all of the following:

(a) Declare as a pest any form of plant or animal life, except viruses, nematodes, bacteria, or other microorganisms on or in living human beings or other animals, that is injurious to health or the environment.

(b) Determine the toxicity of pesticides to human beings. The director shall use the data in support of registration and classification as a guide in this determination.

(c) Determine pesticides, and quantities of substances contained in pesticides, that are injurious to the environment. The director shall use the EPA regulations as a guide in this determination.

(d) Enter into cooperative agreements with agencies of the federal government or any other agency of this state, or an agency of another state, for the purpose of implementing this part and securing uniformity of rules.

(e) Enter and conduct inspections upon any public or private premises or other place, including vehicles of transport, where pesticides or devices are being used or held for distribution or sale, for the purposes of inspecting records, inspecting and obtaining samples of pesticides or devices, and to inspect equipment or methods of application, to assure compliance with this part and the rules promulgated under this part.

(f) Allow only certified applicators to apply a pesticide that is classified as a restricted use pesticide pursuant to subsection (2).

(g) Conduct investigations when there is reasonable cause to believe that a pesticide has been used in violation of this part or the rules promulgated under this part.

(2) In addition to any other authority provided by this part, the director, by administrative order, may:

(a) Classify a pesticide as a restricted use pesticide in accordance with any 1 of the restrictive criteria in 40 C.F.R. 152.170.

(b) Create certification categories in addition to those promulgated by rule.

(3) Prior to classifying a pesticide as a restricted use pesticide under subsection (2), the director shall issue a preliminary administrative order and provide for a 30-day period for public comment and review pertaining to the preliminary order. Prior to issuing the final administrative order, the director shall review and consider any public comments received during the 30-day period. An administrative order classifying a pesticide as a restricted use pesticide shall cite each of the provisions of subsection (2) that justify that classification.

(4) The department shall develop a program on pesticide container recycling and disposal to be approved by the commission of agriculture. The program shall be limited to licensed pesticide dealers and other persons seeking approval from the department for participation in the program.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8323 Confirmation of groundwater contamination; duties of director; development of activity plan by person responsible for contamination; approval or rejection by director; continuation of certain activities; order to cease or modify activities; hearing.

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Sec. 8323. (1) Upon confirming contamination of groundwater by a pesticide pursuant to part 87 at a single location, the director shall do all of the following:

(a) Assist in the coordination of local activities designed to prevent further contamination of groundwater.

(b) Conduct envelope monitoring.

(c) Perform an evaluation of activities that may have contributed to the contamination.

(d) Make a determination as to the degree to which groundwater stewardship practices were being utilized.

(e) Make a determination as to the potential source or sources of the contamination.

(2) If confirmed concentrations of pesticides exceed the groundwater resource response level or a confirmed contaminant has migrated into groundwater off of the property, the director shall require a person whose action or negligence was potentially responsible for the contamination to develop an activity plan. A person required to develop an activity plan shall develop and submit the activity plan to the director within 90 days after receiving notice from the director. Upon receipt of an activity plan, the director shall approve or reject the plan within 90 days. If rejected, the director shall provide a description of reasons for rejection. Upon receipt of a rejection, the person shall within 90 days develop an acceptable activity plan.

(3) If the activities on a contamination site are determined by the director to be in accordance with all applicable components of the groundwater stewardship practices and groundwater protection rules, activities that are not responsible for or potentially responsible for the contamination incident may continue.

(4) If activities on a contamination site are determined by the director not to be in accordance with this part, the director may issue an order to cease or modify activities on the site involving pesticide use. A person aggrieved by an order issued under this section may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8324 Groundwater protection rules.

Sec. 8324. (1) The director shall promulgate a groundwater protection rule that defines the scope and region of implementation of the rule if any of the following occur:

(a) A pesticide has been confirmed in groundwater at levels exceeding its groundwater resource response level in at least 3 distinct locations as a result of similar activities as determined under section 8323(1) and the director determines that voluntary adoption of the groundwater stewardship practices pursuant to part 87 has not been effective in preventing groundwater contaminant concentrations from exceeding the groundwater resource response level.

(b) The EPA proposes to suspend or cancel registration of the pesticide, prohibits or limits the pesticide's sale or use in the state, or otherwise initiates action against the pesticide because of groundwater concerns.

(2) The director may promulgate a groundwater protection rule for a specific pesticide if the pesticide contains an active ingredient with a method detection limit greater than its groundwater resource response level.

(3) In determining the need for and scope of a groundwater protection rule, the director shall consider the type of contaminant or contaminants and the extent to which any of the following apply:

(a) The source or sources of the contaminant or contaminants can be identified.

(b) An identified source or sources are associated with a specific activity or activities.

(c) Local response to the contamination is adequate to protect groundwater.

(d) There are state label restrictions as allowed under sections 18 and 24 of FIFRA, chapter 125, 86 Stat. 995 and 997, 7 U.S.C. 136p and 136v, that could adequately address the problem.

(e) Restricted use classification could adequately address the problem.

(f) The use, value, and vulnerability of the resource and whether the groundwater is a currently or reasonably expected source of drinking water.

(g) The technical and economic feasibility of any mandated practices on persons in the region.

(h) The overall productivity and economic viability of the state's agriculture.

(4) In determining the region of implementation for a groundwater protection rule, the director shall consider both of the following:

(a) The reliability and geographical distribution of groundwater sample test data.

(b) The extent to which local aquifer sensitivity conditions can be considered characteristics of a larger region.

(5) The director may approve alternative operations to those defined in a groundwater protection rule if they can be shown to provide the equivalent level of groundwater protection.

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History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8325 Rules.

Sec. 8325. (1) The director shall promulgate rules for implementing this part, including, but not limited to, rules providing for the following:

(a) The collection, examination, and reporting the results of examination of samples of pesticides or devices.

(b) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.

(c) The designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state. The director may include in the rule the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides.

(d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers and agricultural pesticide dealers.

(e) The maintenance of records by certified commercial applicators with respect to applications of restricted use pesticides.

(f) Good practice in the use of pesticides.

(g) Notification or posting, or both, designed to inform persons entering certain public or private buildings or other areas where the application of a pesticide, other than a general use ready-to-use pesticide, has occurred.

(h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate.

(i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools.

(j) Responsibility of a building manager to post signs provided to him or her by a commercial applicator.

(k) Designation of posted school bus stops as sensitive areas.

(*l*) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3).

(2) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules pertaining to all of the following:

(a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(b) The development of training programs for integrated pest management systems in schools, public buildings, and health care facilities.

(c) The duty of commercial applicators to inform customers of potential risks and benefits associated with the application of pesticides.

(3) By June 27, 1990, the director shall submit rules to the joint committee on administrative rules pertaining to the protection of agriculture employees who hand harvest agricultural commodities regarding all of the following:

(a) The establishment of field reentry periods after the application of agricultural pesticides.

(b) The posting and notification of areas where pesticides have been applied.

(c) The use of protective clothing, safety devices, hand washing, or other methods of protection from pesticide exposure.

(d) Notification of agricultural workers of poison treatment facilities.

(4) If the EPA at any time adopts and publishes agricultural worker protection standards, the federal standards shall supersede rules promulgated under subsection (3).

(5) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules. These rules shall include all of the following:

(a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators.

(b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for

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pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(c) The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 285.636.1 et seq. of the Michigan Administrative Code.

324.8326 Pesticide advisory committee; creation; appointment, qualifications, and terms of members; vacancies; meetings; quorum; duties and responsibilities; meetings open to the public.

Sec. 8326. (1) A pesticide advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director.

(b) The director of the department of natural resources.

(c) A representative of the department of natural resources selected by the director of the department of natural resources who has expertise regarding water quality programs.

(d) The director of public health.

(e) The director of the Michigan cooperative extension service.

(2) The director shall appoint additional members to the committee, 1 each representing the following:

(a) The Michigan pest control association.

(b) Licensed outdoor commercial applicators.

(c) Producers of agricultural commodities.

(d) Licensed aerial applicators.

(e) Nongovernmental organizations for environmental preservation.

(f) Farm employees.

(g) Those in the medical or health science profession experienced in the toxicology of pesticides.

(h) Agricultural chemical industry.

(i) Nongovernmental organizations representing human health interests.

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

(4) The pesticide advisory committee shall consult with and advise the director in the administration of this part and shall have the following responsibilities:

(a) To analyze and summarize information pertaining to pesticide use, including, but not limited to, the number and types of pesticide use violations and the underlying causes and circumstances involving pesticide misuse, and to develop a profile of violators of this part.

(b) To evaluate potential contamination related to the size and disposal of pesticide containers for home, agricultural, industrial, and commercial use and make recommendations to the legislature.

(c) To utilize available information pertaining to the misuse of pesticides to determine whether the training programs offered by the director are effective in curtailing misuses.

(d) To review all training requirements for applicators and persons licensed under this part, including the specific review of the components of each area tested under this part, and to make recommendations to the director regarding training and testing. Notwithstanding the responsibilities of the committee under this subdivision, the specific test questions prepared to implement the requirements of this part shall remain confidential.

(e) To annually publish a report to be submitted to the governor, the legislature, and the director. The report shall include all of the following:

(*i*) A review of the recommendations of the committee.

(*ii*) Recommendations regarding amendatory language for this part.

(*iii*) Recommendations regarding resources necessary to adequately implement this part.

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(*iv*) A summary of the annual enforcement actions taken under this part.

(5) All meetings of the committee shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8327 Order to cease use of, or to refrain from intended use of, pesticide; effect of noncompliance; inspection; rescission of order.

Sec. 8327. (1) When the director has probable cause to believe that an applicator is using or intending to use a pesticide in an unsafe or inadequate manner or in a manner inconsistent with its labeling, the director shall order the applicator to cease the use of or refrain from the intended use of the pesticide. The order may be either oral or written and shall inform the applicator of the reason for the order.

(2) Upon receipt of the order, the applicator shall immediately comply with the director's order. Failure to comply constitutes cause for revocation of the applicator's license or certification or registration and subjects the applicator to the penalty imposed under section 8333.

(3) The director shall rescind the order upon being satisfied that the applicator has complied with the order.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8328 Local governments; powers.

Sec. 8328. (1) Except as otherwise provided in this section, it is the express legislative intent that this part preempt any local ordinance, regulation, or resolution that purports to duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, then that local unit of government may pass an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (7). The local unit of government's enforcement response for a violation of the ordinance that involves the use of a pesticide is limited to issuing a cease and desist order as prescribed in section 8327.

(3) A local unit of government may enact an ordinance identical to this part and rules promulgated under this part regarding the posting and notification of the application of a pesticide. Subject to subsection (8), enforcement of such an ordinance may occur without prior authorization from the department and without a contract with the department for the enforcement of this part and rules promulgated under this part. The local unit of government shall immediately notify the department upon enactment of such an ordinance and shall immediately notify the department of any citations for a violation of that ordinance. A person who violates an ordinance enacted under this subsection is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(4) A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and which regulates the distribution, sale, storage, handling, use, application, transportation, or disposal of pesticides under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the use of a pesticide within that unit of government has resulted or will result in the violation of other existing state laws or federal laws.

(5) An ordinance enacted pursuant to subsections (2), (3), and (4) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (4) shall not be enforced by a local unit of government until approved by the commission of agriculture. If the commission of agriculture denies an ordinance enacted pursuant to subsection (4), the commission of agriculture shall provide a detailed explanation of the basis of the denial within 60 days.

(6) Upon identification of unreasonable adverse effects on the environment or public health by a local unit of government as evidenced by a resolution submitted to the department, the department shall hold a local

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public meeting within 60 days after the submission of the resolution to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the use of pesticides. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(7) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated pursuant to this part. The department shall have sole authority to assess fees, register and certify pesticide applicators, license commercial applicators and restricted use pesticide dealer firms, register pesticide products, cancel or suspend pesticide registrations, and regulate and enforce all provisions of this part pertaining to the application and use of a pesticide to an agricultural commodity or for the purpose of producing an agricultural commodity.

(8) For any ordinance enacted pursuant to this section, the local unit of government shall provide that persons enforcing the ordinance comply with the training and enforcement requirements as determined by the director. A local unit of government shall reimburse the department for actual costs incurred in training local government personnel.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 172, Imd. Eff. Apr. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.8329 Order to stop prohibited conduct; proceeding in rem for condemnation; disposition of pesticide or device; award of court costs, fees, storage, and other expenses.

Sec. 8329. (1) When the director has reasonable suspicion that a pesticide or device is distributed, stored, transported, offered for sale, or used in violation of this part, the director may issue an order to stop the prohibited conduct. The person shall immediately comply with the order.

(2) A pesticide or device that is transported, or is in original unbroken packages, or is sold or offered for sale in this state, or is imported from a foreign country, in violation of this part, is liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if:

(a) In the case of a pesticide, any of the following circumstances exist:

(*i*) It is adulterated or misbranded.

(*ii*) It is not registered pursuant to this part.

(*iii*) Its labeling fails to bear the information required by FIFRA or by regulations promulgated under FIFRA.

(*iv*) Its coloring is different than that required under FIFRA.

(*v*) Any claims or directions for its use differ from the representations made with its registration.

(b) In the case of a device, it is misbranded.

(c) In the case of a pesticide or device, when used in accordance with the requirements imposed under this part it causes unreasonable adverse effects on the environment.

(3) If the pesticide or device is condemned, it shall be disposed of by destruction or sale as the court directs. If the pesticide or device is sold, the proceeds less the court costs shall be credited to the general fund. A pesticide or device shall not be sold contrary to this part or the laws of the jurisdiction in which it is sold. Upon payment of the costs of the condemnation proceedings and the execution and delivery of a sufficient bond conditioned that it shall not be sold or disposed of contrary to this part or the laws of the jurisdiction in which it is sold, the court may direct that it be delivered to the owner. The proceedings of condemnation cases shall conform as nearly as possible to proceedings in admiralty, except that either party may demand trial by jury of an issue of fact joined in a case, and the proceedings shall be brought by and in the name of the people of the state.

(4) Court costs, fees, storage, and other proper expenses shall be awarded against the person, intervening as claimant of the pesticide or device upon entry of a decree of condemnation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8330 Containers; labels; colored or discolored pesticides; handling, storage, display, or transportation of pesticides; adding or taking substance from pesticide; filing and inspection of shipping data.

Sec. 8330. (1) Pesticides distributed, transported, sold, or exposed or offered for sale in this state shall be

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in the registrant's or manufacturer's unbroken immediate container and shall have attached to it a label conforming to the labeling requirements as prescribed under this part or the rules promulgated under this part. The unbroken container requirement of this subsection does not apply to an applicator who is transporting a pesticide between the place of storage and the area of application.

(2) A pesticide container shall be free from damage that renders the pesticide unsafe.

(3) A pesticide that is required to be colored shall not be distributed, sold, exposed, or offered for sale unless the pesticide is colored as prescribed.

(4) A pesticide shall be handled, stored, displayed, or transported so that it will not endanger human beings and the environment or endanger food, feed, or other products that are stored, displayed, or transported with the pesticide.

(5) A person shall not detach, alter, deface, or destroy any portion of a label or labeling provided for in this part or rules promulgated under this part, or add a substance to or take a substance from a pesticide in a manner that may defeat the purpose of this part or FIFRA.

(6) A pesticide vendor shall keep on file, subject to inspection by an authorized agent of the director for a period of 1 year, all invoices, freight bills, truckers' receipts, waybills, and similar shipping data pertaining to pesticides that would establish date and origin of the shipments.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

Popular name: Act 451

Popular name: NREPA

324.8331 False information; resisting, impeding, or hindering director.

Sec. 8331. A person shall not give false information in a matter pertaining to this part, or resist, impede, or hinder the director or his or her authorized representatives in the discharge of their duties.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8332 Hearings.

Sec. 8332. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8333 Violation; administrative fine; warning; action to recover fine; misdemeanors; injunction; action by attorney general; compliance as affirmative defense; gross negligence; applicability of revised judicature act.

Sec. 8333. (1) A person who violates this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted alone or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for a hearing that a person has violated or attempted to violate any provision of this part, may impose an administrative fine of not more than $1,000.00 for each violation of this part.

(3) If the director finds that a violation or attempted violation occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under this section.

(5) A person who violates this part or attempts to violate this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both, for each offense.

(6) The director may bring an action to enjoin a violation of this part or an attempted violation of this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(7) The attorney general may file a civil action in which the court may impose on any person who violates this part or attempts to violate this part a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered

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under this subsection shall be forwarded to the state treasurer for deposit into the pesticide control fund created in section 8318.

(8) In defense of an action filed under this section, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation of this part or attempted violation of this part, he or she was in compliance with label directions and with this part and rules promulgated under this part at the time of the alleged violation.

(9) A civil cause of action does not arise for injuries to any person or property if a private agricultural applicator, or a registered applicator who stores, handles, or applies pesticides only for a private agricultural purpose, was not grossly negligent and stored, handled, or applied pesticides in compliance with this part, rules promulgated under this part, and the pesticide labeling.

(10) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Eff. Sept. 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.8334 Exemptions from penalties.

Sec. 8334. The penalties provided for violations of this part do not apply to any of the following:

(a) A carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the pesticide or devices.

(b) Public officials of this state and the federal government while engaged in the performance of their official duties in administering the state or federal pesticide laws or regulations.

(c) A person who ships a substance or mixture of substances being tested in which the only purpose is to determine its toxicity or other properties and from the use of which the user does not expect to receive any pest control benefit.

(d) The shipment or movement of an unregistered or canceled pesticide for the specific purposes of disposal or storage.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8335 Probable cause as precluding recovery of damages.

Sec. 8335. A court shall not allow the recovery of damages from an administrative action taken or an order stopping the sale or use or requiring seizure if the court finds that there was probable cause for the action or order.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8336 Effect of part on other civil or criminal liability; act or omission occurring before June 25, 1976.

Sec. 8336. (1) This part does not terminate or in any way modify any liability, civil or criminal, which is in existence on June 25, 1976.

(2) For the purposes of determining any penalty or liability in respect to an act or omission occurring before June 25, 1976, former Act No. 297 of the Public Acts of 1949, and former Act No. 233 of the Public Acts of 1959 shall apply.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 85
FERTILIZERS

324.8501 Definitions; A to T.

Sec. 8501. As used in this part:

(a) "Adulterated product" means a product that contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied

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in accordance with directions for use on the label, or if adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown on the label.

(b) "Agricultural use" means that term as defined in section 36101.

(c) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(d) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer.

(e) "Aquifer sensitivity region" means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit.

(f) "Biosolids" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment, or other means.

(g) "Brand or product name" means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(h) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(i) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or blended as specifically requested by the consumer prior to blending.

(j) "Department" means the department of agriculture and rural development.

(k) "Director" means the director of the department or his or her designee.

(*l*) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(m) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(n) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.

(o) "Fertilizer material" means a fertilizer to which 1 or more of the following apply:

(*i*) Contains not more than 1 of the following as primary nutrients:

(A) Total nitrogen (N).

(B) Available phosphate (P_2O_5).

(C) Soluble potash (K_2O).

(*ii*) Has 85% or more of its plant nutrient content present in the form of a single chemical compound.

(*iii*) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(p) "Fund" means the fertilizer control fund created under section 8514.

(q) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O), of a fertilizer. Grade shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(r) "Groundwater" means underground water within the zone of saturation.

(s) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture and rural development pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(t) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(u) "Impervious surface" means a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.

(v) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(w) "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

(x) "Licensee" means the person who receives a license to manufacture or distribute fertilizers under this part.

(y) "Lot" means an identifiable quantity of fertilizer that can be sampled officially according to methods adopted under section 8510, that is contained in a single vehicle, or that is delivered under a single invoice.

(z) "Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise

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treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.

(aa) "Manufacture" means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.

(bb) "Natural fertilizer" means a substance composed only of natural organic, natural inorganic, or both types of fertilizer materials and natural fillers.

(cc) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(dd) "Turf" means land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2008, Act 13, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

Popular name: Act 451

Popular name: NREPA

324.8501a Definitions; M to U.

Sec. 8501a. As used in this part:

(a) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(b) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.

(c) "Official sample" means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable sampling methods under section 8510.

(d) "Order" means a cease and desist order issued under section 8511.

(e) "Package" or "packaged" means any type of product regulated by this part that is distributed in individual labeled containers.

(f) "Percent" and "percentage" mean the percentage by weight.

(g) "Person" means an individual, partnership, association, firm, limited liability company, or corporation.

(h) "Primary nutrients" means total nitrogen, available phosphate, or soluble potash, or any combination of those nutrients.

(i) "Registrant" means the person who registers a product under this part.

(j) "Soil conditioner" means any substance that is used or intended for use to improve the physical characteristics of soil, including, but not limited to, materials such as peat moss and peat products, composted products, synthetic soil conditioners, or other products that are worked into the soil or are applied on the surface to improve the properties of the soil for enhancing plant growth. Soil conditioner does not include guaranteed plant nutrients, agricultural liming materials, pesticides, unmanipulated animal or vegetable manures, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth. A soil conditioner for which claims are made of nutrient value is considered a fertilizer for the purposes of this part.

(k) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as use in connection with home gardens, lawns, shrubbery, flowers, golf courses, parks, and cemeteries, and may include fertilizers used for research or experimental purposes.

(*l*) "Ton" means a net weight of 2,000 pounds avoirdupois.

(m) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8502 Label; invoice.

Sec. 8502. (1) A packaged fertilizer distributed in this state, including packaged mixed fertilizer and soil conditioner, shall have placed on or affixed to the package or container a label setting forth in clearly legible and conspicuous form the following:

(a) The net weight of the contents of the package, except that soil conditioners, peat, or peat moss may be designated by volume.

(b) Brand or product name.

(c) Name and address of the licensed manufacturer or distributor.

(d) Grade. However, the grade is not required when no primary nutrients are claimed. This subdivision does not apply to peat or peat moss, material sold as a soil conditioner, or fertilizer for which no primary nutrients are claimed.

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(e) Guaranteed analysis. This subdivision does not apply to peat or peat moss or material sold as a soil conditioner.

(2) A fertilizer distributed in this state in bulk, except a custom blend, shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Brand or product name.

(e) Grade. However, the grade is not required when no primary nutrients are claimed.

(f) Guaranteed analysis.

(g) Net weight.

(3) A custom blend shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Either the net weight and guaranteed analysis of the custom blend or the guaranteed analysis and net weight of each material used in the formulation of the custom blend or both.

(4) Fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name and address of the licensed manufacturer or distributor and the name and grade of the product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8503 Order and form of guaranteed analysis; minimum percentage of plant nutrients; additional plant nutrients; other beneficial compounds or substances.

Sec. 8503. (1) The guaranteed analysis shall show the minimum percentage of plant nutrients claimed in the following order and form:

(a) Total nitrogen (N). ____%

Available phosphate (P2O5). ____%

Soluble potash (K2O). ____%

(b) When applied to mixed fertilizers, grade shall be given in whole numbers only. However, specialty fertilizers with a guarantee of less than 1% of total nitrogen, available phosphate, and soluble potash may use fractional units. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(c) When applied to custom blends, grade can either be given in whole numbers or in numbers expressed to the nearest 1/10 of a percent in the form of a decimal in the analysis.

(d) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

(2) Additional plant nutrients, other than nitrogen, phosphorus, and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis, at levels not less than those established by rules. Other beneficial compounds or substances, determinable by laboratory methods, may be guaranteed if approved by the director.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8504 License to manufacture or distribute fertilizer; fee; application; beneficial use by-product intended for beneficial use 3; notice of additional distribution points; exceptions; expiration; operation of business located outside of state.

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

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

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

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

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

(a) The name and address of the applicant.

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

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

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

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

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

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

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

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

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324.8505 Distribution of specialty fertilizer or soil conditioner; registration; application; labels to accompany application; beneficial use by-product intended for beneficial use 3; copy of registration approval; expiration; fees; labeling blended soil conditioners; operation of business located outside of state.

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

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

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

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

(a) Registration fee of $25.00.

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

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

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

(7) A manufacturer or distributor of soil conditioners blended according to specifications provided to a blender or blended as specifically requested by the consumer prior to blending shall either register each brand

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or blend distributed or license its firm on an application furnished by the director for an annual fee of $100.00 and shall label the soil conditioner as provided in section 8502. The label of each soil conditioner distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

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

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

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8506 Inspection fee; tonnage reports as basis of payment; waiver; penalty; unpaid fees and penalties as basis of judgment; responsibility for reporting tonnage and paying inspection fee; deposit of money collected.

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

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

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

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8506a Audits.

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

History: Add. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Compiler's note: NREPA

324.8507 Records; disclosure of information.

Sec. 8507. (1) Each licensee and registrant shall maintain for a period of 3 years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee or registrant and shall make the records available for inspection and audit during normal business hours on request of the department. Each distributor shall maintain for a period of 3 years shipping data such as invoices and freight bills pertaining to

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fertilizer and soil conditioner that establish date and origin of the shipment, and shall make the records available for inspection and audit on request of the department.

(2) Tonnage payments, tonnage reports, or other information furnished or obtained under this part shall not be disclosed in a way that will divulge the business operations of any 1 person.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8507a Access to markets for fertilizer; certificate of free sale; application; fees; "certificate of free sale" defined.

Sec. 8507a. (1) To facilitate continued access to markets for fertilizer, the department may do 1 or both of the following:

(a) At the request of a licensee or based upon records voluntarily supplied by a licensee, inspect, audit, or certify locations where fertilizer is manufactured in this state.

(b) Issue certificates of free sale under subsection (3).

(2) A licensee shall submit an application for a certificate of free sale on a form and in a manner prescribed by the department.

(3) The department shall grant or deny an application for a certificate of free sale within 10 business days after the department receives a completed application under subsection (2) and the application fee under subsection (4). If the department determines that the application meets the requirements of this part and the rules promulgated under this part, the department shall issue a certificate of free sale. If the department determines that the application does not meet the requirements of this part or the rules promulgated under this part, the department shall deny the application and send written notice to the licensee stating the reasons for the denial.

(4) A licensee shall pay the department the following fees, as applicable:

(a) An application fee, $60.00.

(b) A duplicate copy of a certificate of free sale, $10.00.

(5) A fee collected under subsection (4) must be deposited in the fertilizer control fund created in section 8514.

(6) A certificate of free sale issued under this section is valid for 1 year.

(7) As used in this section, "certificate of free sale" means a document that is issued by the department that verifies that the fertilizer listed is manufactured in this state and is legally sold or distributed in this state and on the open market with the approval of the department.

History: Add. 2022, Act 125, Imd. Eff. June 29, 2022.

Popular name: Act 451

Popular name: NREPA

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324.8508 Construction and application of part.

Sec. 8508. (1) This part does not require the payment of inspection fees for sales or exchanges of fertilizers or soil conditioners between manufacturers who mix fertilizer or soil conditioner materials for sale, or prevent the free and unrestricted shipment of fertilizers or soil conditioners for further processing to manufacturers licensed under this part.

(2) This part does not apply to a carrier in respect to a fertilizer or soil conditioner delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8509 Prohibitions.

Sec. 8509. A person shall not do any of the following:

(a) Sell or distribute fertilizer or soil conditioner in violation of the requirements of this part or the rules promulgated under this part.

(b) Make a guarantee, claim, or representation in connection with the sale of fertilizer or soil conditioner, or in its labeling, which is false, deceptive, or misleading.

(c) Manufacture or distribute a fertilizer or soil conditioner without a license as required by this part or distribute a specialty fertilizer or soil conditioner unless registered as required by this part.

(d) Make a false or misleading statement in an application for a license or in an inspection fee or statistical

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report or in any other statement or report filed with the department pursuant to this part.

(e) Attach or cause to be attached an analysis stating that a fertilizer contains a higher percentage of a plant nutrient than it in fact contains.

(f) Distribute an adulterated product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8510 Inspecting, sampling, and analyzing fertilizer and soil conditioners; methods; rules; access to premises; stopping conveyances; submission of information to department; confidentiality.

Sec. 8510. (1) The director shall inspect, sample, and analyze fertilizers and soil conditioners distributed within this state at a time and place and to the extent necessary to determine compliance with this part.

(2) The methods of sampling and analysis under subsection (1) shall be those as established by the association of American plant food control officials or the association of analytical communities, international, as those standards exist on the effective date of the amendatory act that added this subsection, and are incorporated by reference. The department may promulgate rules to update these standards. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the director may adopt, by rule, such other methods as are considered appropriate.

(3) Department representatives and inspectors shall have free access during regular business hours and extended operating hours to all premises where fertilizers or soil conditioners are manufactured, sold, or stored, and to all trucks or other vehicles and vessels used in the transportation of a fertilizer or soil conditioner in this state, to determine compliance with this part. Department representatives and inspectors may stop any conveyance transporting fertilizer or soil conditioner for the purpose of inspecting and sampling the products and examining their labeling.

(4) A manufacturer or distributor of fertilizer or soil conditioner shall submit to the department, upon request, product samples, copies of labeling, or any other data or information that the department may request concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by the manufacturer or distributor within this state.

(5) The director may, upon reasonable notice, require a person to furnish any information relating to the identification, nature, and quantity of fertilizers that are or have been used on a particular site and to current or past practices that may have affected groundwater quality. Information required under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8511 Selection of sample from package or bulk lot for comparison with label; order to cease and desist; seizing, or stopping sale of, fertilizer or soil conditioner; conditions; filing action with court.

Sec. 8511. (1) The director, by a duly authorized agent, may select from any package or bulk lot of commercial fertilizer or soil conditioner exposed for sale in this state a sample to be used for the purposes of an official analysis for comparison with the label affixed to the package or bulk lot on sale. The director may at any time order a person to cease and desist from manufacturing, storing, distributing, selling, or registering a product regulated by this part, or may seize or stop the sale of a fertilizer or soil conditioner that is misbranded or adulterated, fails to meet a label claim or guarantee, is being manufactured or distributed by an unlicensed person, or otherwise fails to comply with this part.

(2) An order shall be written and shall inform the manufacturer, storage operator, distributor, seller, or registrant of the grounds for issuance of the order. The person receiving the order shall immediately comply with the order. Failure to comply shall subject the person to the penalty imposed under this part.

(3) The director shall rescind the order immediately upon being satisfied by inspection of compliance with the order. The inspection shall be conducted as soon as possible at the verbal or written request of the responsible party. The rescinding order of the director may be verbal and the person may rely on the verbal rescinding order. However, a verbal order shall be followed by a written rescinding order.

(4) The director may issue and enforce a written order prohibiting the sale, use, or removal of a product regulated by this part to the owner or custodian of any product or product lot and requiring the product to be

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held by the owner or custodian at a designated place when the director finds that the product is being distributed in violation of this part. The order remains in effect until the director determines that the person is complying with the law or until the violation has been otherwise legally disposed of by written authority. The director shall release the product for sale, use, or removal upon compliance with this part and payment of all costs and expenses incurred in connection with the issuance and enforcement of the order.

(5) Any product or product lot not in compliance with this part is subject to seizure upon an action filed by the director in a court of competent jurisdiction in the county in which the product is located. If the court finds the product to be in violation of this part and orders the condemnation of the product, the product shall be disposed of in any manner consistent with the quality of the product and the laws of this state except that the disposition of the product shall not be ordered by the court without first providing the claimant an opportunity to petition the court for release of the product or for permission to process or relabel the product to bring it into compliance with this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.8512 Nitrates in groundwater exceeding certain limits associated with aquifer sensitivity or fertilizer use; educational materials provided to fertilizer users; authority of department director; eligibility of regional stewardship to receive certain grants; authorization to land-apply materials containing fertilizers at agronomic rates.

Sec. 8512. (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director of the department shall provide educational materials to fertilizer users within that region and may do 1 or more of the following:

(a) Establish a regional stewardship team to assist in the coordination of local activities designed to prevent further contamination of groundwater and to identify all probable sources of nitrate.

(b) Conduct further monitoring to determine the concentration and spatial distribution of nitrates in the aquifer.

(c) Perform an evaluation of activities in the monitoring region to determine the sources of nitrate that may have contributed to the contamination.

(d) Implement a stewardship program in the aquifer sensitivity region pursuant to part 87.

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities, which plan must include an assessment of all probable sources of nitrates.

(f) Establish a program that provides incentives for users to increase nitrogen use efficiency.

(2) Upon approval of a regional plan by the director of the department, the regional stewardship team is eligible to receive grants from the freshwater protection fund established by part 87.

(3) The director of the department may, upon written request, authorize persons to land-apply materials containing fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8512b Fertilizer containing phosphate; application to turf; requirements.

Sec. 8512b. (1) Except as provided in subsection (2), (3), (4), or (5), a person shall not apply to turf a fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5).

(2) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate (P_2O_5) in the soil is deficient to support healthy turf grass growth or establishment, a person may apply fertilizer to the turf at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(3) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subsection (2) has not been performed, a person may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the standard rate for new turf grass establishment, which shall be specified by the director after consultation with the Michigan state university

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extension.

(4) A person may apply biosolids, a natural fertilizer, or a manipulated manure to turf at a rate of not more than 0.25 pounds of phosphorus per 1,000 square feet at any 1 time.

(5) In addition, a person may apply fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5) to a golf course if 1 or more of the following apply:

(a) The golf course has been certified by an organization as a result of the golf course's staff having successfully completed a training program approved by the director. The director shall approve a training program if it is a continuing program, adequately addresses best management practices for use of turf fertilizer containing available phosphate, and requires trainees to demonstrate successful implementation of those best management practices.

(b) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate in the soil is deficient to support healthy golf course turf grass growth or establishment, the golf course may apply fertilizer at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(c) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subdivision (b) has not been performed, a golf course may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the rate necessary for new golf course turf grass establishment.

(6) A person shall not apply fertilizer to turf within 15 feet of any surface water, unless 1 or more of the following apply:

(a) A continuous natural vegetative buffer at least 10 feet wide separates the turf from the surface water.

(b) A spreader guard, deflector shield, or drop spreader is used when applying the fertilizer, and the fertilizer is not applied within 3 feet of the surface water.

(7) A person shall not clean a fertilizer spreader that is used to apply fertilizer to turf in a manner that allows wash water from the spreader to discharge directly into waters of this state, including, but not limited to, a drain under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(8) The department shall post information concerning the requirements of subsections (1) to (5) on its website and publicize the availability of that information by whatever means the department determines to be appropriate.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

Popular name: Act 451

Popular name: NREPA

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324.8512f Release of fertilizer on impervious turf; application of fertilizer on frozen or saturated turf.

Sec. 8512f. (1) A person who releases fertilizer on an impervious surface shall do both of the following:

(a) Promptly contain the fertilizer.

(b) Either legally apply the fertilizer to turf or another appropriate site or return the fertilizer to an appropriate container.

(2) A person shall not apply a fertilizer to turf if the soil is frozen or saturated with water.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

324.8512g Residential uses of phosphorus; consumer information on use restrictions and recommended best practices.

Sec. 8512g. The department, in consultation with the fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties, may approve consumer information on use restrictions and recommended best practices for lawn fertilizer containing available phosphate (P_20_5), and on best management practices for other residential uses of phosphorus. The information shall be in a format and include content suitable for use by the general public or posting and distribution at retail points of sale of turf fertilizer.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

324.8512h Fertilizer advisory committee; membership; terms; removal; vacancy; meetings; quorum; duties; meetings subject to open meetings act; "committee" defined.

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

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

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(b) Two members representing the fertilizer industry.

(c) One member representing the specialty fertilizer industry.

(d) Four members representing farmers and other agricultural organizations.

(e) One member from the United States Department of Agriculture Natural Resources Conservation Service.

(f) One member who is a certified crop advisor.

(g) One member representing conservation districts.

(h) The director of Michigan State University AgBioResearch.

(i) One member representing the largest statewide land conservancy in this state.

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

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

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

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

History: Add. 2015, Act 118, Eff. Oct. 1, 2015.

Compiler's note: Act 451

Compiler's note: NREPA

324.8513 Rules; bulk storage of fertilizers; exemption.

Sec. 8513. (1) The department may promulgate rules regarding the bulk storage of fertilizers.

(2) If storage of a material used as a beneficial use by-product for beneficial use 3 under part 115 meets the storage requirements of that part, then the storage is exempt from regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 285.641.1 et seq. and R 285.642.1 et seq. of the Michigan Administrative Code.

324.8514 Fertilizer control fund; creation; deposits; money remaining in fund; lapse; expenditures; grants to local government agencies, institutions of higher education, or nonprofit organizations; notice to legislature.

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

(2) The state treasurer shall receive for deposit in the fund all fees, administrative or civil fines, and payments for the costs of investigations incurred by the department collected under this part. In addition, the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

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

(a) The administration and enforcement of this part.

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

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

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

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8515 Revocation or refusal of license or registration; grounds; hearing; exception for refusal to sell ammonium nitrate fertilizer.

Sec. 8515. (1) The director of the department may revoke the license of a manufacturer or distributor or the registration of a fertilizer product or soil conditioner, or may refuse to license a manufacturer or distributor or to register a fertilizer product or soil conditioner, upon satisfactory evidence that the licensee has engaged in fraudulent or deceptive practices or has evaded or attempted to evade this part or the rules promulgated under this part.

(2) A license or registration shall not be revoked or refused until the licensee or applicant has been given the opportunity by the director of the department to appear for a hearing.

(3) The department shall not suspend or revoke the license of a distributor or manufacturer who refuses to sell ammonium nitrate fertilizer to a person who fails to comply with the request for information required under section 8518 or who refuses to sell ammonium nitrate fertilizer to a person who purchases that fertilizer out of season, in unusual amounts, or under a pattern or circumstances considered unusual, as described in section 8518.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2005, Act 68, Imd. Eff. July 11, 2005.

Popular name: Act 451

Popular name: NREPA

324.8516 Enforcement; rules.

Sec. 8516. The director of the department shall enforce this part and may promulgate rules.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8517 Local ordinance, regulation, or resolution; preemption; adoption; enforcement; identification of unreasonable adverse effects; local public meeting; contract by director with local government; compliance with training and enforcement requirements; application of fertilizer containing phosphate.

Sec. 8517. (1) Except as otherwise provided in this section, this part preempts any local ordinance, regulation, or resolution that would duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not adopt, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, that local unit of government may adopt an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (6). The local unit of government's enforcement response for a violation of the ordinance that involves the manufacturing, storage, distribution, sale, or agricultural use of products regulated by this part is limited to issuing a cease and desist order in the manner prescribed in section 8511.

(3) A local unit of government may adopt an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part only under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will otherwise exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part within that unit of government has resulted or will result in the violation of other existing state or federal laws.

(4) An ordinance adopted under subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance adopted under subsection (3) shall not be enforced by a local unit of government until approved by the commission of agriculture. The commission of agriculture shall provide a detailed explanation of the basis of a denial within 60 days.

(5) Within 60 days after the legislative body of a local unit of government submits to the department a

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resolution identifying unreasonable adverse effects on the environment or public health as provided for in subsection (3)(a), the department shall hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(6) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated under this part. The department has sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and administer and enforce provisions of section 8512.

(7) A local unit of government that adopts an ordinance under subsection (2) or (3) shall require persons enforcing the ordinance to comply with training and enforcement requirements determined appropriate by the director.

(8) Subsection (1) does not prohibit the maintenance or enforcement of an ordinance that regulates or prohibits the application to turf of fertilizer containing the plant nutrient available phosphate (P_2O_5), but only if the ordinance was in effect on the enactment date of the amendatory act that added this subsection.

History: Add. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2008, Act 14, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

Popular name: Act 451

Popular name: NREPA

324.8518 Ammonium nitrate fertilizer; storage methods; information to be obtained by retailers; records; refusal of retailer to sell.

Sec. 8518. (1) A retailer shall secure at all times ammonium nitrate fertilizer to provide reasonable protection against vandalism, theft, or unauthorized access. Secured storage includes, but is not limited to, the following methods:

(a) Fencing.

(b) Lighting.

(c) Locks.

(2) Retailers shall obtain the following information regarding any sale of ammonium nitrate fertilizer:

(a) Date of sale.

(b) Quantity purchased.

(c) License number of the purchaser's valid state operator's license with the appropriate endorsement, if applicable, or other picture identification card number approved for purchaser identification by the department.

(d) The purchaser's name, current address, and telephone number.

(e) The agency relationship, if any, between the purchaser and the person picking up or accepting delivery of the ammonium nitrate fertilizer.

(3) Records created pursuant to this section shall be maintained by the retailer for a minimum of 2 years on a form or using a format recommended by the department. Records shall be made available for inspection and audit upon request of the director of the department.

(4) Records generated by means of the tracking system established under subsection (2) are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Any retailer of ammonium nitrate fertilizer may refuse to sell to any person attempting to purchase ammonium nitrate fertilizer out of season, in unusual patterns or circumstances, or in unusual amounts as determined by the retailer.

History: Add. 2005, Act 68, Imd. Eff. July 11, 2005.

Popular name: Act 451

Popular name: NREPA

324.8519 Hearing; request.

Sec. 8519. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8520 Violations; penalties; remedies; injunctive action; civil action; defenses; liability for

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damages; applicability of provisions of revised judicature act.

Sec. 8520. (1) A person who violates or attempts to violate this part or rules promulgated under this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted directly or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for an administrative hearing that a person has violated or attempted to violate any provision of this part or a rule promulgated under this part, may impose an administrative fine of not more than $1,000.00 for each violation or attempted violation. A person shall not be fined under both this subsection and subsection (7) for the same violation or attempted violation. A person shall not be fined under this subsection for a violation described in subsection (7)(b).

(3) If the director finds that a violation or attempted violation has occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(5) A person who violates this part or a rule promulgated under this part, or attempts to violate this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00 for each violation or attempted violation, in addition to any administrative fines imposed. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(6) A person who knowingly and with malicious intent violates or attempts to violate this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $25,000.00 for each offense. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(7) A person who violates or attempts to violate section 8512b or 8512f is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than the following for each violation or attempted violation:

(a) Except as provided in subdivision (b), not more than $1,000.00.

(b) Not more than $50.00 if all of the following apply:

(*i*) The violation or attempted violation occurs on a single-family residential parcel, or any other parcel or contiguous parcels with a total of not more than 4 acres of turf.

(*ii*) The violation or attempted violation is committed by the property owner or lessee, a member of his or her family, or a person who resides on the property.

(8) The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(9) The attorney general may file a civil action in which the court may impose on any person who violates or attempts to violate this part or a rule promulgated under this part, other than section 8512b or 8512f, a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the fund.

(10) In defense of an action filed under this section for a violation or attempted violation of this part, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation or attempted violation, he or she was in compliance with this part and rules promulgated under this part.

(11) A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other sanctions provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

(12) A civil action filed pursuant to this part is subject to applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

Compiler's note: Act 451

Popular name: NREPA

324.8521 Penalties and sanctions; exceptions.

Sec. 8521. The penalties and sanctions provided for violations of this part do not apply to any of the

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following:

(a) A commercial carrier while lawfully engaged in transporting a commercial fertilizer within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the commercial fertilizer.

(b) The shipment or movement of any commercial fertilizer considered to be in violation of this part, for the specific purposes of disposal or storage when conducted under the approval of the director.

(c) Public officials of this state and the federal government while engaged in the performance of their official duties in administering this part or rules promulgated under this part.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8522 Finding of probable cause.

Sec. 8522. A court shall not allow the recovery of damages by a person against whom an administrative action was brought resulting in an order stopping the sale or use of fertilizer or fertilizer material or requiring its seizure if the court finds that there was probable cause for the action or order.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

PART 87
GROUNDWATER AND FRESHWATER PROTECTION

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324.8701 Meanings of words and phrases.

Sec. 8701. For purposes of this part, the words and phrases defined in sections 8702 to 8705 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8702 Definitions; A to D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

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Popular name: Act 451

Popular name: NREPA

324.8703 Definitions; E to M.

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

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

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

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

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

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

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

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

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

(a) Conservation practices.

(b) Site-specific nutrient management plan requirements.

(c) Emergency protocols.

(d) Completed environmental risk and benefit assessments.

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

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

(g) Other standards considered appropriate by the director.

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8704 Definitions; O, P.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8705 Definitions; R to W.

Sec. 8705. (1) "Registrant" means that term as defined in part 83.

(2) "Restricted use pesticide" means that term as defined in part 83.

(3) "Site-specific nutrient management plan" means a plan designed to assist farmers in achieving MAEAP standards that includes both of the following:

(a) Conservation practices and nutrient management activities that, when implemented as part of a conservation system, will help to ensure that both production and natural resources protection goals are achieved.

(b) Proposed actions to address soil erosion, manure, and organic by-products and their potential impact on

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water quality.

(4) "State management plan" means a plan for the protection of groundwater as required by the United States Environmental Protection Agency's labeling requirements for pesticides and devices under 40 CFR part 156.

(5) "Technical assistance" means direct on-site assistance provided to individuals that is designed to achieve MAEAP standards.

(6) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a pesticide or fertilizer.

(7) "Verification" means the on-site evaluation performed by the department in accordance with protocols adopted by the commission of agriculture and rural development to determine if MAEAP standards have been met.

(8) "Water monitoring" means monitoring of water in areas adjacent to properties to determine the concentration and spatial distribution of contaminants.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

Popular name: Act 451

Popular name: NREPA

324.8706 Purpose of part.

Sec. 8706. The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8707 Conservation practices; on-site evaluations; review and evaluation.

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

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

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

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

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

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

(e) Provide farmers with the opportunity for verification.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2000, Act 100, Imd. Eff. May 19, 2000;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8708 Environmental assurance advisory council.

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

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

(b) The director of the department of environment, Great Lakes, and energy.

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

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(d) The director of the Michigan State University AgBioResearch.
(e) Representatives of all of the following as appointed by the director to serve terms of 3 years:
(*i*) The United States Department of Agriculture, Farm Service Agency.
(*ii*) The United States Department of Agriculture Natural Resources Conservation Service.
(*iii*) Conservation districts.
(*iv*) Farmers and other agricultural organizations.
(*v*) Nongovernmental conservation and environmental organizations.
(*vi*) Regulated agricultural industries.
(*vii*) A private consulting forester.
(*viii*) A member of the forest products industry.
(*ix*) A member of the logging profession.
(*x*) Other individuals as determined by the director.
(*xi*) A member representing each regional environmental assurance team established under section 8709.
(2) The council shall be co-chaired by the representative from Michigan State University Extension and a representative from 1 of the farmers and other agricultural organizations.
(3) The council shall advise the director on topics including, but not limited to, the following:
(a) MAEAP standards.
(b) On-site evaluations for verification of specific aspects of a farming operation.
(c) Water quality and environmental monitoring.
(d) Protocols for verification and revocation of verification.
(e) MAEAP activities.
(f) Interagency coordination of conservation programs.
(g) The use of money in the clean water fund created in section 8807 and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.
(h) Options to increase assistance to assist small- and medium-sized farms in achieving MAEAP standards.
(i) The creation of subcommittees as needed to address emerging and ongoing issues.
(j) On-site evaluations of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.
(4) The council shall do all of the following:
(a) Annually provide recommendations to the director on MAEAP standards and protocols for verification and revocation of verification for consideration by the commission of agriculture and rural development.
(b) Annually submit a report to the department that outlines activities, accomplishments, and emerging issues. The department shall share this report with the agriculture community.
(c) Provide recommendations to the director on the creation of a tiered recognition program for farms working toward MAEAP verification. To qualify for the tiered recognition program, farmers must have completed educational programs, conducted appropriate farm assessments, and implemented conservation practices as approved by the director. The tiers may be used to recognize a farm's movement toward MAEAP verification.
(d) Beginning April 1, 2022, provide biannually, or at the request of the director, recommendations to the director and the legislature on incentives and program modifications to increase participation in MAEAP.
(e) Annually provide recommendations to the director on funding for research projects that address impediments to verification and improve MAEAP practice standards.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

Compiler's note: For abolishment of the groundwater advisory council and transfer of its powers and duties to the department of agriculture, see E.R.O. No. 2007-5, compiled at MCL 324.99907.

Popular name: Act 451

Popular name: NREPA

324.8709 Environmental assurance teams.

Sec. 8709. (1) The director may establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other persons as determined necessary by the director, or the team, or both for implementation of programs developed under this part.
(2) The environmental assurance teams established under subsection (1) are responsible for implementation of programs developed under this part, including, but not limited to, all of the following:
(a) Providing access to educational opportunities including direct educational assistance and consulting programs; demonstration projects; educational programs; and tours, workshops, and conferences.
(b) Providing access to technical assistance related to any of the following:

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(*i*) On-site evaluation of practices that may impact natural resources.

(*ii*) The development and implementation of conservation plans.

(*iii*) The development and implementation of activity plans for persons making conservation practice changes.

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

(c) Evaluating, as available, grants to persons implementing activity plans and conservation practices required to achieve MAEAP standards.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.8710 Michigan agriculture environmental assurance program.

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

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

(a) Complete educational requirements authorized by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Technical assistance.

(b) Promotion of the MAEAP.

(c) Educational programs related to the MAEAP.

(d) Demonstration projects to implement conservation practices.

(e) Removal of potential sources of contamination.

(f) Other purposes considered appropriate by the director.

(10) Following review of the proposed tiered recognition program submitted to the director by the council under section 8708, the director shall approve and implement a tiered recognition program. As part of the

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tiered recognition program, the department shall provide a certificate of progress to a farm participating in MAEAP recognizing each time a new tier is achieved. The certificate of progress shall summarize conservation practices implemented by the farm and the environmental impacts of the implemented conservation practices. The certificate of progress shall recognize the farm for its achievement and encourage the farm to complete the remaining conservation practices necessary for verification. A certificate of progress is valid for 5 years from the date of mailing. Upon written confirmation by the farmer and the MAEAP technician updating any new conservation practices and confirming that all previous applicable conservation practices are still being implemented, the department shall reissue a certificate of progress for additional 5-year periods, as appropriate, until the farm becomes MAEAP-verified in the applicable system or the farmer ceases implementation of the conservation practices. Information collected under this section is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

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

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

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

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

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

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

(*i*) Conservation practices implemented.

(*ii*) Environmental impacts of practices implemented.

(*iii*) Number of new verifications and reverifications.

(*iv*) Number of unique farms verified.

(*v*) Number of farms in tiered recognition system.

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

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

(*i*) Conservation practices implemented.

(*ii*) Environmental impacts of practices implemented.

(*iii*) Number of new verifications and reverifications.

(*iv*) Number of unique farms verified.

(*v*) Number of farms in tiered recognition system.

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

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

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8711 Designation of pesticide as restricted use; establishment of groundwater resource

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protection levels.

Sec. 8711. (1) Pesticides containing ingredients that have been confirmed in groundwater at a level above their groundwater resource response level or pesticides for which a state management plan is required shall be registered as restricted use pesticides pursuant to part 83. The director, by rule promulgated pursuant to part 83, shall establish criteria for designating a pesticide a restricted use pesticide due to groundwater concerns.

(2) The director of the department of public health shall establish groundwater resource protection levels and promulgate groundwater resource protection levels for all pesticides that do not have a federally established maximum contaminant level or a health advisory level and for which monitoring occurs.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8712 Program to track restricted use pesticides to county of application; additional information required; confidentiality.

Sec. 8712. (1) The director shall establish and implement a program to track restricted use pesticides to their county of application.

(2) The director may require additional information for more refined tracking in specific areas determined through groundwater impact potential estimation to be highly vulnerable to groundwater contamination for those pesticides in which the United States environmental protection agency has required a state management plan.

(3) Information collected in subsection (2) is confidential business information and is not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.8713 Water quality monitoring program.

Sec. 8713. (1) The director, in conjunction with the department of environmental quality and the department of community health, shall develop and establish priorities, procedures, and protocols for the implementation of a water quality monitoring program to do all of the following:

(a) Provide general screening of groundwater or surface water, or both.

(b) Determine the relative risk of groundwater contamination at different locations.

(c) Perform envelope monitoring.

(2) The director shall, in a timely manner, notify affected well owners of their monitoring results from the monitoring conducted pursuant to this section, including the method detection limits and associated water resource protection levels.

(3) The monitoring program conducted pursuant to this section may provide for modifications of sampling density and analytes to reflect regional groundwater impact potential.

(4) The monitoring conducted pursuant to this section shall be conducted utilizing generally accepted scientific practices.

(5) The department shall establish a method detection limit goal for monitoring conducted pursuant to this section set at 10% of a compound's groundwater resource response level.

(6) Agencies conducting monitoring for pesticides or fertilizers pursuant to this section shall notify the director, on forms provided by or in a format approved by the director, of the location, procedure, and concentration of all pesticide detections or nitrate concentrations in excess of 10 parts per million. Information received by the director shall be evaluated based upon accepted protocols and procedures established under this part.

(7) The director shall establish by rule laboratory confirmation mechanisms used under this part.

(8) The director shall establish by rule risk assessment protocols for the development of groundwater resource protection levels.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8713a Surface water quality monitoring program.

Sec. 8713a. (1) The director, in consultation with the council, may develop and establish priorities,

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procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

(a) Promote voluntary water quality monitoring by farms.

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

(2) Water quality information collected under this section by the department in cooperation with farmers shall be aggregated and made available to the commission of agriculture and rural development. Specific locations or persons involved in water quality information collection are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8714 Confirmation of adverse impact on groundwater; powers and authority of director.

Sec. 8714. (1) Upon confirmation of an adverse impact on groundwater, the director may, upon reasonable notice, require a person to furnish any information that the person may have relating to the identification, nature, and quantity of pesticides and fertilizers that are or have been used on a particular site and to current or past production practices that may have impacted groundwater quality. This information shall be treated as confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The director may, upon written request, authorize persons to land-apply materials contaminated with pesticides or fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

***** *324.8715 THIS SECTION IS REPEALED BY ACT 123 OF 2021 EFFECTIVE DECEMBER 31, 2025* *****

324.8715 Fees; repeal of section.

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

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

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

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

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

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

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

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

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

(8) This section is repealed December 31, 2025.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 2000, Act 100, Imd. Eff. May 19, 2000;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

Popular name: Act 451

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Popular name: NREPA

324.8716 Freshwater protection fund.

Sec. 8716. (1) The freshwater protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including general fund general purpose appropriations, gifts, grants, and bequests. The director shall annually seek matching general fund general purpose appropriations in amounts equal to the water quality protection fees collected under section 8715 that are deposited into the fund under this part. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(4) The department is the administrator of the fund for auditing purposes.

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

(a) Direct assistance.

(b) Indirect assistance.

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

(d) Natural resources protection.

(e) Administrative costs. Expenditures under this subdivision must not exceed 20% of the annual appropriations from the fund.

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

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

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

(9) As used in this section:

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

(*i*) Groundwater monitoring for pesticides and fertilizers.

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

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

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

(*v*) Management of pesticide sales information.

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

(*i*) Provision of alternate noncommunity water supplies.

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

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

(*iv*) Pesticide disposal programs.

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

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

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

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

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

(*x*) MAEAP grants under section 8710.

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

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(*xii*) Verification.

(*xiii*) Other programs established under this part.

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

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

(*ii*) Educational programs.

(*iii*) Technical assistance programs.

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

(*v*) Research programs.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

Popular name: Act 451

Popular name: NREPA

324.8717 Rules.

Sec. 8717. The department may promulgate rules as it considers necessary or advisable to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 88
WATER POLLUTION PREVENTION AND MONITORING

324.8801 Definitions.

Sec. 8801. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Director" means the director of the department.

(c) "Fund" means the clean water fund created in section 8807.

(d) "Grant" means a nonpoint source pollution prevention and control grant or a wellhead protection grant under this part.

(e) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; the office of a county drain commissioner; a soil conservation district established under part 93; a watershed council; a local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105; or an authority or any other public body created by or pursuant to state law.

(f) "MAEAP" means the Michigan agriculture environmental assurance program as that term is defined in part 87.

(g) "MAEAP-verified farm" means that term as it is defined in part 87.

(h) "Nonpoint source pollution" means water pollution from diffuse sources, including runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8802 Nonpoint source pollution prevention and control grants; wellhead protection grants.

Sec. 8802. (1) The department, in consultation with the department of agriculture and rural development, shall establish a grants program to provide grants for nonpoint source pollution prevention and control projects and wellhead protection projects. The grants program shall provide grants to local units of government or entities that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(2) The nonpoint source pollution prevention and control grants issued under this part shall be provided for projects that do 1 or more of the following:

(a) Implement the physical improvement portion of watershed plans that are approved by the department.

(b) Reduce specific nonpoint source pollution as identified by the department.

(c) Promote MAEAP verification.

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(3) The wellhead protection grants issued under this part shall be provided for projects that are consistent with a wellhead protection plan approved by the department and that do any of the following:

(a) Plug abandoned wells.

(b) Provide for the purchase of land or the purchase of rights in land to protect aquifer recharge areas.

(c) Implement the physical improvement portion of the wellhead protection plan.

(4) For any grant issued under this part, a local unit of government shall contribute at least 25% of the project's total cost from other public or private funding sources. The department may approve in-kind services to meet all or a portion of the match requirement under this subsection. In addition, the department may accept as the match requirement under this subsection a contract between the grant applicant and the department that provides for maintenance of the project or practices that are funded under terms acceptable to the department. The contract shall require maintenance of the project or practices throughout the period of time in which the state is paying off the bonds that were issued pursuant to the clean Michigan initiative act to implement this part.

(5) In issuing grants under this section, the department, in consultation with the department of agriculture and rural development, shall select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8803 Grant awards; criteria for project selection.

Sec. 8803. In selecting projects for a grant award, the department shall consider the following as they relate to a project:

(a) The expectation for long-term water quality improvement.

(b) The expectation for long-term protection of high quality waters.

(c) The consistency of the project with remedial action plans and other regional water quality or watershed management plans approved by the department.

(d) The placement of the watershed on the list of impaired waters pursuant to section 303(d) of title III of the federal water pollution control act, chapter 758, 86 Stat. 846, 33 U.S.C. 1313.

(e) Commitments for financial and technical assistance from the partners in the project.

(f) Financial and other resource contributions, including in-kind services, by project participants in excess of that required in section 8802(4).

(g) The length of time the applicant has committed to maintain the physical improvements.

(h) The commitment to provide monitoring to document improvement in water quality or the reduction of pollutant loads.

(i) Whether the project provides benefits to sources of drinking water.

(j) Other information the department considers relevant.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.8804 Grant applications.

Sec. 8804. A local unit of government that wishes to apply for a grant shall submit a written grant application to the department in a manner prescribed by the department and containing the information required by the department. The grant application shall also include all of the following:

(a) A detailed description of the project for which the grant is sought.

(b) An explanation of how the project is consistent with an approved watershed plan, if applicable.

(c) A description of the total cost of the project and the source of the local government's contribution to the project.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.8805 Issuance of grants.

Sec. 8805. Upon receipt of a grant application pursuant to section 8804, the department, in consultation with the department of agriculture and rural development, shall consider the projects proposed to be funded and the extent that money is available for grants under this part, and shall issue grants for projects that the department determines will assist in the prevention or control of pollution from nonpoint sources or will

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provide for wellhead protection.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8806 Administration of part.

Sec. 8806. Grants made under this part are subject to the applicable requirements of part 196. The department, in consultation with the department of agriculture and rural development, shall administer this part in compliance with the applicable requirements of part 196, including the reporting requirements to the legislature of the grants provided under this part.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

324.8807 Clean water fund.

Sec. 8807. (1) The clean water fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

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

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

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

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

(d) Water pollution control activities.

(e) Wellhead protection activities.

(f) Storm water treatment projects and activities.

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

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

History: Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8808 Rules.

Sec. 8808. The department shall promulgate rules to implement this part including rules to establish a grant program or loan program, or both, for expenditure of money in the fund.

History: Add. 1998, Act 287, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 324.8801 et seq. and R 324.8901 et seq. of the Michigan Administrative Code.

PART 89
LITTERING

324.8901 Definitions.

Sec. 8901. As used in this part:

(a) "Litter" means any of the following:

(*i*) Rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances.

(*ii*) A vehicle that is considered abandoned under section 252a of the Michigan vehicle code, 1949 PA 300, MCL 257.252a.

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(*iii*) An abandoned vessel as defined in section 80130f.

(*iv*) An ORV that is considered abandoned under section 80130f as made applicable in section 81151.

(*v*) A snowmobile that is considered abandoned under section 80130f as made applicable in section 82161.

(b) "Public or private property or water" includes, but is not limited to, any of the following:

(*i*) The right-of-way of a road or highway, a body of water or watercourse, or the shore or beach of a body of water or watercourse, including the ice above the water.

(*ii*) A park, playground, building, refuge, or conservation or recreation area.

(*iii*) Residential or farm properties or timberlands.

(c) "Vehicle" means a motor vehicle registered or required to be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(d) "Vessel" means a vessel registered under part 801.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8902 Littering property or water prohibited; removal of injurious substances dropped on highway as result of accident.

Sec. 8902. (1) A person shall not knowingly, without the consent of the public authority having supervision of public property or the owner of private property, dump, deposit, place, throw, or leave, or cause or permit the dumping, depositing, placing, throwing, or leaving of, litter on public or private property or water other than property designated and set aside for such purposes.

(2) A person who removes a vehicle that is wrecked or damaged in an accident on a highway, road, or street shall remove all glass and other injurious substances dropped on the highway, road, or street as a result of the accident.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8903 Causing litter or object to fall or be thrown into path of or to hit vehicle; violation as misdemeanor; penalty.

Sec. 8903. (1) A person shall not knowingly cause litter or any object to fall or to be thrown into the path of or to hit a vehicle traveling upon a highway.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8904 Presumptions.

Sec. 8904. (1) Except as provided in subsection (3) involving litter from a leased vehicle or leased vessel, in a proceeding for a violation of this part involving litter from a motor vehicle or vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle or vessel at the time of the violation, gives rise to a rebuttable presumption that the registered owner of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(2) There is a rebuttable presumption that the driver of a vehicle or vessel is responsible for litter that is thrown, dumped, deposited, placed, or left from the vehicle or vessel on public or private property or water.

(3) In a proceeding for a violation of this part involving litter from a leased motor vehicle or leased vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the lessee of the vehicle or vessel at the time of the violation, gives rise to a rebuttable presumption that the lessee of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(4) In a proceeding for a violation of this part involving litter consisting of an abandoned vehicle, proof that the particular vehicle described in the citation, complaint, or warrant was abandoned, and that the

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defendant named in the citation, complaint, or warrant was the titled owner or lessee of the vehicle at the time it was abandoned, gives rise to a rebuttable presumption that the defendant abandoned the vehicle.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 111, Imd. Eff. June 28, 1995;—Am. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8905 Violation involving litter produced at health facility, agency, or laboratory as misdemeanor; violation involving infectious waste, pathological waste, or sharps as felony; penalty; second or subsequent violation under subsection (2); definitions.

Sec. 8905. (1) A person who violates this part where the violation involves litter that is produced at a health facility or agency as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws, or at a laboratory described in section 20507 of Act No. 368 of the Public Acts of 1978, being section 333.20507 of the Michigan Compiled Laws, is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months or a fine of not more than $1,000.00, or both.

(2) Except as provided in subsection (3), a person who violates this part where the violation involves litter that is infectious waste, pathological waste, or sharps is guilty of a felony punishable by imprisonment for not more than 2 years or by a fine of not more than $5,000.00, or both.

(3) For a second or subsequent violation under subsection (2), the person shall be punished by imprisonment for not less than 1 year or more than 5 years and a fine of not more than $10,000.00.

(4) As used in this section:

(a) "Infectious waste" means waste that contains varying amounts of microorganisms that have a potential for causing serious illness.

(b) "Pathological waste" means body organs, tissues, parts, and fluids removed during surgery or autopsy, whether or not they are infectious.

(c) "Sharps" means discarded hypodermic needles, syringes and scalpel blades, whether or not they are infectious.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

****** 324.8905a THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.8905a.amended ******

324.8905a Violation as state civil infraction; civil fine; default remedies; exception.

Sec. 8905a. (1) A person who violates this part, if the amount of the litter is less than 1 cubic foot in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $800.00.

(2) A person who violates this part, if the amount of the litter is 1 cubic foot or more but less than 3 cubic feet in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $1,500.00.

(3) Except as provided in subsection (4), a person who violates this part, if the amount of the litter is 3 cubic feet or more in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not more than $5,000.00.

(4) A person who violates this part, if the litter is described in section 8901(a)(*ii*) to (*v*), is responsible for a state civil infraction and is subject to a civil fine of not less than $500.00 or more than $2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not less than $1,000.00 or more than $5,000.00. However, the court shall not order the payment of a fine unless the vehicle has been disposed of under section 252g of the Michigan vehicle code, 1949 PA 300, MCL 257.252g, the abandoned vessel has been disposed of under section 80130k, the ORV that is considered abandoned has been disposed of under section 80130k as made applicable in section 81151, or the snowmobile that is considered abandoned has been disposed of under section 80130k as made applicable in section 82161.

(5) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or

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costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(6) This section does not apply to a violation of section 8903 or 8905.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

Compiler's note: Former MCL 324.8905a, which pertained to violations as civil infractions, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

****** 324.8905a THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

324.8905a.amended Violation as state civil infraction; civil fine; misdemeanor; penal fine; applicability to employer or employing agency; enhanced penal fine; removal or reimbursement orders; default remedies; exception.

Sec. 8905a. (1) A person who violates this part, if the amount of the litter is less than 1 cubic foot in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $800.00.

(2) A person who violates this part, if the amount of the litter is 1 cubic foot or more but less than 3 cubic feet in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than $1,500.00.

(3) A person who commits a first violation of this part, if the amount of litter is 3 cubic feet or more but less than 5 cubic yards, is guilty of a misdemeanor punishable by a penal fine of not more than $2,500.00.

(4) A person who commits a second violation of this part described in subsection (3) is guilty of a misdemeanor punishable by a penal fine of not more than $5,000.00. For each subsequent violation of this part described in subsection (3) that follows a conviction for a second violation under this subsection, the penal fine must be increased by $2,500.00.

(5) A person who commits a first violation of this part, if the amount of litter is 5 cubic yards or more, is guilty of a misdemeanor punishable by a penal fine of not more than $5,000.00.

(6) A person who commits a second violation of this part described in subsection (5) is guilty of a misdemeanor punishable by a penal fine of not more than $10,000.00. For each subsequent violation of this part described in subsection (5) that follows a conviction for a second violation under this subsection, the penal fine must be increased by $5,000.00.

(7) Subsections (3) to (6) apply to a person and a person's employer or employing agency if the violation of subsection (3), (4), (5), or (6) is committed by a person at the direction of or with the knowledge of the person's employer or employing agency.

(8) Except as otherwise provided in this subsection, as part of its judgment of sentence upon the conviction of a person under subsections (3) to (6), the court shall order a person to remove the litter and remediate any damage caused to the property as a result of the violation. If the violation was committed on railroad property, the court shall order reimbursement to the railroad for the costs of the removal of the litter and any necessary damage remediation.

(9) If a prosecuting attorney intends to seek an enhanced penal fine under subsection (4) or (6), the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions must be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(10) In addition to, or in lieu of, a state civil infraction or a criminal conviction under subsections (1) to (6), the court may order an individual who violates this part under subsections (1) to (6) to reimburse a local community group, or village or township, or municipal, county, or state department that has or will perform the cleanup and remediation required as a result of the violation of subsections (1) to (6) for the expense incurred by that entity related to the violation under subsections (1) to (6).

(11) A city, village, or township attorney, a prosecuting attorney for the county, or the attorney general

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may bring an action seeking reimbursement for expenses incurred for the expense to clean up litter and remediate property damage as provided in subsection (10).

(12) Reimbursement ordered under subsection (10) or (11) must not exceed actual cleanup and remediation costs. The funds collected as part of an order for reimbursement under subsection (10) or (11) may be used in partnership by a local community group, or village or township, or municipal, county, or state department with the owner of the property for the cleanup and remediation required as a result of the violation of subsections (1) to (6).

(13) A person who violates this part, if the litter is described in section 8901(a)(*ii*) to (*v*), is responsible for a state civil infraction and is subject to a civil fine of not less than $500.00 or more than $2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not less than $1,000.00 or more than $5,000.00. However, the court shall not order the payment of a fine unless the vehicle has been disposed of under section 252g of the Michigan vehicle code, 1949 PA 300, MCL 257.252g, the abandoned vessel has been disposed of under section 80130k, the ORV that is considered abandoned has been disposed of under section 80130k as made applicable in section 81151, or the snowmobile that is considered abandoned has been disposed of under section 80130k as made applicable in section 82161.

(14) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(15) This section does not apply to a violation of section 8903 or 8905.

(16) In addition to any penal or civil fine ordered for a violation of subsections (1) to (6) a property owner has a civil cause of action for damages for the reasonable and necessary costs of cleanup and remediation of the property.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015;—Am. 2024, Act 6, Eff. (sine die).

Compiler's note: Former MCL 324.8905a, which pertained to violations as civil infractions, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

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324.8905b Additional penalties or sanctions; community service.

Sec. 8905b. (1) In addition to any other penalty or sanction provided in this part for a criminal or civil action brought under this part, the court may require the defendant to pay either or both of the following:

(a) The cost of removing all litter which is the subject of the violation and the cost of damages to any land, water, wildlife, vegetation, or other natural resource or to any facility damaged by the violation of this part. Money collected under this subdivision shall be distributed to the governmental entity bringing the enforcement action.

(b) The reasonable expense of impoundment under section 8905c. Money collected under this subdivision shall be distributed to the governmental entity that impounded the vehicle involved in the violation of this part.

(2) In addition to any other penalty or sanction provided for in this part, the court shall impose, under the supervision of the court, community service in the form of litter gathering labor, including, but not limited to, litter connected with the particular violation.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998.

Compiler's note: Former MCL 324.8905b, which pertained to payment of additional costs and expenses, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8905c Impoundment of vehicles; lien; forfeiture of bond; foreclosure sale; notice; distribution of proceeds.

Sec. 8905c. (1) A peace officer may seize and impound a vehicle operated in the commission of a violation of this part if the operator of the vehicle has previously been convicted for a violation of this part. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant may be ordered to pay under this part. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of $750.00. If

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such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the violation of this part or upon payment of the fine, costs, and damages. Additionally, if the defendant is determined to be not responsible for the violation of this part, the court shall assess against the governmental entity bringing the action costs, payable to the defendant, for any damages that the defendant has sustained due to the impoundment of the vehicle.

(2) If the court determines that the defendant is responsible for the violation of this part and the defendant defaults in the payment of any fine, costs, or damages, or any installment, as ordered pursuant to this part, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, damages, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity bringing the action. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6031, 600.6032, 600.6041, 600.6042, and 600.6044 to 600.6047.

(3) Not less than 21 days before the foreclosure sale under subsection (2), the attorney for the governmental entity bringing the action shall by certified mail send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle. In addition, not less than 10 days before the foreclosure sale, the attorney shall twice publish notice of the time and place of the foreclosure sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

(a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection (1).

(b) To the clerk of the court for the payment of the fine, costs, and damages, that the defendant was ordered to pay.

(c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).

(d) To the owner of the vehicle.

History: Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998.

Compiler's note: Former MCL 324.8905c, which pertained to seizure and impoundment of vehicle, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8906 Posting notices; publication; receptacles for litter.

Sec. 8906. All public authorities having supervision of public property of this state or any political subdivision of this state may post notice signs and otherwise publicize the requirements of this part. All public authorities having supervision of public property in this state may establish and maintain receptacles for the deposit of litter on the property and publicize the location of those receptacles.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

324.8907 Powers of municipalities not limited.

Sec. 8907. This part does not affect or in any way limit the powers of municipalities to enact and enforce ordinances for the control and elimination of litter.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Littering

Popular name: NREPA

SOIL CONSERVATION, EROSION, AND SEDIMENTATION CONTROL

PART 91
SOIL EROSION AND SEDIMENTATION CONTROL

324.9101 Definitions; A to W.

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Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

(2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

(3) "Conservation district" means a conservation district authorized under part 93.

(4) "Consultant" means either of the following:

(a) An individual who has a current certificate of training under section 9123.

(b) A person who employs 1 or more individuals who have current certificates of training under section 9123.

(5) "County agency" means an officer, board, commission, department, or other entity of county government.

(6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.

(7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.

(8) "Department" means the department of environmental quality.

(9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.

(11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.

(12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

(13) "Municipality" means any of the following:

(a) A city.

(b) A village.

(c) A charter township.

(d) A general law township that is located in a county with a population of 200,000 or more.

(14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) "Seawall maintenance" means an earth change activity landward of the seawall.

(16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

(17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

(18) "State agency" means a principal state department or a state public university.

(19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.

(20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2001, Act 227, Imd. Eff. Jan. 2, 2002;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

324.9102, 324.9103 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Compiler's note: The repealed sections pertained to definitions and soil erosion and sedimentation control program.

Popular name: Act 451

Popular name: NREPA

324.9104 Rules; availability of information.

Sec. 9104. (1) The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to soil erosion control and sedimentation control. The

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department shall notify and make copies of proposed rules available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies for review and comment before promulgation.

(2) The department shall make available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies educational information on soil erosion and sedimentation control techniques and the benefits of implementing soil erosion and sedimentation control measures. County enforcing agencies and municipal enforcing agencies shall distribute this information to persons receiving permits under a county program or a local ordinance and to other interested persons.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1701 et seq. of the Michigan Administrative Code.

324.9105 Administration and enforcement of rules; resolution; ordinance; interlocal agreement; review; notice of results; informal meeting; probation; consultant; inspection fees; rescission of order, stipulation, or probation.

Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:

(a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.

(b) With regard to earth changes of authorized public agencies.

(2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.

(3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance and may set forth such other matters as the county board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.

(5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall approve a county's program if all of the following conditions are met:

(a) The county has passed a resolution or enacted an ordinance as provided in this section.

(b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.

(c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:

(*i*) Whether a mechanism is in place to provide funding to administer the county's program.

(*ii*) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(*iii*) The effectiveness of the county's past compliance and enforcement efforts.

(*iv*) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans

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being accepted by the county.

(*v*) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.

(*vi*) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.

(7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.

(8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.

(9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1 year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.

(10) If any of the following occur, the department shall hire a consultant to administer the county's program:

(a) The county does not notify the department of its intent to hire a consultant under subsection (9).

(b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).

(c) The county remains unapproved following the department's review under subsection (9).

(11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.

(12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1701 et seq. of the Michigan Administrative Code.

324.9106 Ordinances; written interlocal agreement.

Sec. 9106. (1) Subject to subsection (4), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance is not applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public

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earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment is considered to have been approved by the department.

(3) Two or more municipalities may provide for joint administration and enforcement of this part and the rules promulgated under this part by entering into a written interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512. However, if all of the municipalities are not located, in whole or in part, in the same county, the agreement does not take effect unless the department approves the agreement in writing. The department shall approve the agreement if the department determines that the agreement will promote the effective administration and enforcement of this part and rules promulgated under this part.

(4) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

(a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.

(c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether the municipality has met the requirements of this subdivision, the department shall consider all of the following:

(*i*) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.

(*ii*) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.

(*iii*) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.

(B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the municipality's past compliance and enforcement efforts.

(D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.

(E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.

(F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.

(5) If the department determines that a municipality is not approved under subsection (4) or that a

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municipality that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.

(6) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.

(7) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at the time of the rescission or disapproval. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005;—Am. 2018, Act 419, Eff. Mar. 20, 2019.

Popular name: Act 451

Popular name: NREPA

324.9107 Notice of violation.

Sec. 9107. If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9108 Permit; deposit as condition for issuance.

Sec. 9108. As a condition for the issuance of a permit, the county enforcing agency or municipal enforcing agency may require the applicant to deposit with the clerk of the county or municipality in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the county or municipality or to the county enforcing agency or municipal enforcing agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county enforcing agency or municipal enforcing agency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9109 Agreement between public agency or county or municipal enforcing agency and conservation district; purpose; reviews and evaluations of agency's programs or procedures; agreement between person engaged in agricultural practices and conservation district; notification; enforcement.

Sec. 9109. (1) An authorized public agency, county enforcing agency, or municipal enforcing agency may enter into an agreement with a conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed earth changes, earth change plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, conservation districts may perform periodic reviews and evaluations of the authorized public agency's, county enforcing agency's, or municipal enforcing agency's programs or procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. These reviews and evaluations shall be submitted to the department for appropriate action.

(2) A person engaged in agricultural practices may enter into an agreement with the appropriate conservation district to pursue agricultural practices in accordance with and subject to this part, the rules promulgated under this part, and any applicable local ordinance. If a person enters into an agreement with a conservation district, the conservation district shall notify the county enforcing agency or municipal enforcing agency or the department in writing of the agreement. Upon entering into the agreement under this subsection,

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a person is not subject to permits required under this part, but is required to develop project specific soil erosion and sedimentation control plans and is subject to the remedies provided for in this part for violations of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9110 Designation as authorized public agency; application; submission of procedures; variance; approval.

Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

(2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.

(3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this subsection.

(4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:

(a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.

(c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subdivision, the department shall consider all of the following:

(*i*) Funding to administer the agency's soil erosion and sedimentation control program.

(*ii*) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.

(*iii*) The adequacy of the agency's soil erosion and sedimentation control procedures.

(*iv*) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.

(B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the agency's past compliance and enforcement efforts.

(D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.

(E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.

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(5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the designation of the state agency or agency of a local unit of government as an authorized public agency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

324.9111 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Compiler's note: The repealed section pertained to statements and certificates relating to plats.

Popular name: Act 451

Popular name: NREPA

324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.

Sec. 9112. (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.

(2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.

(3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:

(a) The permit, including the permit obligations and conditions.

(b) Responsibility for any violations of the permit that exist on the date the property is transferred.

(4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:

(a) The permit obligations and conditions with respect to that parcel, but not the permit itself.

(b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.

(5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.

(6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.

(7) If in the opinion of the department a person, including an authorized public agency, violates this part, the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section 9105, a municipality is not approved under section 9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination

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may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 565, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.9113 Injunction; inspection and investigation.

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this part.

(2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

Popular name: Act 451

Popular name: NREPA

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324.9114 Additional rules.

Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 323.1701 et seq. of the Michigan Administrative Code.

324.9115 Logging, mining, or land plowing or tilling; permit exemption; "mining" defined.

Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

(a) Access roads to and from the site where active mining or logging is taking place.

(b) Ancillary activities associated with logging and mining.

(2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan under part 631 or 634 or a mining, reclamation, and environmental protection plan under part 632, if the plan contains soil erosion and sedimentation control provisions and is approved by the department.

(3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615 or mineral well exploration and development activities regulated under part 625, if the application for a permit to drill and operate contains a soil erosion and sedimentation control plan that is approved by the department under part 615 or 625. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

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(4) As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011;—Am. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.9115a Earth change activities not requiring permit; violations.

Sec. 9115a. (1) Notwithstanding any other provision of this part, a person is not required to obtain a permit from a county or municipal enforcing agency for earth changes associated with the following agricultural practices if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) The construction, maintenance, or removal of fences and fence lines.

(b) The removal of tree or shrub stumps or roots.

(c) The installation of drainage tile, irrigation, or electrical lines.

(d) The construction or maintenance of 1 or more ponds that meet all of the following:

(*i*) The earth change associated with the construction or maintenance is less than 5 acres.

(*ii*) The earth change associated with the construction or maintenance does not result in a discharge of storm water into the waters of the state.

(*iii*) The earth change associated with the construction or maintenance is not part of a larger plan of development. As used in this subparagraph, "larger plan of development" means a contiguous area where multiple separate and distinct construction activities are occurring under a single plan as identified in documentation or physical demarcation indicating where construction activities may occur.

(2) Notwithstanding any other provision of this part, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.

(b) Gardening, if the natural elevation of the area is not raised.

(c) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.

(d) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

(e) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:

(*i*) Planting of trees, shrubs, or other similar plants.

(*ii*) Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.

(*iii*) Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.

(*iv*) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.

(*v*) Seawall maintenance that does not exceed 100 square feet.

(3) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

History: Add. 2005, Act 56, Imd. Eff. June 30, 2005;—Am. 2016, Act 2, Eff. Feb. 25, 2016.

Popular name: Act 451

Popular name: NREPA

324.9116 Reduction of soil erosion or sedimentation by owner.

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.9117 Notice of determination.

Sec. 9117. If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9118 Compliance; time.

Sec. 9118. Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part, the rules promulgated under this part, or an applicable local ordinance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.

Sec. 9119. Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend more than $10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than $10,000.00 may be made. If more than $10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9120 Reimbursement of county or municipal enforcing agency; lien for expenses; priority; collection and treatment of lien.

Sec. 9120. (1) All expenses incurred by a county enforcing agency or a municipal enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with this part and the rules promulgated under this part or an applicable local ordinance shall be reimbursed to the county enforcing agency or municipal enforcing agency by the person who owns the land.

(2) The county enforcing agency or municipal enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9121 Violations; penalties.

Sec. 9121. (1) A person who violates this part is responsible for either of the following:

(a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than $2,500.00.

(b) If the action is brought by the state or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $2,500.00.

(2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than $10,000.00 for each day of violation.

(3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than $2,500.00 or more than $25,000.00 for each day of violation.

(4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:

(a) If the state filed the action under this section, in the general fund of the state.

(b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.

(c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies. All fines going to the department shall be deposited into the general fund of the state.

(5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

(7) This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 173, Imd. Eff. Apr. 18, 1996;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9122 Severability.

Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.9123 Training program; certificate; fees.

Sec. 9123. (1) Beginning 3 years after the effective date of the 2000 amendments to this section, each individual who is responsible for administering this part and the rules promulgated under this part or a local ordinance and who has decision-making authority for soil erosion and sedimentation control plan development or review, inspections, permit issuance, or enforcement shall be trained by the department. The department shall issue a certificate of training to individuals under this section if they do both of the following:

(a) Complete a soil erosion and sedimentation control training program sponsored by the department.

(b) Pass an examination on the subject matter covered in the training program under subdivision (a).

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(2) A certificate of training under subsection (1) is valid for 5 years. For recertifications, the department may offer a refresher course or other update in lieu of the requirements of subsection (1)(a) and (b).

(3) The department may charge fees for administering the training program and the examination under this section that are not greater than the department's cost of administering the training program and the examination. All fees collected under this section shall be deposited into the soil erosion and sedimentation control training fund created in section 9123a.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.9123a Soil erosion and sedimentation control training fund; creation; disposition of funds; lapse; expenditures.

Sec. 9123a. (1) The soil erosion and sedimentation control training fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the soil erosion and sedimentation control training fund. The state treasurer shall direct the investment of the soil erosion and sedimentation control training fund. The state treasurer shall credit to the soil erosion and sedimentation control training fund interest and earnings from fund investments.

(3) Money in the soil erosion and sedimentation control training fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to administer the soil erosion and sedimentation control training program and examination under section 9123.

History: Add. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

PART 93
SOIL CONSERVATION DISTRICTS

324.9301 Definitions.

Sec. 9301. As used in this part:

(a) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(b) "Board" or "conservation district board" means the governing body of a conservation district.

(c) "Compliance assistance agent" means an individual who provides technical assistance to individuals, organizations, agencies, or others to aid them in complying with federal and state laws and local conservation ordinances.

(d) "Conservation species" means those plant species beneficial for conservation practices as included on the list prepared under section 9304a by the conservation species advisory panel.

(e) "Conservation species advisory panel" means the conservation species advisory panel created in section 9304a.

(f) "Department" means the department of agriculture and rural development.

(g) "Director" means 1 of the members of the conservation district board, elected or appointed in accordance with this part.

(h) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this part, for the purposes, with the powers, and subject to the restrictions set forth in this part.

(i) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(j) "Landowner" includes any person who holds title to or has contracted to purchase any land lying within a district organized under this part or former 1937 PA 297.

(k) "Person" means an individual, partnership, or corporation.

(*l*) "Plant rescue" means to physically move native conservation species of plants from 1 location in Michigan to another location in Michigan for the purpose of reestablishing the native conservation species.

(m) "Qualified forester" means that term as defined in section 51301.

(n) "Resident" means a person who is of legal age to vote and can demonstrate residency in the district with 1 piece of identification.

(o) "State" means this state.

(p) "United States" or "agencies of the United States" includes the United States of America, the natural

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resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9302 Declaration of policy.

Sec. 9302. It is the policy of the legislature to provide for the conservation of the natural resources of the state, including soil, water, farmland, forestland, and other natural resources, and to provide for the control and prevention of soil erosion, and thereby to conserve the natural resources of this state, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9303 Conducting business at public meeting; notice; availability of writings to public.

Sec. 9303. (1) The business that a conservation district board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, in addition to any other notice prescribed in this part.

(2) A writing prepared, owned, used, in the possession of, or retained by a conservation district board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

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324.9304 Additional duties and powers of department.

Sec. 9304. In addition to the other duties and powers conferred upon the department under this part, the department has the following duties and powers:

(a) To offer such assistance as may be appropriate to the directors of conservation districts in implementing any of their responsibilities under this part and as otherwise provided by law.

(b) To keep the directors of each of the districts informed of the activities and experience of all other districts and to facilitate cooperation and sharing of advice and experience between the districts.

(c) To approve and coordinate the programs of all conservation districts.

(d) To secure the cooperation and assistance of the United States and any of its agencies, and the state and any of its agencies, in the work of the districts, and to formulate policies and procedures as the department considers necessary for the extension of aid in any form from federal or state agencies to the districts.

(e) To disseminate information throughout the state concerning the activities and programs of the conservation districts and to encourage the formation of districts in areas where their organization is desirable.

(f) To review district budgets and financial information, including audit reports.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9304a Conservation species advisory panel; creation; membership; establishment of conservation species list.

Sec. 9304a. (1) The conservation species advisory panel is created within the department. The conservation species advisory panel shall consist of the following members selected by the director of the department and approved by the commission of agriculture:

(a) Two representatives of the department as follows:

(*i*) One individual from the pesticide and plant management division or its successor agency.

(*ii*) One individual from the environmental division or its successor agency.

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(b) One individual representing the department of natural resources.
(c) One individual representing the natural resource conservation service.
(d) Two representatives from Michigan state university as follows:
(*i*) One individual from the department of horticulture or its successor department.
(*ii*) One individual from the department of forestry or its successor department.
(e) One individual representing conservation districts.
(f) One individual from a statewide organization representing nursery and landscaping interests in the state.
(g) One individual from a statewide organization representing seedling growers' interests in the state.

(2) By December 1 of each year, the conservation species advisory panel shall establish a list of conservation species for the following calendar year that may be propagated, planted, harvested, sold, or rescued as part of a plant rescue operation. However, conservation species on this list that are propagated, planted, or rescued during that calendar year may be sold, removed, or reestablished in subsequent years even if the species is removed from the list in a subsequent year.

History: Add. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.9305 Boundaries; petition to change district's name.

Sec. 9305. (1) Boundaries of conservation districts shall include cities, townships, and incorporated villages.

(2) A conservation district's board may petition the department to change the district's name. The petition form shall be provided by the department. The department shall give due consideration to the petition and, if the request is determined to be needed and practical, shall approve the change in name and request the secretary of state to enter the new name in the secretary of state's official records of the district.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.9306 Repealed. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Compiler's note: The repealed section pertained to election of district directors.

Popular name: Act 451

Popular name: NREPA

324.9307 Conservation district board; directors; chairperson; terms; annual meeting; election; notice; vacancies; certification; special election; quorum; expenses; employees; legal services; delegation of powers and duties; copies of documents; duties of board; eligibility for grant; duties of professional forester; rules; duties of conservation district; removal of director; designation and function of legislative representative.

Sec. 9307. (1) A conservation district board shall consist of 5 directors elected or appointed as provided in this part. The board shall designate a chairperson annually.

(2) Except as provided in subsection (6), the term of office of each director is 4 years. Except as otherwise provided in this section, all directors shall be elected at an annual meeting by residents of the district. The election shall be nonpartisan and the directors shall be elected by the residents of the district at large. To become a candidate for director, at least 60 days prior to the annual meeting, an individual shall file at the district office a petition signed by 5 residents of the district. A candidate must be a resident of the district. The annual meeting shall be held at a date determined by the board. Notice of the annual meeting shall be published in the official newspaper of record for the area in which the district is located at least 45 days prior to the date of the annual meeting. This notice shall include the date, time, and location of the annual meeting, an agenda of items to be considered at the meeting, and a list of all candidates for directors of the district. A resident of a district who is unable to attend the annual meeting may vote for the directors of the district by absentee ballot as follows:

(a) In person at the district office, during regular business hours of the district office, at any time after publication of the notice and prior to the annual meeting.

(b) By mail received at the district office at any time after publication of the notice and prior to the annual meeting.

(3) Following the annual meeting, director elections shall be certified by the department. A director shall hold office until a successor has been elected and qualified. Vacancies shall be filled by appointment by the

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board until the next annual meeting.

(4) The department shall notify the district of its determination on election certification within 90 days after the election. If the department does not certify the director election, the board shall call a special election. The procedures for the special election shall be the same as those for an election at the annual meeting. However, if the board received notification that the department would not be able to certify the director elections from a special election at least 120 days before the next annual meeting, the vacancies shall be filled at the next annual meeting.

(5) A majority of the directors constitutes a quorum of the board, and the concurrence of a majority in any matter within their duties is required for the board's determination. A director is entitled to expenses, including traveling expenses necessarily incurred in the discharge of his or her duties. A director may be paid a per diem for time spent undertaking his or her duties as a director.

(6) If at any time the board has an insufficient number of directors to constitute a quorum, the department shall appoint directors to fill the vacancies on the board. The appointed directors shall serve until new directors are elected as provided for in this section at the next annual meeting and the election is certified by the department. However, new directors who are elected to fill vacancies shall serve for the remainder of the vacated terms.

(7) The board may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as the board may require, and shall determine their qualifications, duties, and compensation. Upon request of the board, the attorney general may, at his or her discretion, provide legal services to the district. The board may delegate to its chairperson, to 1 or more directors, or to 1 or more agents or employees any powers and duties that the board considers proper. The board shall furnish to the department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, and other documents that the board adopts or utilizes and any other information concerning the board's activities that the department may require in the performance of its duties under this part.

(8) The board shall do all of the following:

(a) Provide for the execution of surety bonds for all district employees and officers who are entrusted with funds or property.

(b) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

(c) Determine the fiscal year of the district.

(9) To be eligible for a grant of $50,000.00 or more from the department, a district shall do all of the following:

(a) Annually submit to the department a budget setting forth the purpose and amount of the expenses expected to be incurred and the source and amount of revenue expected to be received during the ensuing fiscal year.

(b) Maintain accurate financial records of receipts and disbursements and uniform accounting in accordance with generally accepted accounting principles under procedures prescribed by the department.

(c) Provide for a biennial independent certified audit by a certified public accountant of the financial records, accounts, and procedures of the district. The audit report shall show profits and losses and the financial condition of the district.

(d) Agree to comply with subsection (10), and agree to return any grant funds received if subsection (10) is violated.

(10) A professional forester employed under a grant described in subsection (9) shall not use his or her position to do either or both of the following:

(a) Compete with a private sector business.

(b) Develop a client base for forestry consultation during hours when he or she is not employed by the district.

(11) The department may promulgate rules to implement subsection (9). However, rules promulgated under this subsection shall remain in effect not later than June 11, 2016.

(12) The board is responsible for the exercise of the powers and the performance of the duties of a conservation district under this part.

(13) Any director may be removed by the department upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(14) The board may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the board on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Eff. June 1, 1999;—Am. 2002, Act 107, Imd. Eff. Mar. 27, 2002;—Am. 2004, Act 439, Imd. Eff. Dec. 21, 2004;—Am. 2013, Act 45, Imd. Eff. June 6, 2013;—Am. 2013, Act 114, Imd. Eff. Sept. 24, 2013.

Popular name: Act 451

Popular name: NREPA

324.9308 Powers of district and board generally; restrictions.

Sec. 9308. (1) A conservation district organized under this part constitutes a governmental subdivision of this state and a public body corporate and politic, exercising public powers, and a conservation district and the conservation district board has all of the following powers, in addition to powers otherwise granted in this part:

(a) To conduct surveys, investigations, and research relating to the conservation of farmland, forestland, and natural resources, to publish the results of the surveys, investigations, or research, and to disseminate that information upon obtaining the consent of the landowner or the necessary rights or interest in the lands. In order to avoid duplication of research activities, a district shall not initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States.

(b) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands, to demonstrate by example the means, methods, and measures by which farmland, forestland, and natural resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.

(c) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other measures to achieve purposes listed in declaration of policy, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the landowners or the necessary rights or interests in the lands.

(d) To cooperate or enter into agreements with and, within the limits of appropriations made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any landowner within the district or his or her designated representative, in the conducting of erosion-control and prevention operations within the district, subject to conditions as the directors consider necessary to advance the purposes of this part.

(e) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in property; to maintain, administer, and improve any properties acquired, to receive income from the properties, and to expend income in carrying out the purposes and provisions of this part; and to sell, lease, or otherwise dispose of any of its property or interests in property in furtherance of the purposes and provisions of this part.

(f) To make available, on the terms it prescribes, to landowners or their designated representatives within the district and to other conservation districts, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and other material or equipment that will assist landowners or their designated representatives to carry on operations upon their lands for the conservation of farmland, forestland, and natural resources and for the prevention and control of soil erosion.

(g) To engage in plant rescue operations and to propagate, plant, harvest, and, subject to section 9304a, sell only conservation species. A conservation district that violates this subdivision is subject to a civil fine of not more than $100.00 per day of violation. An action to enforce this subdivision may be brought by the state or a county in the circuit court for the county in which the conservation district is located or in which the violation occurred.

(h) To provide technical assistance to other conservation districts.

(i) To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this part.

(j) To develop comprehensive plans for the conservation of farmland, forestland, and natural resources and for the control and prevention of soil erosion within the district or other conservation districts. The plans shall specify, in such detail as is possible, the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish the plans and information described in this subdivision and bring them to the attention of residents of the district.

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(k) To take over, by purchase, lease, or otherwise, and to administer any farmland, forestland, or natural resource conservation project located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any farmland, forestland, or natural resource conservation project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any farmland, forestland, or natural resource conservation project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies or from this state or any of its agencies, and to use or expend the money, services, materials, or other contributions in carrying on its operations; and to accept money, gifts, and donations from any other source not specified in this subdivision.

(*l*) To sue and be sued in the name of the district; to have a seal that is judicially noticed; to have perpetual succession unless terminated as provided in this part; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, and from time to time amend and repeal, rules and regulations in a manner that is not inconsistent with this part to carry into effect its purposes and powers.

(m) To borrow money for facilities or equipment for conservation purposes and pledge the assets of the district as collateral against loans. Any money borrowed shall be solely the obligation of the conservation district and not the obligation of the state or any other public entity in the state.

(n) As a condition to the extension of any benefit under this part to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operation conferring the benefits, and may require landowners to enter into and perform agreements or covenants as to the permanent use of the lands that will tend to prevent or control erosion on those lands.

(o) To act as a compliance assistance agent for other federal, state, and county laws.

(p) To act as the enforcing agency for a county if designated under section 9105.

(q) To collaborate with the department in reviewing applications for exemption as qualified forest property under section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(r) Subject to subsection (2), in cooperation with the department, to evaluate nonindustrial private forestlands.

(s) Subject to subsection (3), to provide landowners any of the following:

(*i*) Technical assistance regarding potential environmental, ecological, and economic benefits of forestry, wildlife habitat, and wetland development and restoration.

(*ii*) Contact information for qualified foresters.

(*iii*) Contact information for other forest resource professionals that may have voluntarily provided information to the department.

(2) Except as otherwise provided in this subsection, a conservation district shall not develop management plans for nonindustrial private forestlands. A district shall provide a landowner upon request with a list of qualified foresters to develop management plans. The list shall be developed and maintained by the department. If requested by a landowner, the conservation district shall post on its website notice that the landowner is seeking forest management plan preparation; timber harvesting, marketing, or thinning; or similar services. If, after the notice is posted for at least 30 days on the conservation district's website, a landowner is unable to identify a private forester willing to develop a forest management plan, the conservation district may, upon approval by the department, prepare a forest management plan for the landowner.

(3) The exercise of powers under subsection (1)(s) does not affect the regulatory authority of any state department.

(4) Unless authorized by the county board of commissioners of each county in which a conservation district is located, a conservation district shall not enforce state or federal laws.

(5) Unless otherwise specifically provided by law, provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district organized under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9309 Cooperation between districts.

Sec. 9309. The directors of any 2 or more districts organized under this part may cooperate with one another in the exercise of any or all powers conferred in this part.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.9310 Cooperation of state agencies; agreements.

Sec. 9310. (1) Agencies of this state that have jurisdiction over, or are charged with the administration of, any state owned lands, and agencies of any county or other governmental subdivision of the state that have jurisdiction over, or are charged with the administration of, any county owned or other publicly owned lands, lying within the boundaries of any conservation district, shall cooperate to the fullest extent with the district in the effectuation of programs and operations undertaken by the district under this part. Agents of the district shall be given free access to enter and perform work upon such publicly owned lands.

(2) A conservation district may cooperate with and enter into agreements with a county, township, municipality, or other subdivision of state government in implementing soil, water, forestland, and related land-use projects. A county, township, municipality, or other subdivision of state government through its governing body may cooperate with and enter into agreement with a conservation district in carrying out this part and may assist a district by providing it with such materials, equipment, money, personnel, and other services.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.9311 Repealed. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Compiler's note: The repealed section pertained to termination of district.

Popular name: Act 451

Popular name: NREPA

324.9312 Revision of boundaries; procedure.

Sec. 9312. (1) One or more conservation districts may petition the department for a revision in the boundaries of 1 or more conservation districts. The department shall not take action on the petition unless it is signed by a majority of the directors of each of the districts involved in the proposed revision. Within 30 days after receipt of a proper petition, the department shall cause notice of hearing to be given to the residents in the area or areas affected by the proposed revision as identified by the directors of a district and within 60 days hold a hearing to receive comments relative to the proposed change.

(2) The department shall determine if the proposed revision as petitioned for is desirable. If it finds in the affirmative, the department shall issue an order that states that the boundaries of the districts are to be moved, merged, consolidated, or separated at a date specified in the order and includes the name and the revision of the boundaries of the revised district or districts.

(3) Upon transmission of the order to the secretary of state, a certificate of due organization under seal of the state shall issue, if necessary, to the directors of the district as provided in this part. The revised district or districts shall have the same powers, duties, and functions as other districts organized under this part.

(4) The department shall appoint the first board of directors of the revised district, 1 of whom shall be appointed for a term of 1 year, 2 for a term of 2 years, and 2 for a term of 3 years. Thereafter, directors shall be elected as provided in section 9307.

(5) All assets, liabilities, records, documents, writings, or other property of whatever kind of the districts of which the consolidated district is composed shall become the property of the consolidated district, and all agreements made by, and obligations of, the former districts shall be binding upon and enforceable by the consolidated district. At the date specified in the department's order, the districts of which the consolidated district is composed shall cease to exist, and their powers and duties shall cease after that date. The consolidated district shall be governed by this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.9313 Appropriations.

Sec. 9313. The necessary expenses of any conservation districts shall be made from appropriations made for those purposes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

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Popular name: Act 451

Popular name: NREPA

WATERCRAFT POLLUTION

PART 95
WATERCRAFT POLLUTION CONTROL

324.9501 Definitions.

Sec. 9501. As used in this part:

(a) "Approved holding tank" means a holding tank certified by the United States coast guard under part 159 of subchapter O of chapter I of title 33 of the code of federal regulations, 33 C.F.R. part 159.

(b) "Discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) "Docking facility" means a public, private, or commercial marina, yacht club, dock, or wharf used for mooring, serving, or otherwise handling watercraft.

(d) "Litter" means rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, oil, or other foreign substances of every kind and description.

(e) "Marine sanitation device" means equipment designed for installation on board a watercraft or installed on board a watercraft to receive, retain, treat, or discharge sewage.

(f) "Oil" means oil of any kind or in any form, including petroleum, fuel oil, sludge, and oil refuse.

(g) "Police officer" means a police officer as defined in section 42 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.42 of the Michigan Compiled Laws, and a conservation officer.

(h) "Portable" means not permanently affixed to a watercraft and capable of being immediately removed from a watercraft.

(i) "Sewage" means human body wastes, treated or untreated.

(j) "Watercraft" means a contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels engaged in commerce upon the waters of this state, passenger or other cargo-carrying vessels, and privately owned recreational watercraft.

(k) "Waters of this state" means waters within the territorial limits of this state including the waters of the Great Lakes that are under the jurisdiction of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.9502 Prohibition of discharges into water.

Sec. 9502. (1) A person shall not place, throw, deposit, discharge, or cause to be discharged into or onto the waters of this state, any litter, sewage, oil, or other liquid or solid materials that render the water unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes.

(2) A person shall not discharge, dump, throw, or deposit garbage, litter, sewage, or oil from a recreational, domestic, or foreign watercraft used for pleasure or for the purpose of carrying passengers, cargo, or otherwise engaged in commerce on the waters of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9503 Pollution control devices as condition to mooring or operating watercraft; rendering bypass connection, pump, or other device incapable of discharging sewage; exempting certain watercraft by rule; inspection; sticker.

Sec. 9503. (1) Except as otherwise provided in this section, a person shall not moor or operate a watercraft, or permit the mooring or operation of his or her watercraft, on the waters of this state if the watercraft has a marine sanitation device, unless the marine sanitation device is equipped with 1 or more of the following pollution control devices:

(a) An approved holding tank that will retain all sewage produced on the watercraft for subsequent disposal at approved dockside or onshore collection and treatment facilities.

(b) An incinerating device that will reduce to ash all sewage produced on the watercraft. The ash shall be disposed of onshore in a manner that will preclude pollution.

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(2) Except as otherwise provided in this section, a person shall not moor or operate a watercraft on the waters of this state if the watercraft has a marine sanitation device that is equipped with any type of bypass connection, pump, or other means of directly or indirectly discharging sewage into the waters of this state, unless the bypass connection, pump, or other device has been rendered incapable of directly or indirectly discharging sewage into the waters of this state. This subsection does not prohibit a properly installed discharge line used to empty a holding tank or retention device at an onshore sewage pump-out station, or prohibit the use of a portable marine sanitation device. A bypass connection, pump, or other device shall be rendered incapable of directly or indirectly discharging sewage into the waters of this state by 1 of the following methods:

(a) Removing a section of the pipe or tubing that allows discharge of sewage into the waters of this state, placing a cap over the pipe or tubing that remains attached to the marine sanitation device, and placing a seal approved by the department over the cap in a manner that precludes reattaching the pipe or tubing without breaking the seal. To comply with the requirements of this subsection, the seal must be unbroken at the time an inspection occurs.

(b) Closing a valve that will prevent all discharge of sewage into the waters of the state, and placing a seal approved by the department over the valve handle in a manner that precludes reopening the valve without breaking the seal. To comply with the requirements of this subsection, the seal must be unbroken at the time an inspection occurs.

(3) The department, by rule, may exempt certain oceangoing watercraft from the requirements of this section.

(4) If the department conducts an inspection to determine whether a watercraft is in compliance with this section and finds that the watercraft is in compliance, the department shall place a sticker on the watercraft that lists the date that the watercraft was inspected. The department shall not inspect a watercraft for compliance with this section more than once per year except upon probable cause.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9504 Pump-out facilities.

Sec. 9504. (1) Except as otherwise provided in this section, all docking facilities shall provide pump-out facilities approved by the department of public health for marine sanitation device holding tanks on the watercraft. All pump-out facility plans and installations shall be approved by the department of public health or its authorized representative.

(2) An existing docking facility that would otherwise be required by this section to have pump-out facilities is not required to have those facilities if it has a contract to use, and does use, the pump-out facilities of a docking facility in the vicinity. A contract between docking facilities under this subsection shall be approved by the department. This subsection does not apply to any docking facility that is constructed after May 1, 1990, or whose capacity is expanded by a cumulative amount exceeding 25%, or more than 15 slips, whichever is less, of the capacity existing on May 1, 1990.

(3) A docking facility that is constructed after May 1, 1990 or whose capacity is expanded by a cumulative amount exceeding 25%, or more than 15 slips, whichever is less, of the capacity existing on May 1, 1990 shall provide pump-out facilities as required by this part.

(4) A docking facility that has a capacity of 15 watercraft or less is exempt from the requirement of subsection (1).

(5) A docking facility holding only small watercraft of a type not equipped with a marine sanitation device is exempt from the requirements of subsection (1).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9505 Discharge of oil prohibited; removal of oil from waters, shorelines, or beaches.

Sec. 9505. (1) A person shall not discharge or permit the discharge of oil from a watercraft or a docking facility into or onto the waters of this state.

(2) The owner or operator of a watercraft who, whether directly or through any person concerned in the operation, navigation, or management of the watercraft, discharges, permits, or causes or contributes to the discharge of oil into or onto the waters of this state or adjoining shorelines or beaches shall immediately remove the oil from the waters, shorelines, or beaches. If the state removes the oil that was discharged from the watercraft, the owner or operator, or both, are liable to the state for the full amount of the costs reasonably

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incurred for its removal. The state may bring action against the owner or operator, or both, to recover such costs in any court of competent jurisdiction.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9506 Inspection of watercraft, marinas and docks; facilities required.

Sec. 9506. All watercraft moored, operated, or located upon the waters of this state are subject to inspection by the department, or any peace, conservation, or police officer for the purpose of determining if the watercraft is equipped in compliance with the requirements of this part. The department may inspect marinas and other waterside facilities used by watercraft for launching, docking, or mooring purposes to determine if they are equipped with trash receptacles, sewage disposal equipment, or both. Commercial docks and wharfs designed for receiving and loading cargo or freight, or both, from commercial watercraft shall furnish facilities, if determined necessary, as prescribed by the department, to accommodate discharge of sewage from heads and galleys and for deposit of litter, garbage, trash, or bilge waters from the watercraft that utilize the docks or wharfs.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9507 State rights reserves; prohibition of local regulations.

Sec. 9507. The state fully reserves to itself the exclusive right to establish requirements with reference to the disposal or discharge of sewage, litter, and oil from all watercraft. In order to assure statewide uniformity, the regulation by any political subdivision of the state of waste disposal from watercraft is prohibited.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.9508 Rules.

Sec. 9508. (1) The department may promulgate rules that are necessary or convenient to implement this part.

(2) The department of public health may promulgate rules necessary for the regulation of docking facility water supplies and sewage systems, pump-out facilities, and dockside sanitary facilities.

(3) Before promulgating a rule under this section, the department or the department of public health shall appoint and consult with an advisory committee that is representative of the major interests affected by the proposed rule.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.9510 Violation of part or rules as misdemeanor; penalty.

Sec. 9510. A person who violates this part or the rules promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 92 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

CHAPTER 3
WASTE MANAGEMENT

PART 111
HAZARDOUS WASTE MANAGEMENT

324.11101 Meanings of words and phrases.

Sec. 11101. For the purposes of this part, the words and phrases defined in sections 11102 to 11104 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

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Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11102 Definitions; C to F.

Sec. 11102. (1) "Contaminant" means any of the following:

(a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.

(b) Any hazardous waste or hazardous constituent listed in 40 CFR part 261, appendix VIII or 40 CFR part 264, appendix IX.

(2) "Corrective action" means an action determined by the department to be necessary to protect the public health, safety, or welfare, or the environment, and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under the solid waste disposal act or regulations promulgated pursuant to that act.

(3) "Designated facility" means a hazardous waste treatment, storage, or disposal facility that has received a permit or has interim status under the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of the solid waste disposal act, 42 USC 6926, and which, if located in this state, has an operating license issued under this part, has a legally binding agreement with the department that authorizes operation, or is subject to the requirements of section 11123(8).

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste may enter the environment, be emitted into the air, or be discharged into water, including groundwater.

(5) "Disposal facility" means a facility or a part of a facility where managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.

(6) "Failure mode assessment" means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a treatment, storage, or disposal facility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11103 Definitions; G to O.

Sec. 11103. (1) "Generation" means the act or process of producing hazardous waste.

(2) "Generator" means any person, by site, whose act or process produces hazardous waste as identified or listed pursuant to section 11128 or whose act first causes a hazardous waste to become subject to regulation under this part.

(3) "Hazardous waste" means waste or a combination of waste and other discarded material including solid, liquid, semisolid, or contained gaseous material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous waste does not include material that is solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, industrial discharge that is a point source subject to permits under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or is a source, special nuclear, or by-product material as defined by the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(4) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, recycling, and disposal of hazardous waste.

(5) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome

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formation, a salt bed formation, or an underground mine or cave.

(6) "Land treatment facility" means a treatment facility or part of a treatment facility at which hazardous waste is applied onto or incorporated into the soil surface. If waste will remain after closure, a facility described in this subsection is a disposal facility.

(7) "Limited storage facility" means a storage facility that meets all of the following conditions:

(a) Has a maximum storage capacity that does not exceed 25,000 gallons of hazardous waste.

(b) Storage occurs only in tanks or containers.

(c) Has not more than 200 containers on site that have a capacity of 55 gallons or less.

(d) Does not store hazardous waste on site for more than 90 days.

(e) Does not receive hazardous waste from a treatment, storage, or disposal facility.

(8) "Manifest" means a form approved by the department used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(9) "Manifest system" means the system used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(10) "Mechanism" means a letter of credit, a financial test that demonstrates the financial strength of the company owning a treatment, storage, or disposal facility or a parent company guaranteeing financial assurance for a subsidiary, or an insurance policy that will provide funds for closure or postclosure care of a treatment, storage, or disposal facility.

(11) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and that meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or burns this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under this part.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(12) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(13) "Municipality" means a city, village, township, or Indian tribe.

(14) "On site" means on the same or geographically contiguous property that may be divided by a public or private right-of-way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right-of-way. On site property includes noncontiguous pieces of property owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11104 Definitions; O to V.

Sec. 11104. (1) "Operator" means the person responsible for the overall operation of a disposal, treatment, or storage facility with approval of the department either by contract or license.

(2) "Site identification number" means a number that is assigned by the United States Environmental Protection Agency or the United States Environmental Protection Agency's designee to each generator, each transporter, and each treatment, storage, or disposal facility. If the generator or transporter or the treatment, storage, or disposal facility manages wastes that are hazardous under this part and the rules promulgated under this part but are not hazardous under the solid waste disposal act, site identification number means an equivalent number that is assigned by the department.

(3) "Solid waste" means that term as it is defined in part 115.

(4) "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

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(5) "Storage facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to storage. A generator who accumulates managed hazardous waste, as defined by rule, on site in containers or tanks for less than 91 days or a period of time prescribed by rule is not a storage facility.

(6) "Surface impoundment" or "impoundment" means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons.

(7) "Technologically enhanced naturally occurring radioactive material" or "TENORM" means naturally occurring radioactive material whose radionuclide concentrations have been increased as a result of human practices. TENORM does not include any of the following:

(a) Source material, as defined in section 11 of the atomic energy act of 1954, 42 USC 2014, and its progeny in equilibrium.

(b) Material with concentrations of radium-226, radium-228, and lead-210 each less than 5 picocuries per gram.

(8) "The solid waste disposal act" means title II of Public Law 89-272.

(9) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(10) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(11) "Treatment facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to treatment.

(12) "Updated plan" means the updated state hazardous waste management plan prepared under section 11110.

(13) "Vehicle" means a transport vehicle as defined in 49 CFR 171.8.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2018, Act 688, Eff. Mar. 28, 2019.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11105 Generation, disposition, storage, treatment, or transportation of hazardous waste.

Sec. 11105. A person shall not generate, dispose, store, treat, or transport hazardous waste in this state without complying with the requirements of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11105a Repealed. 2006, Act 560, Eff. Dec. 29, 2008.

Compiler's note: The repealed section pertained to adoption by reference of federal rules and promulgation of administrative rule.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11106 Municipal solid waste incinerator ash; regulation.

Sec. 11106. The generation, transportation, treatment, storage, disposal, reuse, and recycling of municipal

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solid waste incinerator ash is regulated under part 115, and not under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11107 Methods of hazardous waste management; assistance.

Sec. 11107. The department, in the conduct of its duties as prescribed under this part, shall assist in encouraging, developing, and implementing methods of hazardous waste management that are environmentally sound, that maximize the utilization of valuable resources, that encourage resource conservation, including source separation, recycling, and waste reduction, and that are consistent with the plan to be provided by the department pursuant to section 12103(1)(d) of the public health code, 1978 PA 368, MCL 333.12103. In addition, the department, in the conduct of its duties as prescribed by this part, shall assist in implementing the policy of this state to minimize the placement of untreated hazardous waste in disposal facilities.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11108 Landfill or solidification facility; payment of fee by owner or operator; certain hazardous waste exempt from fees; certification; evaluating accuracy of generator fee exemption certifications; enforcement action; forwarding fee revenue and completed form; reduction in hazardous waste generated or disposed; refund; disposition of fees; environmental pollution prevention fund.

Sec. 11108. (1) Except as otherwise provided in this section, each owner or operator of a landfill shall pay to the department a fee assessed on hazardous waste disposed of in the landfill. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be $10.00 per ton, $10.00 per cubic yard, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the landfill determines that the hazardous waste quantity on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity on all manifest copies accompanying the shipment, note the reason for the change in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity. Payment shall be made within 30 days after the close of each quarter. The landfill owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and disposed of on the site of a landfill owner or operator shall be paid by that owner or operator.

(2) Except as otherwise provided in this section, each owner or operator of a solidification facility licensed pursuant to section 11123 shall pay to the department a fee assessed on hazardous waste received at the solidification facility. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be $10.00 per ton, $10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the solidification facility determines that the hazardous waste quantity on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity on all manifest copies accompanying the shipment, note the reason for the change in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity. Payment shall be made within 30 days after the close of each quarter. The solidification facility owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and solidified on the site of a solidification owner or operator shall be paid by that owner or operator.

(3) The following hazardous waste is exempt from the fees provided for in this section:

(a) Ash that results from the incineration of hazardous waste or the incineration of solid waste as defined in

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part 115.

(b) Hazardous waste exempted by rule because of its character or the treatment it has received.

(c) Hazardous waste that is removed as part of a site cleanup activity at the expense of this state or the federal government.

(d) Solidified hazardous waste produced by a solidification facility licensed pursuant to section 11123 and destined for land disposal.

(e) Hazardous waste generated pursuant to a 1-time closure or site cleanup activity in this state if the closure or cleanup activity has been authorized in writing by the department. Hazardous waste resulting from the cleanup of inadvertent releases which occur after March 30, 1988 is not exempt from the fees.

(f) Primary and secondary wastewater treatment solids from a wastewater treatment plant that includes an aggressive biological treatment facility as defined in 42 USC 6925.

(g) Emission control dust or sludge from the primary production of steel in electric furnaces.

(4) An owner or operator of a landfill or solidification facility shall assess or pay the fee described in this section unless the generator provides a signed written certification indicating that the hazardous waste is exempt from the fee. If the hazardous waste that is exempt from the fee is required to be listed on a manifest, the certification shall contain the manifest number of the shipment and the specific fee exemption for which the hazardous waste qualifies. If the hazardous waste that is exempt from the fee is not required to be listed on a manifest, the certification shall provide the volume of exempt hazardous waste, the waste code or waste codes of the exempt waste, the date of disposal or solidification, and the specific fee exemption for which the hazardous waste qualifies. The owner or operator of the landfill or solidification facility shall retain this certification for 4 years from the date of receipt.

(5) The department or a health department certified pursuant to section 11145 shall evaluate the accuracy of generator fee exemption certifications and shall take enforcement action against a generator who files a false certification. In addition, the department shall take enforcement action to collect fees that are not paid as required by this section.

(6) The landfill owner or operator and the solidification facility owner or operator shall forward to the department the fee revenue due under this section with a completed form that is provided or approved by the department. The owner or operator shall certify that all information provided in the form is accurate. The form shall include the following information:

(a) The volume of hazardous waste subject to a fee.

(b) The name of each generator who was assessed a fee, the generator's identification number, manifest numbers, hazardous waste volumes, and the amount of the fee assessed.

(7) A generator is eligible for a refund from this state of fees paid under this section if the generator documents to the department, on a form provided by the department, a reduction in the amount of hazardous waste generated as a result of a process change, or a reduction in the amount of hazardous waste disposed of in a landfill, either directly or following solidification at a solidification facility, as a result of a process change or the generator's increased use of source separation, input substitution, process reformulation, recycling, treatment, or an exchange of hazardous waste that results in a utilization of that hazardous waste. The refund shall be in the amount of $10.00 per ton, $10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound of reduction in the amount of hazardous waste generated or disposed of in a landfill. A generator is not eligible to receive a refund for that portion of a reduction in the amount of hazardous waste generated that is attributable to a decrease in the generator's level of production of the products that resulted in the generation of the hazardous waste.

(8) A generator seeking a refund under subsection (7) shall calculate the refund due by comparing hazardous waste generation, treatment, and disposal activity in the calendar year immediately preceding the date of filing with hazardous waste generation, treatment, and disposal activity in the calendar year 2 years prior to the date of filing. To be eligible for a refund, a generator shall file a request with the department by June 30 of the year following the year for which the refund is being claimed. A refund shall not exceed the total fees paid by the generator to the landfill operator or owner and the solidification facility operator or owner. A form submitted by the generator as provided for in subsection (7) shall be certified by the generator or the generator's authorized agent.

(9) The department shall maintain information regarding the landfill disposal fees received and refunds provided under this section.

(10) The fees collected under this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130. Any balance in the waste reduction fund on October 1, 2013 shall not lapse to the general fund but shall be transferred to the environmental pollution prevention fund and the waste reduction fund shall be closed. Money from the environmental pollution prevention fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

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(a) To pay refunds to generators under this section.

(b) To fund programs created under this part, part 143, part 145, or the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480.

(c) Not more than $500,000.00 to implement section 3103a.

(d) To fund the permit to install program established under section 5505.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2011, Act 150, Imd. Eff. Sept. 21, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11109 Fee for disposal of TENORM in landfill; enforcement; completed form; TENORM account in the environmental pollution prevention fund; creation; investment; expenditures.

Sec. 11109. (1) The owner or operator of a landfill shall pay to the department a fee assessed on TENORM disposed of in the landfill. The fee is $5.00 per ton, based on the quantity of TENORM specified on the monthly operating report. The fee for fractional tons of TENORM shall be proportional. The fee shall be paid within 30 days after the end of each calendar year quarter.

(2) The department shall take enforcement action to collect fees that are not paid as required by this section.

(3) The landfill owner or operator shall forward to the department the fee revenue due under this section with a completed form that is provided or approved by the department. The owner or operator shall certify that all information provided in the form is accurate. The form shall specify the volume of TENORM disposed of at the landfill during the preceding calendar quarter and the amount of fee revenue being forwarded to the department.

(4) The department shall maintain information regarding the fees collected under this section.

(5) The TENORM account is created within the environmental pollution prevention fund created in section 11130. The department shall forward fees collected under this section to the state treasurer for deposit in the TENORM account. The state treasurer may receive money or other assets from any other source for deposit into the account. The state treasurer shall direct the investment of the account. The state treasurer shall credit to the account interest and earnings from account investments. Money remaining in the account at the close of the fiscal year shall not lapse to the general fund.

(6) Money from the TENORM account shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) To pay refunds to generators under this section.

(b) To fund the department's regulation and oversight of the disposal of TENORM in this state.

(c) To provide grants to local units of government and landfill operators to obtain equipment to monitor TENORM radiation.

History: Add. 2018, Act 689, Eff. Mar. 28, 2019.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11110 State hazardous waste management plan; preparation; contents; studies; incentives; criteria; notice; news release; public hearings; comments; amendments.

Sec. 11110. (1) Not later than January 1, 1990, the department shall prepare an updated state hazardous waste management plan.

(2) The updated plan shall:

(a) Update the state hazardous waste management plan adopted by the commission on January 15, 1982.

(b) Be based upon location of generators, health and safety, economics of transporting, type of waste, and existing treatment, storage, or disposal facilities.

(c) Include information generated by the department of commerce and the department on hazardous waste capacity needs in the state.

(d) Include information provided by the office of waste reduction created in part 143.

(e) Plan for the availability of hazardous waste treatment or disposal facilities that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period after October 1, 1988, as is described in section

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104(c)(9)(A) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9604.

(f) Plan for a reasonable geographic distribution of treatment, storage, and disposal facilities to meet existing and future needs, including proposing criteria for determining acceptable locations for these facilities. The criteria shall include a consideration of a location's geology, geography, demography, waste generation patterns, along with environmental factors, public health factors, and other relevant characteristics as determined by the department.

(g) Emphasize a shift away from the practice of landfilling hazardous waste and toward the in-plant reduction of hazardous waste and the recycling and treatment of hazardous waste.

(h) Include necessary legislative, administrative, and economic mechanisms, and a timetable to carry out the plan.

(3) The department shall instruct the office of waste reduction created in part 143 to complete studies as considered necessary for the completion of the updated plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types, quantities, and chemical and physical characteristics of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management, minimization, or reduction practices and costs, including treatment, disposal, on-site recycling, reclamation, and other forms of source reduction within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations, and constraints. Projection of needs shall consider the types and sizes of treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for a state owned treatment, storage, or disposal facility.

(d) An investigation and analysis of methods, incentives, or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(f) An estimate of the public and private cost of treating, storing, or disposing of hazardous waste.

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) If the department finds in preparing the updated plan that there is a need for additional treatment or disposal facilities in the state, then the department shall identify incentives the state could offer that would encourage the construction and operation of additional treatment or disposal facilities in the state that are consistent with the updated plan. The department shall propose criteria which could be used in evaluating applicants for the incentives.

(5) Upon completion of the updated plan, the department shall publish a notice in a number of newspapers having major circulation within the state as determined by the department and shall issue a statewide news release announcing the availability of the updated plan for inspection or purchase at cost by interested persons. The announcement shall indicate where and how the updated plan may be obtained or reviewed and shall indicate that not less than 6 public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the updated plan. The remaining public hearings shall be held within 120 days after the first public hearing at approximately equal time intervals.

(6) After the public hearings, the department shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the updated plan, and determine whether the updated plan should be adopted.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11111 State hazardous waste management plan; adoption or rejection; reason for rejection; return of plan; changing and reconsidering plan.

Sec. 11111. (1) The department, with the advice of the director of public health, shall adopt or reject the updated plan within 60 days.

(2) If the department rejects the updated plan, it shall indicate its reason for rejection and return the updated plan for further work.

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(3) The department shall make the necessary changes and reconsider the updated plan within 30 days after receipt of the rejection.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11112 State hazardous waste management plan; final decision; adoption.

Sec. 11112. The department shall make a final decision on the updated plan within 120 days after the department first receives the updated plan. If the department fails to formally adopt or reject the updated plan within 120 days, the updated plan is considered adopted.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11114 Proposed rules to implement plan.

Sec. 11114. Not more than 180 days after the final adoption of the updated plan, the department shall submit to the legislature proposed rules to implement the updated plan created in section 11110.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11115 Permits and licenses for treatment, storage, or disposal facility; determination; exception.

Sec. 11115. After the updated plan is adopted, the department shall not issue a permit or license under this part for a treatment, storage, or disposal facility until the department has made a determination that the action is consistent with the updated plan. This section does not apply to a treatment, storage, or disposal facility granted a construction permit or a license under this part before the final adoption of the updated plan. However, such a facility shall be consistent with the state hazardous waste management plan adopted by the commission on January 15, 1982.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11115a Facility subject to corrective action requirements; release of contaminant from waste management unit or release of hazardous waste from facility; determination by department; consent order; license, permit, or order; contents.

Sec. 11115a. (1) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a contaminant from any waste management unit at the facility, regardless of when the contaminant may have been placed in or released from the waste management unit. This requirement applies to a facility for which the owner or operator, or both, is applying for or has been issued a license under this part.

(2) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a contaminant from any waste management unit at the facility, the department may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (1), requiring corrective action at the facility. A license, permit, or order issued or entered pursuant to this subsection shall contain all of the following:

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license, permit, or order.

(b) Assurances of financial responsibility for completing the corrective action.

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary, unless the owner or operator of the facility demonstrates to the satisfaction of the department that,

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despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake this corrective action.

(3) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a hazardous waste from the facility, regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator, or both, is or was subject to the interim status requirements defined in the solid waste disposal act, except for those facilities that have received formal written approval of the withdrawal of their United States environmental protection agency part A hazardous waste permit application from the department or the United States environmental protection agency.

(4) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a hazardous waste, the department may order, or may enter a consent order with, an owner or operator, or both, of a facility specified in subsection (3), requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following:

(a) Schedules of compliance for corrective action.

(b) Assurances of financial responsibility for completing the corrective action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11115b Corrective actions; satisfaction of remedial action obligations.

Sec. 11115b. Corrective actions conducted pursuant to this part satisfy a person's remedial action obligations under part 201 and remedial obligations under part 31 for that release or threat of release.

History: Add. 1995, Act 37, Imd. Eff. May 17, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11116-324.11118 Repealed. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: The repealed sections pertained to requirements for applications for construction permits.

324.11118a Multisource commercial hazardous waste disposal well; definition; maintenance of treatment and storage facility; operating license required; business plan; applicability of subsection (3).

Sec. 11118a. (1) As used in this section, "multisource commercial hazardous waste disposal well" has the meaning ascribed to that term in section 62506a.

(2) A multisource commercial hazardous waste disposal well shall maintain on site a treatment facility and a storage facility that have obtained an operating license under section 11123.

(3) Subject to subsection (4), in addition to the information required under section 11123, the owner or operator of a proposed treatment and storage facility with a multisource commercial hazardous waste disposal well shall provide to the department in an application for an operating license a business plan for the well operations. The business plan shall contain all of the following information:

(a) The type, estimated quantities, and expected potential sources of wastes to be disposed of in the well.

(b) A feasibility study on the viability of the disposal well operations.

(c) Additional business plan information required by the department and related solely to the requirements of subdivisions (a) and (b).

(d) Any additional business plan information if the department and applicant agree that such additional information should be submitted.

(4) Subsection (3) applies only to a person who submits an application for an operating license, other than a renewal operating license, after the effective date of the 2010 amendatory act that added this subsection.

History: Add. 1996, Act 182, Imd. Eff. May 3, 1996;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

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324.11119, 324.11120 Repealed. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: The repealed sections pertained to duties of department upon receipt of construction permit application and notification of affected municipalities and counties.

324.11121 Effect of local ordinance, permit requirement, or other requirement.

Sec. 11121. A local ordinance, permit requirement, or other requirement does not prohibit the construction of a treatment, storage, or disposal facility, except as otherwise provided in section 11123.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11122 Repealed. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Compiler's note: The repealed section pertained to establishment of limited storage facility.

324.11123 Operating license; contents of applications; schedule for submitting operating license application; time period for submitting complete operating license application; conditions for operating storage facility until application approved or denied; placement on department-organized mailing list; fee.

Sec. 11123. (1) Unless a person is complying with subsection (8) or a rule promulgated under section 11127(4), a person shall not establish, construct, conduct, manage, maintain, or operate a treatment, storage, or disposal facility within this state without an operating license from the department.

(2) An application for an operating license for a proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization shall be submitted on a form provided by the department and contain all of the following:

(a) The name and residence of the applicant.

(b) The location of the proposed treatment, storage, or disposal facility project.

(c) A copy of an actual published notice that the applicant published at least 30 days before submittal of the application in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed treatment, storage, or disposal facility project. The notice shall contain a map indicating the location of the proposed treatment, storage, or disposal facility project and information on the nature and size of the proposed facility. In addition, as provided by the department, the notice shall contain a description of the application review process, the location where the complete application may be reviewed, and an explanation of how copies of the complete application may be obtained.

(d) A written summary of the comments received at the public preapplication meeting required by rule and the applicant's response to the comments, including any revisions to the application.

(e) A determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated under this part.

(f) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(g) The procedures for closure and postclosure monitoring.

(h) An engineering plan.

(i) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(j) An application fee. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130. Pursuant to procedures established by rule, the application fee shall be $25,000.00 plus all of the following, as applicable:

(*i*)	For a landfill, surface impoundment, land treatment, or waste pile facility	$	9,000.00
(*ii*)	For an incinerator or treatment facility other than a treatment facility described in subparagraph (*i*)	$	7,200.00
(*iii*)	For a storage facility, other than storage that is associated with treatment or disposal activities that may be regulated under a single license	$	500.00

(k) Except as otherwise provided in this subdivision, a disclosure statement that includes all of the following:

(*i*) The full name and business address of all of the following:

(A) The applicant.

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(B) The 5 persons holding the largest shares of the equity in or debt liability of the proposed facility. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(C) The operator. If a waiver is obtained under sub-subparagraph (B), detailed information regarding the proposed operator shall be included in the disclosure statement.

(D) If known, the 3 employees of the operator who will have the most responsibility for the day-to-day operation of the facility, including their previous experience with other hazardous waste treatment, storage, or disposal facilities.

(E) Any other partnership, corporation, association, or other legal entity if any person required to be listed under sub-subparagraphs (A) to (D) has at any time had 25% or more of the equity in or debt liability of that legal entity. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(*ii*) For each person required to be listed under this subdivision, a list of all convictions for criminal violations of any statute enacted by a federal, state, Canadian, or Canadian provincial agency if the statute is an environmental statute, if the violation was a misdemeanor committed in furtherance of obtaining an operating license under this part not more than 5 years before the application is filed, or if the violation was a felony committed in furtherance of obtaining an operating license under this part not more than 10 years before the application is filed. If debt liability is held by a chartered lending institution, information required in this subparagraph and subparagraphs (*iii*) and (*iv*) is not required from that institution. The department shall submit to the legislature a report on the 2014 act that amended this subparagraph, including the number of permits denied as a result of that act and whether this subparagraph should be further amended. The report shall cover the 5-year period after the effective date of that act and shall be submitted within 60 days after the expiration of that 5-year period. The report may be submitted electronically.

(*iii*) A list of all environmental permits or licenses issued by a federal, state, local, Canadian, or Canadian provincial agency held by each person required to be listed under this subdivision that were permanently revoked because of noncompliance.

(*iv*) A list of all activities at property owned or operated by each person required to be listed under this subdivision that resulted in a threat or potential threat to the environment and for which public funds were used to finance an activity to mitigate the threat or potential threat to the environment, except if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously recovered from the applicant or other listed person without litigation.

(*l*) A demonstration that the applicant has considered each of the following:

(*i*) The risk and impact of accident during the transportation of hazardous waste to the treatment, storage, or disposal facility.

(*ii*) The risk and impact of fires or explosions from improper treatment, storage, and disposal methods at the treatment, storage, or disposal facility.

(*iii*) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development, including proximity to housing, schools, and public facilities.

(*iv*) The nature of the probable environmental impact, including the specification of the predictable adverse effects on each of the following:

(A) The natural environment and ecology.

(B) Public health and safety.

(C) Scenic, historic, cultural, and recreational values.

(D) Water and air quality and wildlife.

(m) A summary of measures evaluated to mitigate the impacts identified in subdivision (*l*) and a detailed description of the measures to be implemented by the applicant.

(n) A schedule for submittal of all of the following postconstruction documentation:

(*i*) Any changes in, or additions to, the previously submitted disclosure information, or a certification that the disclosure listings previously submitted continue to be correct, following completion of construction of the treatment, storage, or disposal facility.

(*ii*) A certification under the seal of a licensed professional engineer verifying that the construction of the treatment, storage, or disposal facility has proceeded according to the plans approved by the department and, if applicable, the approved construction permit, including as-built plans.

(*iii*) A certification of the treatment, storage, or disposal facility's capability of treating, storing, or disposing of hazardous waste in compliance with this part.

(*iv*) Proof of financial assurance as required by rule.

(3) If any information required to be included in the disclosure statement under subsection (2)(k) changes

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or is supplemented after the filing of the statement, the applicant or licensee shall provide that information to the department in writing not later than 30 days after the change or addition.

(4) Notwithstanding any other provision of law, the department may deny an application for an operating license if there are any listings pursuant to subsection (2)(k)(*ii*), (*iii*), or (*iv*) as originally disclosed or as supplemented.

(5) The application for an operating license for a proposed limited storage facility, which is subject to the requirements pertaining to storage facilities, shall be submitted on a form provided by the department and contain all of the following:

(a) The name and residence of the applicant.

(b) The location of the proposed facility.

(c) A determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated under this part.

(d) An environmental assessment. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of this state, and also shall contain an environmental failure mode assessment.

(e) The procedures for closure.

(f) An engineering plan.

(g) Proof of financial responsibility.

(h) A resolution or other formal determination of the governing body of each municipality in which the proposed limited storage facility would be located indicating that the limited storage facility is compatible with the zoning ordinance of that municipality, if any. However, in the absence of a resolution or other formal determination, the application shall include a copy of a registered letter sent to the municipality at least 60 days before the application submittal, indicating the intent to construct a limited storage facility, and requesting a formal determination on whether the proposed facility is compatible with the zoning ordinance of that municipality, if any, in effect on the date the letter is received, and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter means that the proposed facility is to be considered compatible with any applicable zoning ordinance. If, within 60 days of receiving a registered letter, a municipality does not make a formal determination concerning whether a proposed limited storage facility is compatible with a zoning ordinance of that municipality as in effect on the date the letter is received, the limited storage facility is considered compatible with any zoning ordinance of that municipality, and incompatibility with a zoning ordinance of that municipality is not a basis for the department to deny the license.

(i) An application fee of $500.00. The application fee shall be deposited in the environmental pollution prevention fund created in section 11130.

(j) Other information specified by rule or by federal regulation issued under the solid waste disposal act.

(6) The application for an operating license for a treatment, storage, or disposal facility other than a facility identified in subsection (2) or (5) shall be made on a form provided by the department and include all of the following:

(a) The name and residence of the applicant.

(b) The location of the existing treatment, storage, or disposal facility.

(c) Other information considered necessary by the department or specified in this section, by rule, or by federal regulation issued under the solid waste disposal act.

(d) Proof of financial responsibility. An applicant for an operating license for a treatment, storage, or disposal facility that is a surface impoundment, landfill, or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property.

(e) A fee of $500.00. The fee shall be deposited in the environmental pollution prevention fund created in section 11130.

(7) The department shall establish a schedule for requiring each person subject to subsection (8) to submit an operating license application. The department may adjust this schedule as necessary. Each person subject to subsection (8) shall submit a complete operating license application within 180 days of the date requested to do so by the department.

(8) A person who owns or operates a treatment, storage, or disposal facility that is in existence on the effective date of an amendment of this part or of a rule promulgated under this part that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license requirements until an operating license application is approved or denied if all of the following conditions have been met:

(a) A complete operating license application is submitted within 180 days of the date requested by the

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department under subsection (7).

(b) The person is in compliance with all rules promulgated under this part and with all other state laws.

(c) The person qualifies for interim status as defined in the solid waste disposal act, is in compliance with interim status standards established by federal regulation under subtitle C of the solid waste disposal act, 42 USC 6921 to 6939e, and has not had interim status terminated.

(9) A person may request to be placed on a department-organized mailing list to be kept informed of any rules, plans, operating license applications, contested case hearings, public hearings, or other information or procedures relating to the administration of this part. The department may charge a fee to cover the cost of the materials.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010;—Am. 2014, Act 254, Imd. Eff. June 30, 2014.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11124 Inspection of site; determination of compliance; filing and review of inspection report.

Sec. 11124. (1) Following the construction of the proposed treatment, storage, or disposal facility or the expansion, enlargement, or alteration of a treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in an existing operating license, original construction permit, or other authorization, and the receipt of the postconstruction documentation required under section 11123, the department shall inspect the site and determine if the proposed treatment, storage, or disposal facility complies with this part, the rules promulgated under this part, and the stipulations included in the approved treatment, storage, or disposal facility operating license. An inspection report shall be filed in writing by the department before issuing final authorization to manage, maintain, and operate the treatment, storage, or disposal facility and shall be made available for public review.

(2) Upon receipt of an operating license application meeting the requirements of section 11123(6), the department shall inspect the site and determine if the treatment, storage, or disposal facility complies with this part and the rules promulgated under this part. An inspection report shall be filed in writing by the department before issuing an operating license.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11125 Duties of department upon receipt of operating license application; establishment of operating license condition; final decision on operating license application; public hearing; notice; time; extension of deadline; stipulations; operation not prohibited by local ordinance, permit, or other requirement; changes or additions to disclosure statement; denial of application; modification or revocation of operating license; conditions; postconstruction documentation.

Sec. 11125. (1) Upon receipt of an operating license application that complies with the requirements of section 11123(2), the department shall do all of the following:

(a) Notify the municipality and county in which the treatment, storage, or disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to part 91; each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the license may be approved or denied.

(b) Review the plans of the proposed treatment, storage, or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part. The review shall be made within the department. The review shall include, but need not be limited to, a review of air quality, water quality, waste management, hydrogeology, and the applicant's disclosure statement. A written and signed review by each person within the department reviewing the application and plans shall be received and filed in the department's license application records before an operating license is issued or denied by the department.

(c) Integrate the relevant provisions of all permits that the applicant is required to obtain from the department to construct the proposed treatment, storage, or disposal facility into the operating license required

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by this part.

(d) Consider the mitigation measures proposed to be implemented as identified in section 11123(2)(m).

(e) Hold a public hearing not more than 60 days after receipt of the application.

(2) The department may establish operating license conditions specifically applicable to the treatment, storage, or disposal facility and operation at that site to mitigate adverse impacts.

(3) The department shall provide notice and an opportunity for a public hearing before making a final decision on an operating license application.

(4) The department shall make a final decision on an operating license application within 140 days after the department receives a complete application. However, if the state's hazardous waste management program is authorized by the United States environmental protection agency under section 3006 of subtitle C of the solid waste disposal act, 42 USC 6926, the department may extend the deadline beyond the limitation provided in this section in order to fulfill the public participation requirements of the solid waste disposal act. The operating license may contain stipulations specifically applicable to site and operation.

(5) A local ordinance, permit, or other requirement shall not prohibit the operation of a licensed treatment, storage, or disposal facility.

(6) If any information required to be included in the disclosure statement required under section 11123 changes or is supplemented after the filing of the statement, the applicant or licensee shall provide that information to the department in writing within 30 days after the change or addition.

(7) The department may deny an operating license application submitted pursuant to section 11123 if any information described in section 11123(2)(k)(*ii*) to (*iv*) was not disclosed as required in section 11123(2) or this section.

(8) The department shall provide notice of the final decision to persons on the organized mailing list for the facility.

(9) Following the construction of a new, expanded, enlarged, or altered treatment, storage, or disposal facility, the department shall review all information required to be submitted by the operating license. If the department finds that the owner or operator has deviated from the specific conditions established in the operating license, the department shall determine if cause exists for modification or revocation of the operating license, in accordance with provisions established by rule. At a minimum, the postconstruction documentation shall include all of the following:

(a) Updated disclosure information or a certification as described in section 11123(2)(n)(*i*).

(b) A certification of construction as described in section 11123(2)(n)(*ii*). The department shall require additional certification periodically during the operation or in order to verify proper closure of the site.

(c) A certification of capability signed and sealed by a licensed professional engineer as described in section 11123(2)(n)(*iii*).

(d) Information regarding any deviations from the specific conditions in the operating license.

(e) Proof of financial responsibility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11126 Coordinating and integrating provisions of act; extent.

Sec. 11126. The department shall coordinate and integrate the provisions of this part for purposes of administration and enforcement with appropriate state and federal law including the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q; the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387; title XIV of the public health service act, chapter 373, 88 Stat. 1660; the toxic substances control act, Public Law 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692; the resource conservation and recovery act of 1976, 42 U.S.C. 6901 to 6987; parts 31, 55, 115, and 121; the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023; the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34; and the hazardous materials transportation act. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

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Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11126a Fee schedule; report.

Sec. 11126a. By September 1, 1998, the department shall submit a report to the legislature that recommends a fee schedule to implement this part.

History: Add. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11127 Rules generally; exemption; effect of amendment to part or rules, or changes in definitions.

Sec. 11127. (1) The department shall submit to the legislature, after consultation with the department of public health, rules necessary to implement and administer this part. The rules required to be submitted by this subsection shall include, but not be limited to, requirements for generators, transporters, and treatment, storage, and disposal facilities.

(2) The department may promulgate rules that exempt certain hazardous wastes and certain treatment, storage, or disposal facilities from all or portions of the requirements of this part as necessary to obtain or maintain authorization from the United States environmental protection agency under the solid waste disposal act, or upon a determination by the department that a hazardous waste or a treatment, storage, or disposal facility is adequately regulated under other state or federal law and that scientific data supports a conclusion that an exemption will not result in an impairment of the department's ability to protect the public health and the environment. However, an exemption granted pursuant to this subsection shall not result in a level of regulation less stringent than that required under the solid waste disposal act.

(3) If an amendment to this part or the rules promulgated under this part subjects a person to a new or different licensing requirement of this part, the department shall promulgate rules to facilitate orderly and reasonable compliance by that person.

(4) Changes in the definition of hazardous waste contained in section 11103 and the definition of treatment contained in section 11104 effected by the 1982 amendatory act that amended former Act No. 64 of the Public Acts of 1979 do not eliminate any exemption provided to any hazardous waste or to any treatment, storage, or disposal facility under administrative rules promulgated under former Act No. 64 of the Public Acts of 1979 before March 30, 1983. However, these exemptions may be modified or eliminated by administrative rules promulgated after March 30, 1983 under former Act No. 64 of the Public Acts of 1979 or under this part in order that the state may obtain authorization from the United States environmental protection agency under the solid waste disposal act, or to provide adequate protection to the public health or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11128 Rules listing hazardous waste and other criteria; revision; removing certain materials from list; public hearings; construction of part, rules, and list.

Sec. 11128. (1) The department shall submit to the legislature proposed rules listing hazardous waste and other criteria as required by this part. The rules shall state the criteria for identifying the characteristics of hazardous waste and for listing the types of hazardous waste, taking into account toxicity, persistence, degradability in nature, potential for accumulation in tissue, and other related factors including flammability, corrosiveness, and other hazardous characteristics. The department shall revise by rule the criteria and listing as necessary. A rule promulgated for the purpose of removing from the list those materials removed from the federal list of regulated materials or removing from management as a hazardous waste those wastes that have been exempted from management under the solid waste disposal act are not required to meet the requirements of sections 41, 42, and 45(2) of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.241, 24.242, and 24.245 of the Michigan Compiled Laws.

(2) Before the department establishes the list, the department shall hold not less than 3 public hearings in different municipalities in the state. To ensure consistency between federal and state requirements, this part,

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the rules promulgated by the department, and the list shall be construed to conform as closely as possible to requirements established under the solid waste disposal act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11129 Information as public record; confidential information; notice of request for information; demonstration by person regulated; granting or denying request; certain data not confidential; release of confidential information.

Sec. 11129. (1) Except as provided in subsections (2) and (3), information obtained by the department under this part is a public record subject to disclosure as provided in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) A person regulated under this part may designate a record, permit application, other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department. The department shall notify the regulated person of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, whose scope includes information designated as confidential. The person regulated under this part has 30 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part makes a satisfactory demonstration to the department that the information should not be disclosed. If there is a dispute between the owner or operator of a treatment, storage, or disposal facility and the person requesting information under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, the director of the department shall make the decision to grant or deny the request. When the department makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, treated, stored, or disposed of; air and water emission factors, rates and characterizations; emissions during malfunctions of equipment required under this part on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The department may release any information obtained under this part, including a record, permit application, or other information considered confidential pursuant to subsection (1), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under the solid waste disposal act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11130 Environmental pollution prevention fund; creation; receipt and disposition of assets; investment; administration.

Sec. 11130. (1) The environmental pollution prevention fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the environmental pollution prevention fund or into an account within the environmental pollution prevention fund. The state treasurer shall direct the investment of the environmental pollution prevention fund. The state treasurer shall credit to each account within the environmental pollution prevention fund interest and earnings from account investments.

(3) Money remaining in the environmental pollution prevention fund and in any account within the environmental pollution prevention fund at the close of the fiscal year shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2013, Act 73, Eff. Oct. 1, 2013.

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Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11132 Disposal of certain technologically enhanced naturally occurring radioactive material (TENORM) in landfill prohibited; request for renewal or modification of operating license for disposal of TENORM; requirements; monitoring program; report; maintenance of records.

Sec. 11132. (1) Except as otherwise provided in this section, a person shall not deliver to a landfill in this state for disposal and the owner or operator of a landfill shall not permit disposal in the landfill of TENORM with any of the following:

(a) A concentration of radium-226 more than 50 picocuries per gram.

(b) A concentration of radium-228 more than 50 picocuries per gram.

(c) A concentration of lead-210 more than 260 picocuries per gram.

(2) Except as otherwise specified in the landfill operating license, the owner or operator of a landfill shall not permit a delivery of TENORM for disposal at the landfill unless the generator has provided the following information in writing to the owner or operator of the landfill:

(a) The concentrations of radium-226, radium-228, lead-210, and any other radionuclide identified using gamma spectroscopy, or an equivalent analytical method, in the TENORM based on techniques for representative sampling and waste characterization approved by the department.

(b) An estimate of the total mass of the TENORM.

(c) An estimate of the total radium-226 activity, the total radium-228 activity, and the total lead-210 activity of the TENORM.

(d) The proposed date of delivery.

(3) The department may test TENORM proposed to be delivered to a landfill.

(4) If requested by the owner or operator of a landfill in an application for the renewal of or a major modification to an operating license, the department may authorize with conditions and limits in the operating license the disposal of TENORM with concentrations of radium-226 more than 50 picocuries per gram, radium-228 more than 50 picocuries per gram, or lead-210 more than 260 picocuries per gram, or any combination thereof, but not more than 500 picocuries per gram for each radionuclide. An operating license under this part with such an authorization constitutes a license from the state's radiation control authority under part 135 of the public health code, 1978 PA 368, MCL 333.13501 to 333.13537, if the conditions and procedures for issuance of the operating license under this part are sufficient to satisfy the licensing requirements of part 135 of the public health code, 1978 PA 368, MCL 333.13501 to 333.13537.

(5) A request under subsection (4) shall include all of the following:

(a) A radiation safety program that addresses all of the following:

(*i*) Personnel radiation protection.

(*ii*) Worker training.

(*iii*) Radiation surveys.

(*iv*) Radiation instrument calibration.

(*v*) Receipt and disposal of radioactive material.

(*vi*) Emergency procedures.

(*vii*) Record keeping.

(b) A report evaluating the risks of exposure to residual radioactivity through all relevant pathways using a generally accepted industry model such as the Argonne National Laboratory RESRAD family of codes or, if approved by the department, another model. The report shall evaluate potential radiation doses to site workers and members of the public during site operation and after site closure. The report shall use reasonable scenarios to evaluate the dose to members of the public.

(c) A description of any steps necessary to ensure the annual dose to members of the public during landfill operation and after site closure will be less than 25 millirem.

(d) A description of an environmental monitoring program under subsection (6).

(6) If TENORM is disposed at a landfill, the operator of the landfill shall conduct a monitoring program that complies with all of the following:

(a) Radiological monitoring of site workers and at the landfill property boundary are conducted as specified in the license.

(b) Radium-226, radium-228, and lead-210 are included among the parameters analyzed in leachate and groundwater at the frequency specified in the license.

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(c) Penetrating radiation, radioactivity in air, and radon in air are measured as specified in the operating license if the landfill is used to dispose of TENORM with a concentration of radium-226 more than 50 picocuries per gram, radium-228 more than 50 picocuries per gram, or lead-210 more than 260 picocuries per gram.

(d) Results of all monitoring required under this subsection are included in the environmental monitoring reports required under rules promulgated under this part and the facility operating license.

(7) The owner or operator of a landfill shall submit to the department by March 15 each year a report that summarizes the information obtained under subsection (2) for all TENORM disposed at the landfill during the previous calendar year.

(8) The owner or operator of a landfill shall do both of the following:

(a) Ensure that all TENORM is deposited at least 10 feet below the bottom of the future landfill cap.

(b) Maintain records of the location and elevation of TENORM disposed of at the landfill.

History: Add. 2018, Act 688, Eff. Mar. 28, 2019.

Compiler's note: Former MCL 324.11132, which pertained to requirements for hazardous waste transporter business license, was repealed by Act 139 of 1998, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11132a Transporter; duties; inspection; establishment of standards and requirements by rule.

Sec. 11132a. (1) A transporter shall do all of the following:

(a) Obtain and utilize an environmental protection agency identification number in accordance with the rules promulgated under this part.

(b) If transporting by highway, register and be permitted in accordance with the hazardous materials transportation act and carry a copy of the registration and permit on the vehicle for inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(c) Comply with the transfer facility operating and financial responsibility requirements as required by the rules promulgated under this part.

(d) Comply with the consolidation and commingling requirements as required by the rules promulgated under this part.

(e) Comply with the vehicle requirements as required by the rules promulgated under this part.

(f) Utilize, complete, and retain a manifest for each shipment of hazardous waste as required by this part and the rules promulgated under this part.

(g) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(h) Retain all records as required by the rules promulgated under this part for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(i) Comply with the reporting requirements as required by the rules promulgated under this part.

(j) Comply with the import and export requirements as required by the rules promulgated under this part.

(k) Comply with the requirements regarding hazardous waste discharges as required by the rules promulgated under this part.

(*l*) Comply with the land disposal restriction requirements as required by the rules promulgated under this part.

(m) Comply with the universal waste requirements as required by the rules promulgated under this part.

(n) Keep the outside of all vehicles and accessory equipment free of hazardous waste or hazardous waste constituents.

(2) The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part and the rules promulgated under this part. The department shall establish, by rule, the inspection standards and requirements.

History: Add. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

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324.11133 Hazardous waste transporter business license; revocation.

Sec. 11133. A hazardous waste transporter business license issued under this part shall be revoked if the holder of the license selected a treatment, storage, or disposal facility which is operated contrary to this part or the rules promulgated under this part or uses a vehicle to store, treat, transport, or dispose of hazardous waste contrary to this part or the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11134 Municipality or county; prohibited conduct.

Sec. 11134. A municipality or county shall not prohibit the transportation of hazardous waste through the municipality or county or prevent the ingress and egress into a licensed treatment, storage, or disposal facility.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11135 Manifest; submission of copy to department; certification; specified destination; determining status of specified waste; exception report; retention period for copy of manifest; extension.

Sec. 11135. (1) A hazardous waste generator shall provide a separate manifest to the transporter for each load of hazardous waste transported to property that is not on the site where it was generated.

(2) A person that fails to provide timely and accurate information or a complete form as provided for in this section is in violation of this part.

(3) A generator shall include on the manifest details as specified by the department and shall at least include a sufficient qualitative and quantitative analysis and a physical description of the hazardous waste to evaluate toxicity and methods of transportation, storage, and disposal. The manifest must include safety precautions as necessary for each load of hazardous waste. The generator shall submit to the department a copy of the manifest within 10 days after the end of the month for each load of hazardous waste transported within that month.

(4) A generator shall certify that the information contained on a manifest prepared by the generator is accurate.

(5) The specified destination of each load of hazardous waste identified on the manifest must be a designated facility.

(6) If a generator does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days after the date on which the hazardous waste was accepted by the initial transporter, the generator shall contact the transporter to determine the status of the hazardous waste. If the generator is unable to determine the status of the hazardous waste upon contacting the transporter, the generator shall contact the owner or operator of the designated facility to which the hazardous waste was to be transported to determine the status of the hazardous waste.

(7) A generator shall submit an exception report to the department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days after the date on which the hazardous waste was accepted by the initial transporter. The exception report must include all of the following:

(a) A legible copy of the manifest.

(b) A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(8) A generator shall keep a copy of each manifest signed and dated by the initial transporter for 3 years or until the generator receives a signed and dated copy from the owner or operator of the designated facility that received the hazardous waste. The generator shall keep the copy of the manifest signed and dated by the owner or operator of the designated facility for 3 years. The retention periods required by this subsection are automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 403, Imd. Eff. Jan. 6, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;

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—Am. 2014, Act 287, Imd. Eff. Sept. 23, 2014;—Am. 2017, Act 90, Imd. Eff. July 12, 2017;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11136 Certifying acceptance of waste for transportation; delivery of hazardous waste and manifest; period for keeping copy of manifest; review and inspection of manifest; extension of retention period.

Sec. 11136. (1) The hazardous waste transporter shall certify acceptance of waste for transportation and shall deliver the hazardous waste and accompanying manifest only to the destination specified by the generator on the manifest.

(2) The hazardous waste transporter shall keep a copy of the manifest for a period of 3 years and shall make it readily available for review and inspection by the department, the director of public health, an authorized representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11137 Accepting delivery of hazardous waste; condition; duties of owner or operator.

Sec. 11137. The treatment, storage, or disposal facility owner or operator shall accept delivery of hazardous waste only if delivery is accompanied by a manifest properly certified by both the generator and the transporter and the treatment, storage, or disposal facility is the destination indicated on the manifest. The treatment, storage, or disposal facility owner or operator also shall do all of the following:

(a) Certify on the manifest receipt of the hazardous waste and return a signed copy of the manifest to the department within a period of 10 days after the end of the month for all hazardous waste received within that month.

(b) Return a signed copy of the manifest to the generator.

(c) Keep permanent records pursuant to the rules promulgated by the department.

(d) Compile a periodic report of hazardous waste treated, stored, or disposed of as required by the department under rules promulgated by the department.

(e) Retain a copy of each manifest and report described in this section for a period of 3 years and make each copy readily available for review and inspection by the department, the director of public health or a designated representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11138 Generator of hazardous waste; duties; records; report.

Sec. 11138. (1) A generator of hazardous waste shall do all of the following:

(a) Compile and maintain information and records regarding the quantities of hazardous waste generated, characteristics and composition of the hazardous waste, and the disposition of hazardous waste generated.

(b) Utilize proper labeling and containerization of hazardous waste as required by the department.

(c) Provide for the transport of hazardous waste only by a transporter permitted under the hazardous materials transportation act.

(d) Utilize and retain a manifest for each shipment of hazardous waste transported to property that is not on site as required by section 11135 and assure that the treatment, storage, or disposal facility to which the waste is transported is a designated facility.

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(e) Provide the information on the manifest as required under section 11135(1) to each person transporting, treating, storing, or disposing of hazardous waste.

(f) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(g) Retain all records for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(h) Compile and submit a periodic report of hazardous waste generated, stored, transferred, treated, disposed of, or transported for treatment, storage, or disposal as required by the department.

(2) A generator who also operates a treatment, storage, or disposal facility shall keep records of all hazardous waste produced and treated, stored, or disposed. The generator shall submit a report to the department within a period of 10 days after the end of each month for all waste produced and treated, stored, or disposed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11139 Condition of obtaining operating license for disposal facility; condition of obtaining operating license for landfill.

Sec. 11139. (1) As a condition of obtaining an operating license for a disposal facility pursuant to section 11123, the applicant shall demonstrate to the department that the owner of the property has recorded on the deed to the property or some other document that is normally examined during a title search a notice that will notify in perpetuity any potential purchaser of the following:

(a) That the property has been used to manage hazardous wastes.

(b) That the use of the land should not disturb the final cover, liners, components of any containment system, or the function of the monitoring systems on or in the property.

(c) That the survey plat and records of type, location, and quantity of hazardous waste on or in the property have been filed with the local zoning or land use authority as required by the rules promulgated under this part.

(2) As a condition of obtaining an operating license for a landfill pursuant to section 11123, the applicant shall demonstrate to the department that an instrument imposing a restrictive covenant upon the land involved has been executed by all of the owners of the tract of land upon which the landfill is to be located. The instrument imposing the restrictive covenant shall be filed for record by the department in the office of the register of deeds in the county in which the disposal facility is located. The covenant shall state that the land has been or may be used as a landfill for disposal of hazardous waste and that neither the property owners, agents, or employees, nor any of their heirs, successors, lessees, or assignees shall engage in filling, grading, excavating, building, drilling, or mining on the property following completion of the landfill without authorization of the department. In giving authorization, the department shall consider, at a minimum, the original design, type of operation, hazardous waste deposited, and the state of decomposition of the fill. Before authorizing any activity that would disturb the integrity of the final cover of a landfill, the department must find either that the disturbance of the final cover is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment or that disturbance of the final cover is necessary to reduce a threat to human health or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11140 Closure and postclosure monitoring and maintenance plan; submission; contents; rules.

Sec. 11140. (1) The owner or operator of a treatment, storage, or disposal facility shall submit a closure plan to the department as part of the application for an operating license under section 11123. In addition, the owner or operator of a disposal facility shall submit a postclosure monitoring and maintenance plan to the department as part of the application. At a minimum, the closure plan shall include a description of how the facility shall be closed, possible uses of the land after closure, anticipated time until closure, estimated time for closure, and each anticipated partial closure. Those facilities described in section 11123(6) and (8) shall

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submit a closure and, if required by rule, a postclosure plan with their operating license application.

(2) The department shall promulgate rules regarding notification before closure of a treatment, storage, or disposal facility, length of time permitted for closure, removal and decontamination of equipment, security, groundwater and leachate monitoring system, sampling analysis and reporting requirements, and any other pertinent requirements.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11141 Cost of closing and postclosure monitoring and maintenance of facility; methods of assurance; amount; periodic adjustment; violation.

Sec. 11141. An owner or operator of a treatment, storage, or disposal facility shall file, as a part of the application for a license to operate, a surety bond or other suitable instrument or mechanism or establish a secured trust fund, as approved by the department, to cover the cost of closing the treatment, storage, or disposal facility after its capacity is reached or operations have otherwise terminated. In addition, the owner or operator of a disposal facility shall also file a surety bond or other suitable instrument or mechanism or establish a secured trust fund, approved by the department, to cover the cost of postclosure monitoring and maintenance of the facility. An owner or operator may use a combination of bonds, instruments, mechanisms, or funds, as approved by the department, to satisfy the requirements of this section. The bond, instrument, mechanism, or fund, or combination of these methods of assurance, shall be in an amount equal to a reasonable estimate of the cost required to adequately close the facility, based on the level of operations proposed in the operating license application, and, with respect to a disposal facility, to monitor and maintain the site for a period of at least 30 years. The bond, instrument, mechanism, or fund, or the combination of these methods of assurance, shall be adjusted periodically as determined by rule to account for inflation or changes in the permitted level of operations. Failure to maintain the bond, instrument, mechanism, or fund, or combination of these methods of assurance, constitutes a violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11143 Hazardous waste service fund; creation; financing; uses of fund; administration; expenditures; expenses; rules.

Sec. 11143. (1) There is created within the state treasury a hazardous waste service fund of not less than $1,000,000.00 to be financed by appropriations for the following uses:

(a) For hazardous waste emergencies as defined by rule.

(b) For use in ensuring the closure and post closure monitoring and maintenance of treatment, storage, or disposal facilities.

(2) The department shall administer the fund and authorize expenditures upon a finding of actual or potential environmental damage caused by hazardous waste or when the owner or operator of the treatment, storage, or disposal facility is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of the site and the surety bond, instrument, mechanism, or secured trust fund maintained by the owner or operator of a treatment, storage, or disposal facility as required by section 11141 is inadequate or is no longer in effect.

(3) After an expenditure from the fund, the department immediately shall request the attorney general to begin proceedings to recover any expenditure from the fund from the person responsible for the hazardous waste emergency or the owner or operator of a treatment, storage, or disposal facility who is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of a facility. If the owner of the property refuses to pay expenses incurred, the expenses shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the laws of the state.

(4) The department shall promulgate rules to define a hazardous waste emergency and to establish the method of payment from the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

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324.11144 Inspection; filing report for licensed facility; complaint or allegation; record; investigation; report; notice of violation or emergency situation.

Sec. 11144. (1) The department shall inspect and file a written report not less than 4 times per year for each licensed treatment, storage, and disposal facility.

(2) A person may register with the department a complaint or allegation of improper action or violation of this part, a rule, or a condition of the license to operate a treatment, storage, or disposal facility.

(3) Upon receipt of a complaint or allegation from a municipality, the department shall make a record of the complaint and shall order an inspection of the treatment, storage, or disposal facility, or other location of alleged violation to investigate the complaint or allegation within not more than 5 business days after receipt of the complaint or allegation. If a complaint or allegation is of a highly serious nature, as determined by the department, the facility or the location of the alleged violation shall be inspected as quickly as possible.

(4) Following an investigation of a complaint or allegation under subsection (3), the department shall make a written report to the municipality within 15 days.

(5) A person who has knowledge that hazardous waste is being treated, disposed of, or stored in violation of this part shall notify the department. A person who has knowledge that an emergency situation exists shall notify the department and the department of community health.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11145 Administration and enforcement of part by certified health department; certification procedures; rescission of certification; annual grant; costs; rules.

Sec. 11145. (1) The department may certify a city, county, or district health department to administer and enforce portions of this part but only to an extent consistent with obtaining and maintaining authorization of the state's hazardous waste management program pursuant to sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929. Certification procedures shall be established by the department by rule. The department may rescind certification upon the request of the certified city, county, or district health department, or after reasonable notice and hearing, if the department finds that a certified health department is not administering and enforcing this part as required.

(2) In order for a certified health department to carry out the responsibilities authorized under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to each certified health department. A certified health department shall be eligible to receive 100% of its reasonable costs as determined by the department based on criteria established by rule. The department shall promulgate rules for distribution of the appropriated funds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

Administrative rules: R 299.9101 et seq. of the Michigan Administrative Code.

324.11146 Request for information and records; purpose; court authorization; inspection; samples; probable cause as to violation; search and seizure; forfeiture.

Sec. 11146. (1) Any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall furnish information relating to the hazardous wastes or permit access to and copying of all records relating to the hazardous wastes, or both, if the information and records are required to be kept under this part or the rules promulgated under this part, upon a request of the department, made for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part. This subsection does not limit the department's authority to pursue appropriate court authorization in order to obtain information pertaining to enforcement actions under this part.

(2) The department may enter at reasonable times any treatment, storage, or disposal facility or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from and may inspect the facility or other place and obtain from any person samples of the hazardous wastes and samples of the containers or labeling of the wastes for the purpose of developing a rule or enforcing or administering this

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part or a rule promulgated under this part.

(3) If the department or a law enforcement official has probable cause to believe that a person is violating this part or a rule promulgated under this part, the department or law enforcement official may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to this part or a rule promulgated under this part. A vehicle, equipment, or other property used in violation of this part or a rule promulgated under this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11147 Violation as misdemeanor; penalty; appearance ticket.

Sec. 11147. A person who violates section 11132a(1)(b) or (n) or who violates rules promulgated under section 11132a(1)(b) or (n) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both, for each violation. A law enforcement officer or a conservation officer may issue an appearance ticket to a person who is in violation of section 11132a(1)(b) or (n) or the rules promulgated under section 11132a(1)(b) or (n).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11148 Imminent and substantial hazard to health; endangering or causing damage to public health or environment; actions by director; determination.

Sec. 11148. (1) Subject to subsection (2), upon receipt of information that the storage, transportation, treatment, or disposal of hazardous waste may present an imminent and substantial hazard to the health of persons or to the natural resources, or is endangering or causing damage to public health or the environment, the department, after consultation with the director of public health or a designated representative of the director of public health, shall take 1 or more of the following actions:

(a) Issue an order directing the owner or operator of the treatment, storage, or disposal facility, the generator, the transporter, or the custodian of the hazardous waste that constitutes the hazard, to take the steps necessary to prevent the act or eliminate the practice that constitutes the hazard. The order may include permanent or temporary cessation of the operation of a treatment, storage, or disposal facility, generator, or transporter. An order issued under this subdivision may be issued without prior notice or hearing and shall be complied with immediately. An order issued under this subdivision shall not remain in effect more than 7 days without affording the owner or operator or custodian an opportunity for a hearing. In issuing an order calling for corrective action, the department shall specify the precise nature of the corrective action necessary and the specific time limits for performing the corrective action. If corrective action is not completed within the time limit specified and pursuant to the department's requirements, the department shall issue a cease and desist order against the owner or operator of the treatment, storage, or disposal facility, generator, or transporter and initiate action to revoke the operating license and take appropriate action.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing by the department that a person has engaged in the prohibited act or practice.

(c) Revoke a permit, license, or construction permit after reasonable notice and hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, if the department finds that a treatment, storage, or disposal facility is not, or has not been, constructed or operated pursuant to the approved plans or this part and the rules promulgated under this part, or the conditions of a license or construction permit.

(2) A determination of an instance of imminent and substantial hazard to the health of persons shall be made by the director of community health.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 139, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

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324.11149 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.

Sec. 11149. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous waste or marking the boundaries of a hazardous waste treatment, storage, or disposal facility is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11150 Order of noncompliance; order suspending or restricting license of facility.

Sec. 11150. (1) Upon receipt and verification of information that a licensed storage, treatment, or disposal facility does not have or has not maintained a suitable instrument or mechanism required under section 11141, or that the hazardous waste at the licensed facility exceeds the maximum quantities allowed under the storage, treatment, or disposal facility's license issued under this part, the department may issue an order of noncompliance directing the owner or operator of the storage, treatment, or disposal facility to take steps to eliminate the act or practice that results in a violation listed in this section. An order issued pursuant to this section shall specify the corrective action necessary and may order a licensed facility that has exceeded the maximum quantities of hazardous waste allowed under the terms of the facility's license to cease receiving hazardous waste. The order shall specify the time limit in which corrective action must be completed. If a licensed storage, treatment, or disposal facility comes into compliance with this part following the issuance of an order of noncompliance, the department shall send written verification of compliance to the owner or operator of the facility.

(2) An order of noncompliance issued pursuant to subsection (1) that requires a licensed facility to reduce the quantity of hazardous waste on site and to cease receiving hazardous waste shall not remain in effect for more than 7 days without affording the owner or operator an opportunity for a hearing. If the order remains in effect following the hearing, or if the owner or operator of the facility waives his or her right to a hearing, the owner or operator shall cooperate with the department in developing and implementing a compliance plan to reduce the amount of hazardous waste at the facility. If the department determines that the owner or operator has failed to make reasonable and continuous efforts to comply with the order of noncompliance and the resulting compliance plan, the department may issue an order suspending or restricting the facility's license pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(3) If the owner or operator of a storage, treatment, or disposal facility receives an order of noncompliance issued pursuant to subsection (1) for failing to maintain a suitable instrument or mechanism required under section 11141 and does not make reasonable efforts to comply with the order of noncompliance, the department may issue an order suspending or restricting the facility's license pursuant to Act No. 306 of the Public Acts of 1969. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(4) Upon receipt and verification that a storage, treatment, or disposal facility has not maintained a suitable instrument or mechanism required under section 11141 or that hazardous waste at a licensed facility exceeds the maximum quantities allowed under the facility's license and the owner or operator of the facility has previously been issued an order of noncompliance under this section, the department may do either of the following:

(a) Issue a second or subsequent order of noncompliance and proceed in the manner provided for in subsection (2) or (3).

(b) Initiate an action to suspend or restrict the facility's license or permit pursuant to Act No. 306 of the Public Acts of 1969, without first issuing an order of noncompliance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

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Popular name: NREPA

324.11151 Violation of permit, license, rule, or part; order requiring compliance; civil action; jurisdiction; imposition, collection, and disposition of fine; conduct constituting misdemeanor; penalty; state of mind and knowledge; affirmative defense; preponderance of evidence; definition; action for damages and costs; disposition and use of damages and costs collected; awarding costs of litigation; intervention.

Sec. 11151. (1) If the department finds that a person is in violation of a permit, license, rule promulgated under this part, or requirement of this part including a corrective action requirement of this part, the department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this part including a corrective action requirement of this part. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 11145 for appropriate relief, including injunctive relief for a violation of this part including a corrective action requirement of this part, or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund of the state.

(2) A person who transports, treats, stores, disposes, or generates hazardous waste in violation of this part, or contrary to a permit, license, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit, license, or order or in a notice or report required by the terms and conditions of an issued permit, license, or order, or a person who violates section 11144(5), is guilty of a misdemeanor punishable by a fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor punishable by a fine of not more than $50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, upon conviction, is subject to a fine of not more than $250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life, upon conviction, is subject to a fine of not more than $250,000.00 or imprisonment for not more than 5 years, or both. A defendant that is not an individual and not a governmental entity, upon conviction, is subject to a fine of not more than $1,000,000.00. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to:

(a) His or her conduct, if he or she is aware of the nature of his or her conduct.

(b) An existing circumstance, if he or she is aware or believes that the circumstance exists.

(c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply:

(a) The person is responsible only for actual awareness or actual belief that he or she possessed.

(b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

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(a) An occupation, a business, or a profession.

(b) Medical treatment or professionally approved methods and the other person had been made aware of the risks involved prior to giving consent.

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.

(8) For purposes of subsection (3), "serious bodily injury" means each of the following:

(a) Bodily injury that involves a substantial risk of death.

(b) Unconsciousness.

(c) Extreme physical pain.

(d) Protracted and obvious disfigurement.

(e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be deposited in the general fund if the damages or costs result from impairment or destruction of the fish, wildlife, or other natural resources of the state and shall be used to restore, rehabilitate, or mitigate the damage to those resources in the affected area, and for the specific resource to which the damages occurred.

(10) The court, in issuing a final order in an action brought under this part, may award costs of litigation, including reasonable attorney and expert witness fees to a party, if the court determines that the award is appropriate.

(11) A person who has an interest that is or may be affected by a civil or administrative action commenced under this part has a right to intervene in that action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 439, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11152 Interstate and international cooperation; purpose.

Sec. 11152. The department shall encourage interstate and international cooperation for the improved management of hazardous waste; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous waste; and compacts between this and other states for the improved management of hazardous waste.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.11153 Site identification number; user charges; violations; maintenance of information; summary of findings; report; definitions.

Sec. 11153. (1) A generator, transporter, or treatment, storage, or disposal facility shall obtain and utilize a site identification number assigned by the United States Environmental Protection Agency or the department. Until October 1, 2025, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received by the department.

(2) Until October 1, 2025, the department shall annually assess hazardous waste management program user charges as follows:

(a) A generator shall pay a handler user charge that is the highest of the following applicable fees:

(*i*) A generator that generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any month during the calendar year shall pay to the department an annual handler user charge of $100.00.

(*ii*) A generator that generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and that generates less than 900,000 kilograms during the calendar year shall pay to the department an annual handler user charge of $400.00.

(*iii*) A generator that generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and that generates 900,000 kilograms or more of hazardous waste during the calendar year shall pay to the department an annual handler user charge of $1,000.00.

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(b) An owner or operator of a treatment, storage, or disposal facility for which an operating license is required under section 11123 or for which an operating license is issued under section 11125 shall pay to the department an annual handler user charge of $2,000.00.

(c) A used oil processor or rerefiner, a used oil burner, or a used oil fuel marketer as defined in the rules promulgated under this part shall pay to the department an annual handler user charge of $100.00.

(3) A handler shall pay the handler user charge specified in subsection (2)(a) to (c) for each of the activities conducted during the previous calendar year.

(4) Handler user charges must be paid using a form provided by the department. The handler shall certify that the information on the form is accurate. The department shall send forms to the handlers by March 30 of each year. A handler shall return the completed forms and the appropriate payment to the department by April 30 of each year.

(5) A handler that fails to provide timely and accurate information, a complete form, or the appropriate handler user charge is in violation of this part and is subject to both of the following:

(a) Payment of the handler user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the fifteenth of the month after the due date are delinquent for that month. However, the administrative fine must not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the handler user charge is due, if the amount owed under subdivision (a) is not paid in full, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(6) The department shall maintain information regarding the site identification number user charges and the handler user charges collected under this section as necessary to satisfy the reporting requirements of subsection (8).

(7) The site identification number user charges and the handler user charges collected under this section and any amounts collected under subsection (5) for a violation of this section must be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130.

(8) The department shall evaluate the effectiveness and adequacy of the site identification number user charges and the handler user charges collected under this section relative to the overall revenue needs of the hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall submit to the legislature a report summarizing the department's findings under this subsection.

(9) As used in this section:

(a) "Handler" means the person required to pay the handler user charge.

(b) "Handler user charge" means an annual hazardous waste management program user charge provided for in subsection (2).

History: Add. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 403, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 357, Imd. Eff. Dec. 22, 2010;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 287, Imd. Eff. Sept. 23, 2014;—Am. 2017, Act 90, Imd. Eff. July 12, 2017;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

PART 113
LANDFILL MAINTENANCE TRUST FUND

324.11301 Definitions.

Sec. 11301. As used in this part:

(a) "Fund" means the landfill maintenance trust fund created in section 11302 .

(b) "Response activity" means response activity as defined in part 201.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.11302 Landfill maintenance trust fund; creation; separate fund; revenue.

Sec. 11302. (1) There is hereby created the landfill maintenance trust fund. The fund shall be established as a separate fund in the department of treasury.

(2) The fund shall receive as revenue money from any source not to exceed $500,000.00, as appropriated by the legislature.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.11303 Expenditure of interest and earnings of fund; manner of maintaining corpus of fund.

Sec. 11303. (1) The interest and earnings of the fund shall be expended by the department to monitor the effectiveness of response activity and to provide necessary long-term maintenance only at those landfills that are sites of polybrominated biphenyls contamination where the department has undertaken response activity through the use of funds appropriated by the state from a judicially approved settlement.

(2) The corpus of the fund shall be maintained by the state treasurer in a manner that will provide for future disbursements to the department to ensure that the sites described in subsection (1) are properly monitored and maintained for as long as considered necessary by the department to assure the protection of the public health, safety, welfare, and the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.11304 Investment of fund.

Sec. 11304. The state treasurer shall direct the investment of the fund in the same manner as surplus funds are invested.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 115
SOLID WASTE MANAGEMENT

SUBPART 1
GENERAL AND DEFINITIONS

324.11501 Meanings of words and phrases.

Sec. 11501. For purposes of this part, the words and phrases defined in sections 11502 to 11506 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11502 Definitions; A to C.

Sec. 11502. (1) "Agreement" means a written contract.

(2) "Agronomic rate" means a rate that meets both of the following requirements:

(a) Is generally recognized by the agricultural community or is calculated for a particular area of land to improve the physical nature of soil, such as structure, tilth, water retention, pH, or porosity, or to provide macronutrients or micronutrients in an amount not materially in excess of that needed by the crop, forest, or vegetation grown on the land.

(b) Takes into account and minimizes runoff of beneficial use by-products to surface water or neighboring

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properties, the percolation of excess nutrients beyond the root zone, and the liberation of metals from the soil into groundwater.

(3) "Anaerobic digester" means a facility that uses microorganisms to break down biodegradable material in the absence of oxygen, producing methane and an organic product.

(4) "Animal bedding" means a mixture of manure and wood chips, sawdust, shredded paper or cardboard, hay, straw, or other similar fibrous materials normally used for bedding animals.

(5) "Ashes" means the residue from the burning of wood, scrap wood, tires, biomass, wastewater sludge, fossil fuels including coal or coke, or other combustible materials.

(6) "Benchmark recycling standards" means all of the following requirements:

(a) By January 1, 2026, at least 90% of single-family dwellings in urban areas as identified by the most recent federal decennial census and, by January 1, 2028, at least 90% of single-family dwellings in municipalities with more than 5,000 residents have access to curbside recycling that meets all of the following criteria:

(*i*) One or more recyclable materials, as determined by the county's material management plan, that are typically collected through curbside recycling programs, are collected at least twice per month.

(*ii*) If recyclable materials are not collected separately, the mixed load is delivered to a solid waste processing and transfer facility and the recyclable materials are separated from material to be sent to a solid waste disposal area.

(*iii*) Recyclable materials collected are delivered to a materials recovery facility that complies with part 115 or are managed appropriately at an out-of-state recycling facility.

(*iv*) The curbside recycling is provided by the municipality or the resident has access to curbside recycling by the resident's chosen hauler.

(b) By January 1, 2032, the following additional criteria:

(*i*) In counties with a population of less than 100,000, there is at least 1 drop-off location for each 10,000 residents without access to curbside recycling at their dwelling, and the drop-off location is available at least 24 hours per month.

(*ii*) In counties with a population of 100,000 or more, there is at least 1 drop-off location for each 50,000 residents without access to curbside recycling at their dwelling, and the drop-off location is available at least 24 hours per month.

(7) "Beneficial use 1" means use as aggregate, road material, or building material that in ultimate use is or will be bonded or encapsulated by cement, limes, or asphalt.

(8) "Beneficial use 2" means use as any of the following:

(a) Construction fill at nonresidential property that meets all of the following requirements:

(*i*) Is placed at least 4 feet above the seasonal groundwater table.

(*ii*) Does not come into contact with a surface water body.

(*iii*) Is covered by concrete, asphalt pavement, or other material approved by the department.

(*iv*) Does not exceed 4 feet in thickness, except for areas where exceedances are incidental to variations in the existing topography. This subparagraph does not apply to construction fill placed underneath a building or other structure.

(b) Road base or soil stabilizer that does not exceed 4 feet in thickness except for areas where exceedances are incidental to variations in existing topography, is placed at least 4 feet above the seasonal groundwater table, does not come into contact with a surface water body, and is covered by concrete, asphalt pavement, or other material approved by the department.

(c) Road shoulder material that does not exceed 4 feet in thickness except for areas where exceedances are incidental to variations in existing topography, is placed at least 4 feet above the seasonal groundwater table, does not come into contact with a surface water body, is sloped, and is covered by asphalt pavement, concrete, 6 inches of gravel, or other material approved by the department.

(9) "Beneficial use 3" means applied to land as a fertilizer or soil conditioner under part 85 or a liming material under 1955 PA 162, MCL 290.531 to 290.538, if all of the following requirements are met:

(a) The material is applied at an agronomic rate consistent with GAAMPS.

(b) The use, placement, or storage at the location of use does not do any of the following:

(*i*) Violate part 55 or create a nuisance.

(*ii*) Cause groundwater to no longer be fit for 1 or more protected uses as defined in R 323.2202 of the MAC.

(*iii*) Cause a violation of a part 31 surface water quality standard.

(10) "Beneficial use 4" means any of the following uses:

(a) To stabilize, neutralize, solidify, or otherwise treat waste for ultimate disposal at a facility licensed under this part or part 111.

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(b) To treat wastewater, wastewater treatment sludge, or wastewater sludge in compliance with part 31 or the federal water pollution control act, 33 USC 1251 to 1388, at a private or publicly owned wastewater treatment plant.

(c) To stabilize, neutralize, solidify, cap, or otherwise remediate hazardous substances or contaminants as part of a response activity in compliance with part 201, part 213, or the comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601 to 9657, or a corrective action in compliance with part 111 or the solid waste disposal act, 42 USC 6901 to 6992k.

(d) As construction material at a landfill licensed under this part.

(e) As alternate daily cover at a licensed landfill in compliance with an operational plan approved pursuant to R 299.4429 of the MAC.

(11) "Beneficial use 5" means blended with inert materials or with compost and used to manufacture soil.

(12) "Beneficial use by-product" means the following materials if the materials are stored for beneficial use or are used beneficially as specified and the requirements of section 11551(1) are met:

(a) Coal bottom ash or wood ash used for beneficial use 3 or wood ash or coal ash, except for segregated flue gas desulfurization material, used for beneficial use 1, 2, or 4.

(b) Pulp and paper mill ash used for beneficial use 1, 2, 3, or 4.

(c) Mixed wood ash used for beneficial use 1, 2, 3, or 4.

(d) Cement kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.

(e) Lime kiln dust used as a flue gas scrubbing reagent or for beneficial use 1, 2, 3, or 4.

(f) Stamp sands used for beneficial use 1 or 2.

(g) Foundry sand from ferrous or aluminum foundries used for beneficial use 1, 2, 3, 4, or 5.

(h) Pulp and paper mill material, other than the following, used for beneficial use 3:

(*i*) Rejects, from screens, cleaners, and mills dispersion equipment, containing more than de minimis amounts of plastic.

(*ii*) Scrap paper.

(i) Spent media from sandblasting, with uncontaminated sand, newly manufactured, unpainted steel used for beneficial use 1 or 2.

(j) Dewatered concrete grinding slurry from public transportation agency road projects used for beneficial use 1, 2, 3, or 4.

(k) Lime softening residuals from the treatment and conditioning of water for domestic use or from a community water supply used for beneficial use 3 or 4.

(*l*) Soil washed or otherwise removed from sugar beets that is used for beneficial use 3.

(m) Segregated flue gas desulfurization material used for beneficial use 1 or 3.

(n) Materials and uses approved by the department under section 11553(3) or (4). Approval of materials and uses by the department under section 11553(3) or (4) does not require the use of those materials by any governmental entity or any other person.

(13) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of any of the following:

(a) A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(b) A beer, ale, or other malt drink of whatever alcoholic content.

(c) A mixed wine drink or a mixed spirit drink.

(14) "Biosolids" means a solid, semisolid, or liquid that has been treated to meet the requirements of R 323.2414 of the MAC. Biosolids include, but are not limited to, scum or solids removed in a primary, secondary, or advanced wastewater treatment process and a derivative of the removed scum or solids.

(15) "Bond" means a financial instrument guaranteeing performance, including a surety bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, an insurance policy, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department.

(16) "Captive facility" means a landfill or coal ash impoundment that accepts for disposal, and accepted for disposal during the previous calendar year, only nonhazardous industrial waste generated only by the owner of the landfill or coal ash impoundment.

(17) "Captive type III landfill" means a type III landfill that meets either of the following requirements:

(a) Accepts for disposal only nonhazardous industrial waste generated only by the owner of the landfill.

(b) Is a nonhazardous industrial waste landfill described in section 11525(4)(a), (b), or (c).

(18) "Cement kiln dust" means particulate matter collected in air emission control devices serving Portland cement kilns.

(19) "Certificate of deposit" means a certificate of deposit that meets all of the following requirements:

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(a) Is negotiable.

(b) Is held by a bank or other financial institution regulated and examined by a state or federal agency.

(c) Is fully insured by an agency of the United States government.

(d) Is in the sole name of the department.

(e) Has a maturity date of not less than 1 year.

(f) Is renewed not later than 60 days before the maturity date.

(20) "Certified health department" means a city, county, or district department of health certified under section 11507a.

(21) "Chemical recycling" means a manufacturing process for the conversion of source separated post-use polymers into basic raw materials, feedstocks, chemicals, and other products through processes that include pyrolysis (catalytic and noncatalytic), gasification, depolymerization, hydrogenation, solvolysis, and other similar chemical technologies. The recycled products produced include, but are not limited to, monomers, oligomers, plastics, plastic and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and adhesives. For the purposes of part 115, chemical recycling does not include incineration of plastics, waste-to-energy processes, or activities performed at a facility excluded from the definition of materials management facility by section 11504(25). Products sold as fuel are not recycled products. For purposes of part 115, chemical recycling is not solid waste management, solid waste processing, waste diversion, resource recovery, municipal solid waste incineration or combustion, the conversion of waste to energy, or identification, separation, or sorting of recyclable materials through mechanical processes.

(22) "Chemical recycling facility" means a manufacturing facility that receives, stores, and, using chemical recycling, converts post-use polymers. A chemical recycling facility is a manufacturing facility subject to applicable requirements of this act and rules promulgated under this act concerning air, water, waste, and land use or any other applicable regulation. A chemical recycling facility is not a solid waste processing plant, solid waste transfer facility, waste diversion center, resource recovery facility, or municipal solid waste incinerator.

(23) "Class 1 compostable material" means any of the following:

(a) Yard waste.

(b) Wood.

(c) Food waste.

(d) Paper products.

(e) Manure or animal bedding.

(f) Anaerobic digester digestate that does not contain free liquids.

(g) Compostable products.

(h) Dead animals unless infectious or managed under 1982 PA 239, MCL 287.651 to 287.683.

(i) Spent grain from breweries.

(j) Paunch.

(k) Food processing residuals.

(*l*) Aquatic plants.

(m) Any other material, including, but not limited to, fat, oil, or grease, that the department classifies as class 1 compostable material under section 11562 or that is approved as part of a large composting facility operations plan.

(n) A mixture of any of these materials.

(24) "Class 1 composting facility" means a composting facility where only class 1 compostable material is composted.

(25) "Class 2 compostable material" means mixed municipal solid waste, biosolids, state or federal controlled substances, and all other compostable material that is not listed or approved as a class 1 compostable material.

(26) "Class 2 composting facility" means a composting facility where class 2 compostable material or a combination of class 2 compostable material and class 1 compostable material is composted.

(27) "Coal ash", subject to subsection (28), means any of the following:

(a) Material recovered from systems for the control of air pollution from, or the noncombusted residue remaining after, the combustion of coal or coal coke, including, but not limited to, coal bottom ash, fly ash, boiler slag, flue gas desulfurization materials, or fluidized-bed combustion ash.

(b) Residuals removed from coal ash impoundments.

(28) For beneficial use 2, coal ash does not include coal fly ash except for the following if used at nonresidential property:

(a) Class C fly ash under ASTM C618-12A, "Standard Specification for Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use in Concrete", by ASTM International.

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(b) Class F fly ash under ASTM C618-12A, if that fly ash forms a pozzolanic-stabilized mixture by being blended with lime, Portland cement, or cement kiln dust.

(c) A combination of class C fly ash and class F fly ash under ASTM C618-12A if that combination forms a pozzolanic-stabilized mixture by being blended with lime, Portland cement, or cement kiln dust and is used as a road base, soil stabilizer, or road shoulder material under beneficial use 2.

(29) "Coal ash impoundment" means a natural topographic depression, man-made excavation, or diked area that is designed to hold and, after October 14, 2015, accepted an accumulation of coal ash and liquids or other materials approved by the department for treatment, storage, or disposal and did not receive department approval of its closure. A coal ash impoundment in existence before October 14, 2015 that receives waste after December 28, 2018, and that does not have a permit pursuant to part 31, is considered an open dump beginning December 28, 2020 unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment. Coal ash impoundment includes an existing coal ash impoundment.

(30) "Coal ash landfill" means a landfill that is used for the disposal of coal ash and may also be used for the disposal of inert materials and construction material used for purposes of meeting the definition of beneficial use 4, or other materials approved by the department.

(31) "Coal bottom ash" means ash particles from the combustion of coal that are too large to be carried in flue gases and that collect on furnace walls or at the bottom of the furnace.

(32) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(33) "Commercial waste", subject to subsection (34), means solid waste generated by nonmanufacturing activities, including, but not limited to, solid waste from any of the following:

(a) Stores.

(b) Offices.

(c) Restaurants.

(d) Warehouses.

(e) Multifamily dwellings.

(f) Hotels and motels.

(g) Bunkhouses.

(h) Ranger stations.

(i) Crew quarters.

(j) Campgrounds.

(k) Picnic grounds.

(*l*) Day use recreation areas.

(m) Hospitals.

(n) Schools.

(34) Commercial waste does not include household waste, hazardous waste, or industrial waste.

(35) "Compost additive" means any of the following materials if added to finished compost to improve the quality of the finished compost:

(a) Products designed to enhance finished compost.

(b) Sugar beet limes.

(c) Wood ash.

(d) Drywall.

(e) Synthetic gypsum.

(f) Other materials approved by the department.

(36) "Compostable material" means organic material that can be converted to finished compost. Compostable material comprises class 1 compostable material and class 2 compostable material.

(37) "Compostable products" means utensils, food service containers, and other packaging and products that are certified by the Biodegradable Products Institute or an equivalent, recognized, third-party, independent verification body, as meeting either of the following requirements:

(a) ASTM D6400, "Standard Specification for Labeling of Plastics Designed to Be Aerobically Composted in Municipal or Industrial Facilities", by ASTM International.

(b) ASTM D6868, "Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to Be Aerobically Composted in Municipal or Industrial Facilities", by ASTM International.

(38) "Composting" means a process of biological decomposition of class 1 compostable material or class 2 compostable material that meets the following requirements:

(a) Is carried out as provided in either of the following:

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(*i*) In a system using vermiculture.

(*ii*) Under controlled aerobic conditions using mechanical handling techniques such as physical turning, windrowing, or aeration or using other management techniques approved by the department. For the purposes of this subparagraph, aerobic conditions may include the presence of insignificant anaerobic zones within the composting material.

(b) Stabilizes the organic fraction into a material that can be stored, handled, and used easily, safely, and in an environmentally acceptable manner.

(39) "Composting facility" means a facility where composting occurs. However, composting facility does not include a site where only composting described in section 11555(1)(a), (b), or (e) occurs.

(40) "Consistency review" means evaluation of the administrative and technical components of an application for a permit or license or evaluation of operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of part 115 and approved plans and specifications.

(41) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a materials management facility's approved hydrogeological monitoring plan, released into the environment from a materials management facility, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a, and regulations promulgated thereunder.

(42) "County approval agency" or "CAA" means the county board of commissioners, the municipalities in the county, or the regional planning agency, whichever submits a notice of intent to prepare a materials management plan under section 11571.

(43) "County board of commissioners" means the county board of commissioners or the elected county executive, as appropriate.

(44) "Custodial care" includes all of the following:

(a) Preventing deep-rooted vegetation from establishing on the final cover.

(b) Repairing erosion damage on the final cover.

(c) Maintaining stormwater controls.

(d) Maintaining limited access to the site.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 35, Imd. Eff. Mar. 19, 2004;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 243, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11503 Definitions; D to G.

Sec. 11503. (1) "De minimis" refers to a small amount of material or number of items, as applicable, incidentally commingled with inert material for beneficial use by-products or with source separated material or incidentally disposed of with other solid waste.

(2) "Department", subject to section 11554, means the department of environment, Great Lakes, and energy.

(3) "Depolymerization" means a manufacturing process in which post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate, or final products, plastic and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings.

(4) "Designated planning agency" or "DPA" means the planning agency designated under section 11571(10). Designated planning agency does not mean a regional planning agency unless the county approval agency identifies the regional planning agency as the DPA.

(5) "Director" means the director of the department.

(6) "Discharge" includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment that is or may become injurious to the environment, natural resources, or the public health, safety, or welfare.

(7) "Disposal area", subject to section 11555(6), means 1 or more of the following that accepts solid waste at a location as defined by the boundary identified in its construction permit, in engineering plans approved by the department, or in a notification or registration:

(a) A solid waste processing and transfer facility.

(b) A municipal solid waste incinerator.

(c) A landfill.

(d) A coal ash impoundment.

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(e) Any other solid waste handling or disposal facility utilized in the disposal of solid waste, as determined by the department.

(8) "Diverted waste" means waste that meets all of the following requirements:

(a) Is generated by households, businesses, or governmental entities.

(b) Can lawfully be disposed of at a licensed landfill or municipal solid waste incinerator.

(c) Is separated from other waste.

(d) Is 1 or more of the following:

(*i*) Hazardous material.

(*ii*) Liquid waste.

(*iii*) Pharmaceuticals.

(*iv*) Electronics.

(*v*) Batteries.

(*vi*) Light bulbs.

(*vii*) Pesticides.

(*viii*) Thermostats, switches, thermometers, or other devices that contain elemental mercury.

(*ix*) Sharps.

(*x*) Other waste approved by the department that can be readily separated from solid waste for diversion to preferred methods of management and disposal.

(9) "Enforceable mechanism" means a legal method that authorizes this state, a county, a municipality, or another person to take action to guarantee compliance with a materials management plan. Enforceable mechanisms include agreements, laws, ordinances, rules, and regulations.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "Escrow account" means an account that is managed by a bank or other financial institution whose account operations are regulated and examined by a federal or state agency and that complies with section 11523b.

(12) "Existing coal ash impoundment" means a coal ash impoundment that received coal ash before December 28, 2018, and that, as of that date, had not initiated elements of closure that include dewatering, stabilizing residuals, or placement of an engineered cover or otherwise closed pursuant to its part 31 permit or pursuant to R 299.4309 of the MAC and, therefore, is capable of receiving coal ash in the future. A coal ash impoundment that has initiated closure is considered an open dump unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment by December 28, 2020.

(13) "Existing coal ash landfill" means a coal ash landfill to which either of the following applies:

(a) The landfill received coal ash both before and after October 19, 2015.

(b) Construction of the landfill commenced before October 19, 2015, and the landfill received coal ash on or after October 19, 2015. For the purposes of this subdivision, construction of a landfill commenced before October 19, 2015 if both of the following requirements were met before that date:

(*i*) The owner or operator obtained the federal, state, and local approvals or permits necessary to begin physical construction.

(*ii*) A continuous, on-site physical construction program began.

(14) "Existing disposal area" means any of the following:

(a) A disposal area that has in effect a construction permit under this part.

(b) A disposal area that had engineering plans approved by the director before January 11, 1979.

(c) An industrial waste landfill that was authorized to operate by the director or by court order before October 9, 1993.

(d) An industrial waste pile that was located at the site of generation on October 9, 1993.

(e) An existing coal ash impoundment.

(15) "Existing landfill unit" or "existing unit" means any landfill unit that received solid waste on or before October 9, 1993.

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

(17) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(18) "Fats, oils, or greases" means organic polar compounds that meet all of the following requirements:

(a) Contain multiple carbon chain triglyceride molecules.

(b) Are derived from animal or plant sources.

(c) Are generated at food manufacturing and food service establishments.

(d) Are generated by-products from food preparation activities.

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(19) "Financial assurance" means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available to the department whenever they are needed for those purposes.

(20) "Financial test" means a corporate or local government financial test or guarantee approved under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a and regulations promulgated thereunder. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the financial test shall include a list showing the name and address of each facility and the amount of funds assured by the financial test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

(21) "Finished compost" means organic matter that meets all of the following requirements:

(a) Has undergone biological decomposition and has been stabilized to a degree that is beneficial to plant growth without creating a nuisance.

(b) Is used or sold for use as a soil amendment, fertilizer, topsoil blend, growing medium amendment, or other similar use.

(c) With any compost additives, does not contain more than 1%, by weight, of foreign matter that will remain on a 4-millimeter screen or more than a de minimis amount of viable weed seeds.

(22) "Flue gas desulfurization material" means the material recovered from air pollution control systems that capture sulfur dioxide from the combustion of wood, coal, or fossil fuels, or other combustible materials, if the other combustible materials constitute less than 50% by weight of the total material combusted and the department determines in writing that the other combustible materials do not materially affect the character of the residue. Flue gas desulfurization material includes synthetic gypsum.

(23) "Food processing residuals" means any of the following:

(a) Residuals of fruits, vegetables, aquatic plants, or field crops, including such residuals generated by a brewery or distillery.

(b) Otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing thereof.

(c) Otherwise unusable food products that do not meet size, quality, or other product specifications and that were intended for human or animal consumption.

(24) "Food waste" means an accumulation of animal or vegetable matter that was used or intended for human or animal food or that results from the preparation, use, cooking, dealing in, or storing of animal or vegetable matter for human or animal food if the accumulation is or is intended to be discarded. Food waste does not include fats, oils, or greases.

(25) "Foreign matter" means organic and inorganic constituents, other than sticks and stones, that will not readily decompose during composting and do not aid in producing compost, including glass, textiles, rubber, metal, ceramics, noncompostable plastic, and painted, laminated, or treated wood.

(26) "Foundry sand" means silica sand used in the metal casting process, including binding material or carbonaceous additives, from ferrous or nonferrous foundries.

(27) "Functional stability" means the stage at which a landfill does not pose a significant risk to the environment, natural resources, or the public health, safety, or welfare at a point of exposure, in the absence of active control systems.

(28) "GAAMPS" means generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(29) "Gasification" means a manufacturing process in which post-use polymers are heated in an oxygen-controlled atmosphere and converted to syngas (carbon monoxide (CO) and hydrogen (H2)) and the syngas is converted into valuable raw materials or intermediate or final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, coatings, and plastic and chemical feedstocks.

(30) "General permit" means a permit that does both of the following:

(a) Covers a category of activities that the department determines will not negatively impact public health, safety, or welfare and will not have more than minimal short-term adverse impacts on the environment or natural resources.

(b) Includes requirements for a site plan, an operations plan, a facility final closure plan, and financial assurance.

(31) "General use compost" means finished compost that is produced from 1 of the following:

(a) Class 1 compostable material.

(b) Class 2 compostable material, including any combination of class 1 compostable material and class 2 compostable material, that meets the requirements listed in section 11553(5).

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2020, Act 85, Imd. Eff. May 15, 2020;—Am. 2022, Act 243, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11504 Definitions; H to P.

Sec. 11504. (1) "Hauler" means a person who owns or operates a managed materials transporting unit.

(2) "Host community approval" means an agreement, resolution, letter, or other document indicating that the governing body of the municipality where the materials management facility is proposed to be located has reviewed and approved the development of that specific facility.

(3) "Household waste" means solid waste that is generated from single-family dwellings. Household waste does not include commercial waste, industrial waste, hazardous waste, or construction and demolition waste.

(4) "Hydrogenation" means the chemical reaction between molecular hydrogen and an element or compound, ordinarily in the presence of a catalyst.

(5) "Industrial waste" means solid waste that is generated by manufacturing or industrial processes at an industrial site and that is not a hazardous waste regulated under part 111.

(6) "Industrial waste landfill" means a landfill that is used for the disposal of any of the following, as applicable:

(a) Industrial waste that has been characterized for hazard and that has been determined to be nonhazardous under part 111.

(b) If the landfill is an existing disposal area, nonhazardous solid waste that originates from an industrial site.

(7) "Inert material" means any of the following:

(a) Rock.

(b) Trees, stumps, and other similar land-clearing debris, if all of the following conditions are met:

(*i*) The debris is buried on the site of origin or another site, with the approval of the owner of the site.

(*ii*) The debris is not buried in a wetland or floodplain.

(*iii*) The debris is placed at least 3 feet above the groundwater table as observed at the time of placement.

(*iv*) The placement of the debris does not violate federal, state, or local law or create a nuisance.

(c) Uncontaminated excavated soil or dredged sediment. Excavated soil or dredged sediment is considered uncontaminated if it does not contain more than de minimis amounts of solid waste and any of the following apply:

(*i*) The soil or sediment is not contaminated by a hazardous substance as a result of human activity. Soil or sediment that naturally contains elevated levels of hazardous substances above unrestricted residential or any other part 201 generic soil cleanup criteria is not considered contaminated for purposes of this subdivision. A soil or sediment analysis is not required under this subparagraph if, based on past land use, there is no reason to believe that the soil or sediment is contaminated.

(*ii*) For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment does not exceed the background concentration, as that term is defined in section 20101.

(*iii*) For any hazardous substance that could reasonably be expected to be present as a result of past land use and human activity, the soil or sediment falls below part 201 generic residential soil direct contact cleanup criteria and hazardous substances in leachate from the soil or sediment, using, at the option of the generator, EPA method 1311, "Toxicity Characteristic Leaching Procedure", EPA method 1312, "Synthetic Precipitation Leaching Procedure", or any other leaching protocol approved by the department, fall below part 201 generic residential health based groundwater drinking water values or criteria, and the soil or sediment would not cause a violation of any surface water quality standard established under part 31 at the area of placement, disposal, or use.

(d) Excavated soil from a site of environmental contamination, corrective action, or response activity if the soil is not a listed hazardous waste under part 111 and if hazardous substances in the soil do not exceed generic soil cleanup criteria for unrestricted residential use as defined in section 20101 or background concentration as defined in section 20101, as applicable.

(e) Construction brick, masonry, pavement, or broken concrete that is reused for fill, rip rap, slope stabilization, or other construction, if all of the following conditions are met:

(*i*) The use of the material does not violate section 3108, part 301, or part 303.

(*ii*) The material is not materially contaminated. Typical surface oil staining on pavement or concrete from

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driveways, roadways, or parking lots is not material contamination. Material covered in whole or in part with paint that contains more than 0.5% lead is materially contaminated.

(*iii*) The material does not include exposed reinforcing bars.

(f) Portland cement clinker produced by a cement kiln using wood, fossil fuels, or solid waste as a fuel or feedstock, but not including cement kiln dust generated in the process.

(g) Asphalt pavement or concrete pavement that meets all of the following requirements:

(*i*) Has been removed from a public right-of-way.

(*ii*) Has been stockpiled or crushed for reuse as aggregate material.

(*iii*) Does not include exposed reinforcement bars.

(h) Cuttings, drilling materials, and fluids used to drill or complete a well installed pursuant to part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, if the location of the well is not a facility under part 201.

(i) Any material determined by the department under section 11553(5) or (6) to be an inert material, either for general use or for a particular use.

(8) "Innovative technology facility" means a materials management facility that converts solid waste into energy or a usable product and that is not a materials recovery facility, a composting facility, or an anaerobic digester.

(9) "Insurance" means insurance that conforms to the requirements of 40 CFR 258.74(d) and is provided by an insurer that has a certificate of authority from the director of insurance and financial services to sell this line of coverage. An applicant for an operating license or general permit shall submit evidence of the required coverage by submitting both of the following to the department:

(a) A certificate of insurance that uses wording approved by the department.

(b) A certified true and complete copy of the insurance policy.

(10) "Landfill" means a type II landfill or type III landfill.

(11) "Landfill care fund" means a landfill care fund required by section 11525d(2).

(12) "Landfill care fund bond" means a surety bond, an irrevocable letter of credit, or a combination of these instruments in favor of the department used to establish a landfill care fund.

(13) "Large", in reference to a composting facility, means a composting facility to which both of the following apply:

(a) The site at any time contains more than 500 cubic yards of compostable material.

(b) The site does not qualify as a small or medium composting facility.

(14) "Lateral expansion" means a horizontal expansion of the solid waste boundary of any of the following:

(a) A landfill, other than a coal ash landfill, if the expansion is beyond the limit established in a construction permit or engineering plans approved by the department or a certified health department before January 11, 1979.

(b) A coal ash landfill, if either of the following applies:

(*i*) The expansion is beyond the limit established in a construction permit issued after December 28, 2018.

(*ii*) The expansion is made after October 19, 2015, and is a horizontal expansion of the outermost boundary, as defined by a construction certification or operating license, of an existing coal ash landfill.

(c) A coal ash impoundment, if the expansion is beyond the limit established in a construction permit or the horizontal limits of coal ash in place on or before October 14, 2015.

(15) "Letter of credit" means an irrevocable letter of credit that complies with 40 CFR 258.74(c).

(16) "License" means an operating license.

(17) "Lime kiln dust" means particulate matter collected in air emission control devices serving lime kilns.

(18) "Local health officer" means a local health officer as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105, to which the department delegates certain duties under part 115.

(19) "Low-hazard industrial waste" means industrial material that has a low potential for groundwater contamination when managed in compliance with part 115. All of the following materials are low-hazard industrial wastes:

(a) Coal ash and wood ash.

(b) Cement kiln dust.

(c) Pulp and paper mill material.

(d) Scrap wood.

(e) Sludge from the treatment and conditioning of water for domestic use.

(f) Residue from the thermal treatment of petroleum contaminated soil, media, or debris.

(g) Sludge from the treatment and conditioning of water from a community water supply.

(h) Foundry sand.

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(i) Mixed wood ash, scrap wood ash, and pulp and paper mill ash.
(j) Street cleanings.
(k) Asphalt shingles.
(*l*) New construction or production scrap drywall.
(m) Chipped or shredded tires.
(n) Copper slag.
(o) Copper stamp sands.
(p) Dredge material from nonremedial activities.
(q) Flue gas desulfurization material.
(r) Dewatered grinding slurry generated from public transportation agency road projects.
(s) Any material determined by the department under section 11553(7) to be a low-hazard industrial waste.

(20) "Low-hazard-potential coal ash impoundment" means a coal ash impoundment that is a diked surface impoundment, the failure or mis-operation of which is expected to result in no loss of human life and low economic or environmental losses principally limited to the impoundment owner's property.

(21) "MAC" means the Michigan Administrative Code.

(22) "Managed material" means solid waste, diverted waste, or recyclable material. Managed material does not include a material or product that contains iron, steel, or nonferrous metals and that is directed to or received by a scrap processor as defined in section 3 of the scrap metal regulatory act, 2008 PA 429, MCL 445.423, or by a reuser of these metals.

(23) "Managed materials transporting unit" means a container, which may be an integral part of a truck or other piece of equipment, used for the transportation of managed materials.

(24) "Materials management facility" or, unless the context implies a different meaning, "facility" means any of the following, subject to subsection (25):
(a) A disposal area.
(b) A materials utilization facility.
(c) A waste diversion center.

(25) Materials management facility or facility does not include a person, utilizing machinery and equipment and operating from a fixed location, whose principal business is the processing and manufacturing of iron, steel, or nonferrous metals into prepared grades of products suitable for consumption, reuse, or additional processing.

(26) "Materials management goals" means goals identified in the MMP pursuant to section 11578(1)(a).

(27) "Materials management plan" or "MMP" means a plan required under section 11571.

(28) "Materials recovery facility", subject to subsection (29), means a facility that meets both of the following requirements:
(a) Receives primarily source separated material and sorts, bales, or processes the source separated material for reuse, recycling, or utilization as a raw material or new product.
(b) On an annual basis, does not receive an amount of solid waste equal to or more than 15% of the total weight of material received by the facility unless the materials recovery facility is making reasonable effort and has an education program to reduce the amount of solid waste. Material disposed of as a result of recycling market fluctuations is not included in the 15% calculation.

(29) Materials recovery facility does not include any of the following:
(a) A retail, commercial, or industrial establishment that bales for off-site shipment managed material that it generates.
(b) A retail establishment that collects returnable beverage containers under 1976 IL 1, MCL 445.571 to 445.576.
(c) A beverage distributor, or its agent, that manages returnable beverage containers under 1976 IL 1, MCL 445.571 to 445.576.
(d) A facility or area used for reuse, recycling, or storage of recyclable materials solely generated by an industrial facility.
(e) A facility that is an end user or secondary processor and that uses as fuel or otherwise, processes, or stores material generated by industrial facilities.
(f) A facility that primarily manages material that was previously sorted or processed.
(g) An anaerobic digester.

(30) "Materials utilization" means recycling, composting, or converting material into energy rather than disposing of the material.

(31) "Materials utilization facility" means a facility that is any of the following:
(a) A materials recovery facility.
(b) A composting facility.

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(c) An anaerobic digester, except at a manufacturing facility that generates its own feedstock.

(d) An innovative technology facility.

(32) "Medical waste" means that term as it is defined in section 13805 of the public health code, 1978 PA 368, MCL 333.13805.

(33) "Medium", in reference to a composting facility, means a composting facility to which all of the following apply:

(a) The site at any time contains more than 500 cubic yards of compostable material.

(b) The site does not qualify as a small composting facility.

(c) The site does not at any time contain more than 10,000 cubic yards of compostable material.

(d) The site does not at any time contain more than 10% by volume of class 1 compostable material other than yard waste.

(e) Unless approved by the department, the site does not at any time on any acre contain more than 5,000 cubic yards of compostable material, finished product, compost additives, or screening rejects.

(34) "Mixed wood ash" means the material recovered from air pollution control systems for, or the noncombusted residue remaining after, the combustion of any combination of wood, scrap wood, railroad ties, or tires, if railroad ties composed less than 35% by weight of the total combusted material and tires composed less than 10% by weight of the total combusted material.

(35) "Municipal solid waste" means household waste, commercial waste, waste generated by other nonindustrial locations, waste that has characteristics similar to that generated at a household or commercial business, or any combination thereof. Municipal solid waste does not include municipal wastewater treatment sludges, industrial process wastes, automobile bodies, combustion ash, or construction and demolition debris.

(36) "Municipal solid waste incinerator" means an incinerator that is owned or operated by any person, and that meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only waste from single-family and multifamily dwellings, hotels, motels, and other residential sources, or such waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under part 111.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to ensure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of part 115.

(d) The incinerator is not an industrial furnace as defined in 40 CFR 260.10.

(e) The incinerator is not an incinerator that receives and burns only medical waste or only waste produced at 1 or more hospitals.

(37) "Municipal solid waste incinerator ash" means the substances remaining after combustion in a municipal solid waste incinerator.

(38) "Municipal solid waste recycling rate" means the amount of municipal solid waste recycled or composted, divided by the amount of municipal solid waste recycled, composted, landfilled, or incinerated.

(39) "New coal ash impoundment" means a coal ash impoundment that first receives coal ash after December 28, 2018.

(40) "New disposal area" means a disposal area that requires a construction permit under this part and includes all of the following:

(a) A disposal area, other than an existing disposal area, that is proposed for construction.

(b) For a landfill, a lateral expansion, vertical expansion, or other expansion that results in an increase in the landfill's design capacity.

(c) A new coal ash impoundment, or a lateral expansion of a coal ash impoundment beyond the placement of waste as of October 14, 2015.

(d) For a disposal area other than a landfill or coal ash impoundment, an enlargement in capacity beyond that indicated in the construction permit or in engineering plans approved before January 11, 1979.

(e) For any existing disposal area, an alteration of the disposal area to a different disposal area type than was specified in the previous construction permit application or in engineering plans that were approved by the director or his or her designee before January 11, 1979.

(41) "Nonresidential property" means property not used or intended to be used for any of the following:

(a) A child day care center.

(b) An elementary school.

(c) An elder care and assisted living center.

(d) A nursing home.

(e) A single-family or multifamily dwelling unless the dwelling is part of a mixed use development and all dwelling units and associated outdoor residential use areas are located above the ground floor.

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(42) "Operate" includes, but is not limited to, conducting, managing, and maintaining.

(43) "Part 115" means this part and rules promulgated under this part.

(44) "Perpetual care fund" means a trust fund, escrow account, or perpetual care fund bond required by section 11525(2).

(45) "Perpetual care fund bond" means a surety bond, an irrevocable letter of credit, or a combination of these instruments in favor of the department used to establish a perpetual care fund.

(46) "Planning area" means the geographic area to which a materials management plan applies.

(47) "Planning committee" means a committee appointed under section 11572.

(48) "Post-use polymer" means a plastic to which all of the following apply:

(a) It has been source separated.

(b) It has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste.

(c) It is not mixed with solid waste or hazardous waste on-site or during conversion at a chemical recycling facility.

(d) It is converted at a chemical recycling facility or, subject to applicable speculative accumulation time frames, stored at a chemical recycling facility before conversion.

(49) "Preexisting unit" means a landfill unit that is or was licensed under part 115 but has not received waste after October 9, 1993.

(50) "Pulp and paper mill ash" means the material recovered from air pollution control systems for, or the noncombusted residue remaining after, the combustion of any combination of coal, wood, pulp and paper mill material, wood or biomass fuel pellets, scrap wood, railroad ties, or tires, in a boiler, power plant, or furnace at a pulp and paper mill, if railroad ties composed less than 35% by weight of the total combusted material and tires composed less than 10% by weight of the total combusted material.

(51) "Pulp and paper mill material" means all of the following materials if generated at a facility that produces pulp or paper:

(a) Wastewater treatment sludge, including wood fibers, minerals, and microbial biomass.

(b) Rejects from screens, cleaners, and mills.

(c) Bark, wood fiber, and chips.

(d) Scrap paper.

(e) Causticizing residues, including lime mud and grit and green liquor dregs.

(f) Any material that the department determines has characteristics that are similar to any of the materials listed in subdivisions (a) to (e).

(52) "Pyrolysis" means a manufacturing process in which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and then are cooled, condensed, and converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, and plastic and chemical feedstocks that have economic utility as raw materials and products.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2020, Act 85, Imd. Eff. May 15, 2020;—Am. 2022, Act 244, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11505 Definitions; R, S.

Sec. 11505. (1) "RDDP" means a research, development, and demonstration project for a new or existing type II landfill unit or for a lateral expansion of a type II landfill unit.

(2) "Recyclable materials" means glass, metal, plastics, paper products, wood, rubber, textiles, food waste, yard clippings, and other materials that may be recycled or composted.

(3) "Recycling" means any process applied to materials that are no longer being used and that would have otherwise been disposed as waste, for the purpose of converting the materials into raw materials or intermediate or new products.

(4) "Regional planning agency" means the regional solid waste planning agency designated by the governor pursuant to section 4006 of subtitle D of the solid waste disposal act, 42 USC 6946.

(5) "Resource recovery facility" means machinery, equipment, structures, or any parts or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of recovering materials or energy from the waste stream.

(6) "Response activity" means an activity that is necessary to protect the environment, natural resources, or

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the public health, safety, or welfare, and includes, but is not limited to, evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.

(7) "Restricted use compost" means compost that is produced from class 2 compostable material, including any combination of class 1 compostable material and class 2 compostable material, that is not approved as inert under section 11553(5).

(8) "Reuse" means to remanufacture, use again, use in a different manner, or use after reclamation.

(9) "Rubbish" means nonputrescible solid waste, excluding ashes, consisting of both combustible and noncombustible waste, including paper, cardboard, metal containers, yard waste, wood, glass, bedding, crockery, demolished building materials, or litter of any kind that may be a detriment to the environment, natural resources, or the public health, safety, or welfare.

(10) "Salvaging" means the lawful and controlled removal of reusable materials from solid waste.

(11) "Scrap wood" means wood or wood product that is 1 or more of the following:

(a) Plywood, particle board, pressed board, oriented strand board, fiberboard, resonated wood, or any other wood or wood product mixed with glue, resins, or filler.

(b) Wood or wood product treated with creosote or pentachlorophenol.

(c) Any wood or wood product designated as scrap wood in rules promulgated by the department.

(12) "Sharps" means that term as defined in section 13807 of the public health code, 1978 PA 368, MCL 333.13807.

(13) "Slag" means the nonmetallic product resulting from melting or smelting operations for iron or steel.

(14) "Small", in reference to a composting facility, means a composting facility to which both of the following apply:

(a) The site at any time contains more than 500 cubic yards of compostable material but does not at any time contain 1,000 or more cubic yards of compostable material.

(b) The site does not at any time contain 5% or more by volume of class 1 compostable material other than yard waste.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 244, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11506 Definitions; S to Y.

Sec. 11506. (1) "Solid waste" means food waste, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial waste, solid industrial waste, and animal waste. However, solid waste does not include any of the following:

(a) Human body waste.

(b) Medical waste.

(c) Manure or animal bedding generated in the production of livestock and poultry, if managed in compliance with the appropriate GAAMPS.

(d) Liquid waste.

(e) Scrap metal, as defined in section 3 of the scrap metal regulatory act, 2008 PA 429, MCL 445.423, directed to a scrap processor as defined in that section or to a reuser of scrap metal.

(f) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department.

(h) The following materials that are used as animal feed, or are applied on, or are composted and applied on, farmland or forestland for an agricultural or silvicultural purpose at an agronomic rate consistent with GAAMPS:

(*i*) Food processing residuals and food waste.

(*ii*) Precipitated calcium carbonate from sugar beet processing.

(*iii*) Wood ashes resulting solely from a source that burns only wood that is untreated and inert.

(*iv*) Lime from kraft pulping processes generated before bleaching.

(*v*) Aquatic plants.

(i) Materials approved for emergency disposal by the department.

(j) Source separated materials.

(k) Coal ash, when used under any of the following circumstances:

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(*i*) As a component of concrete, grout, mortar, or casting molds, if the coal ash does not have more than 6% unburned carbon.

(*ii*) As a raw material in asphalt for road construction, if the coal ash does not have more than 12% unburned carbon and passes Michigan test method for water asphalt preferential test, MTM 101, as set forth in the state transportation department's manual for the Michigan test methods (MTM).

(*iii*) As aggregate, road material, or building material that in ultimate use is or will be stabilized or bonded by cement, limes, or asphalt, or itself act as a bonding agent. To be considered to act as a bonding agent, the coal ash must have at least 10% available lime.

(*iv*) As a road base or construction fill that is placed at least 4 feet above the seasonal groundwater table and covered with asphalt, concrete, or other material approved by the department.

(*l*) Inert material.

(m) Soil that is washed or otherwise removed from sugar beets, has not more than 55% moisture content, and is registered as a soil conditioner under part 85. Any testing required to become registered under part 85 is the responsibility of the generator.

(n) Soil that is relocated under section 20120c.

(o) Diverted waste that is managed through a waste diversion center.

(p) Beneficial use by-products.

(q) Coal bottom ash, if substantially free of fly ash or economizer ash, when used as cold weather road abrasive.

(r) Stamp sands when used as cold weather road abrasive in the Upper Peninsula by any of the following:

(*i*) A public road agency.

(*ii*) Any other person pursuant to a plan approved by a public road agency.

(s) Any material that is reclaimed or reused in the process that generated it.

(t) Any secondary material that, as specified in or determined pursuant to 40 CFR part 241, is not a solid waste when combusted.

(u) Post-use polymers.

(v) Other wastes regulated by statute.

(2) "Solid waste management fund" means the solid waste management fund created in section 11550.

(3) "Solid waste processing and transfer facility" means a tract of land, a building or unit and any appurtenances of a building or unit, a container, or any combination of these that is used or intended for use in the handling, storage, transfer, or processing of solid waste, and is not located at the site of generation or the site of disposal of the solid waste.

(4) "Solvolysis" means a manufacturing process in which post-use polymers are purified with the aid of solvents, while heated at low temperatures or pressurized, or both, to make useful products while allowing additives and contaminants to be removed. The products of solvolysis include, but are not limited to, monomers, intermediates, and valuable chemicals and raw materials. Solvolysis includes, but is not limited to, the following:

(a) Hydrolysis.

(b) Aminolysis.

(c) Ammonolysis.

(d) Methanolysis.

(e) Glycolysis.

(5) "Source reduction" means any practice that reduces or eliminates the generation of waste at the source.

(6) "Source separated material" means any of the following materials if separated at the source of generation or at a materials management facility that complies with part 115 and if not speculatively accumulated:

(a) Glass, metal, wood, paper products, plastics, rubber, textiles, food waste, electronics, latex paint, yard waste, or any other material approved by the department that is used for conversion into raw materials or intermediate or new products. For the purposes of this subdivision, raw materials or intermediate or new products include, but are not limited to, compost, biogas from anaerobic digestion, synthesis gas from gasification or pyrolysis, or other fuel. This subdivision does not prohibit material from being classified as a renewable energy resource as defined in section 11 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1011.

(b) Scrap wood and railroad ties used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, for production of new wood products, or for other uses approved by the department.

(c) Chipped or whole tires used to fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55, or for other uses approved by the department. This subdivision does not prohibit material from being classified as a renewable energy resource as defined in section 11 of the clean and renewable energy and

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energy waste reduction act, 2008 PA 295, MCL 460.1011.

(d) Recovered paint solids if used to fuel an industrial boiler, kiln, power plant, gasification plant, or furnace, subject to part 55; if bonded with cement or asphalt; or if used for other uses approved by the department.

(e) Gypsum drywall generated from the production of wallboard used for stock returned to the production process or for other uses approved by the department.

(f) Flue gas desulfurization gypsum used for production of cement or wallboard or other uses approved by the department.

(g) Asphalt shingles that meet both of the following requirements:

(*i*) Do not contain asbestos, rolled roofing, wood, nails, or tar paper.

(*ii*) Are used as described in any of the following:

(A) As a component in hot mix asphalt, warm mix asphalt, or cold patch asphalt.

(B) To fuel an industrial boiler, kiln, power plant, or furnace, subject to part 55.

(C) Mixed with recycled asphalt pavement at a maximum of 1 to 1 ratio by volume to produce a base that is covered by concrete or asphalt paving.

(D) Other uses approved by the department.

(h) Municipal solid waste incinerator ash that meets criteria specified by the department and that is used as daily cover at a disposal facility licensed pursuant to part 115.

(i) Utility poles or pole segments reused as poles, posts, or similar uses approved by the department in writing.

(j) Railroad ties reused in landscaping, embankments, or similar uses approved by the department in writing.

(k) Any materials and uses approved by the department under section 11553(8).

(*l*) Leaves that are ground or mixed with ground wood and sold as mulch for landscaping purposes if the volumes so managed are reported to the department in the manner provided in section 11560.

(m) Any material determined by the department in writing before September 16, 2014 to be a source separated material.

(n) Yard waste that is land applied on a farm in a manner consistent with GAAMPS.

(o) Yard waste, class 1 compostable material, and class 2 compostable material that are delivered to an anaerobic digester authorized by the department under part 115 to receive the material.

(p) Recyclable materials.

(7) "Stamp sands" means finely grained crushed rock resulting from mining, milling, or smelting of copper ore and includes native substances contained within the crushed rock and any ancillary material associated with the crushed rock.

(8) "Treated wood" means wood or wood product that has been treated with 1 or more of the following:

(a) Chromated copper arsenate (CCA).

(b) Ammoniacal copper quat (ACQ).

(c) Ammoniacal copper zinc arsenate (ACZA).

(d) Any other chemical designated in rules promulgated by the department.

(9) "Trust fund" means a fund held by a trustee who has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(10) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the MAC.

(11) "Type II landfill" means a landfill that receives household waste or municipal solid waste incinerator ash, or both, and that may also receive other types of solid waste, such as any of the following:

(a) Construction and demolition waste.

(b) Sewage sludge.

(c) Commercial waste.

(d) Nonhazardous sludge.

(e) Hazardous waste from conditionally exempt small quantity generators.

(f) Industrial waste.

(12) "Type III landfill" means a landfill that is not a type II landfill or hazardous waste landfill. Type III landfill includes all of the following:

(a) A construction and demolition waste landfill.

(b) An industrial waste landfill.

(c) A low hazard industrial waste landfill.

(d) A surface impoundment authorized as an industrial waste landfill.

(e) A landfill that accepts only waste other than household waste, municipal solid waste incinerator ash, or

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hazardous waste from conditionally exempt small quantity generators.

(f) A coal ash landfill.

(g) Any coal ash impoundment, including, but not limited to, the following:

(*i*) An existing coal ash impoundment that is closed as a landfill pursuant to R 299.4309 of the MAC.

(*ii*) An existing coal ash impoundment where coal ash will remain after closure and that will be closed as a landfill pursuant to R 299.4309 of the MAC.

(13) "Vermiculture" means the controlled and managed process by which live worms degrade organic materials into worm castings or worm humus.

(14) "Waste diversion center" means property or a building, or a portion of property or a building, designated for the purpose of receiving or collecting diverted wastes and not used for residential purposes.

(15) "Wood" means trees, branches and associated leaves, bark, lumber, pallets, wood chips, sawdust, or other wood or wood product but does not include scrap wood, treated wood, painted wood or painted wood product, or any wood or wood product that has been contaminated during manufacture or use.

(16) "Wood ash" means any type of ash or slag resulting from the burning of wood.

(17) "Yard waste" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than 4 feet in length and 2 inches in diameter, that can be converted to compost. Yard waste does not include stumps, agricultural wastes, animal waste, roots, sewage sludge, Christmas trees or wreaths, food waste, or screened finished compost made from yard waste.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 65, Imd. Eff. May 31, 1995;—Am. 1996, Act 392, Imd. Eff. Oct. 3, 1996;—Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2010, Act 345, Imd. Eff. Dec. 21, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 615, Eff. Mar. 28, 2019;—Am. 2022, Act 244, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11507 Recycling and reuse of materials; optimizing recycling opportunities; policies, practices, and benchmark recycling standards; development of methods for disposal of solid waste; construction and administration of Part 115; disposal, storage, or transportation of solid waste; compliance with Part 115.

Sec. 11507. (1) Optimizing recycling opportunities, including electronics recycling opportunities, and the reuse of materials are a principal objective of this state's solid waste management plan. Recycling and reuse of materials, including the reuse of materials from electronic devices, are in the best interest of the environment, natural resources, and the public health, safety, and welfare. This state should develop policies, practices, and goals that promote recycling and reuse of materials, waste reduction, and pollution prevention and that, to the extent practical, minimize the use of landfilling and municipal solid waste incineration as methods for disposal of waste. Policies and practices that promote recycling and reuse of materials, including materials from electronic devices, result in conservation of raw materials and landfill space and avoid the contamination of soil and groundwater from heavy metals and other pollutants.

(2) It is the goal of this state to achieve through the benchmark recycling standards a 45% municipal solid waste recycling rate and, as an interim step, by 2029, a 30% municipal solid waste recycling rate.

(3) The department and a local health officer shall assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation including source reduction and source separation.

(4) Part 115 shall be construed and administered to encourage and facilitate all persons to engage in source separation of material from solid waste, and other environmentally sound measures to prevent materials from entering the waste stream or to remove materials from the waste stream.

(5) A person shall not dispose, store, or transport solid waste in this state unless the person complies with part 115.

(6) Part 115 is intended to encourage the continuation of the private sector in materials management, disposal, and transportation in compliance with part 115. Part 115 is not intended to prohibit salvaging.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 244, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11507a Solid waste management program; certification; grounds for rescission of

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certification.

Sec. 11507a. Under rules promulgated by the department, the department may certify a city, county, or district health department to perform a solid waste management program or designated activities as prescribed in part 115. The department may rescind certification under either of the following circumstances:

(a) Upon request of the certified health department.

(b) After reasonable notice and an opportunity for a hearing if the department finds that the certified health department is not performing the program or designated activities as required.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 39, Imd. Eff. Mar. 29, 2004;—Am. 2022, Act 244, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11508 Operation of materials management facility; requirements; registration application.

Sec. 11508. (1) A person shall not operate a materials management facility unless all of the following requirements are met:

(a) The owner or operator has complied with any applicable requirement of part 115 to notify the department, register with the department, obtain an approval from the department under a general permit, or obtain a construction permit and operating license from the department.

(b) The operation is in compliance with the terms of any registration, general permit, construction permit, or operating license issued for the materials management facility under part 115.

(c) Subject to subsection (2)(a) to (c), the facility is consistent with the MMP. This subdivision does not apply to a disposal area described in section 11509(1)(b) or 11513(1).

(2) The department shall deny an application for a registration, for approval under a general permit, or for a construction permit or operating license for a materials management facility unless the department has, under section 11575(9), approved an MMP for the planning area where the facility is located or proposed to be located and the facility is consistent with the MMP, as determined under section 11585. However, all of the following apply:

(a) Before an MMP is initially approved by the department under section 11575(9), the department may issue a construction permit for a solid waste processing and transfer facility or an approval under a general permit or a registration for a materials utilization facility if the county approval agency and the legislative body of the municipality in which the facility is or is proposed to be located have each notified the department in writing that they approve the issuance.

(b) Proposed landfill expansions shall follow the siting process of the existing solid waste management plan until an MMP for the planning area is approved by the department.

(c) Before an MMP for the planning area has been approved by the department, materials utilization facilities that are required to provide a notification or registration to the department under part 115 may be sited under local zoning ordinances.

(3) A notification or application under part 115 for a construction permit, operating license, approval under a general permit, or registration required to operate a materials management facility; a notice of intent to prepare a materials management plan; a bond; a risk pooling financial mechanism; evidence of financial assurance; a request for the reduction of the amount of a financial assurance mechanism; an agreement governing the operation of a perpetual care fund trust fund or escrow account; an application for a grant or loan; or a report or other information required to be submitted to the department under part 115 shall meet all of the following requirements:

(a) Be on a form and in a medium provided or approved by the department.

(b) Contain relevant information required by the department.

(c) If an application, be accompanied by any applicable application fee provided for by this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 244, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 2
DISPOSAL AREAS

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324.11509 Construction permit for establishment of disposal area; application; engineering plan; construction permit application fees; resubmission of application with additional information and fee; modification or renewal of permit; single permit multiple types of disposal areas; disposition of fees; approval of new type II landfill; restrictions; "contiguous" defined.

Sec. 11509. (1) This section and sections 11510 to 11512 apply to disposal areas other than the following:

(a) A solid waste processing and transfer facility described in section 11513(1) or (2).

(b) An incinerator that does not comply with the construction permit and operating license requirements of this subpart, as allowed under section 11540.

(2) A person shall not establish a disposal area except as authorized by a construction permit issued by the department pursuant to part 13. A person proposing the establishment of a disposal area shall submit the application for a construction permit to the appropriate local health officer. However, if the disposal area is located in a county or city that does not have a certified health department, the application shall be submitted directly to the department. An application for a construction permit shall be accompanied by engineering plans.

(3) An application for a construction permit for a landfill shall be accompanied by an application fee in the following amount:

(a) For a new landfill, the following:

(*i*) For a type II landfill, $3,000.00.

(*ii*) Except as provided in subparagraph (*iii*), for an industrial waste landfill, $2,000.00.

(*iii*) For a type III landfill limited to low hazard industrial waste, $1,500.00.

(b) For a lateral expansion of a landfill, the following:

(*i*) For a type II landfill, $2,000.00.

(*ii*) Except as provided in subparagraph (*iii*), for an industrial waste landfill, $1,500.00.

(*iii*) For a type III landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, $1,000.00.

(c) For a vertical expansion of an existing landfill, the following:

(*i*) For a type II landfill, $1,500.00.

(*ii*) Except as provided in subparagraph (*iii*), for an industrial waste landfill, $1,000.00.

(*iii*) For an industrial waste landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, $500.00.

(d) For a new coal ash impoundment, $1,000.00.

(e) For a lateral or vertical expansion of a coal ash impoundment, $750.00.

(4) An application for a construction permit for a disposal area that is not a landfill shall be accompanied by an application fee in the following amount:

(a) For a new disposal area for municipal solid waste, or a combination of municipal solid waste and waste listed in subdivision (b), $2,000.00.

(b) For a new disposal area for industrial waste, or construction and demolition waste, $1,000.00.

(c) For the expansion of an existing disposal area for any type of waste, $500.00.

(5) If an application is returned to the applicant as administratively incomplete, the applicant may, within 1 year after the application is returned, resubmit the application, together with the additional information as needed to address the reasons for being incomplete, without paying an additional application fee. If a permit is denied or an application is withdrawn, an applicant for a construction permit, within 1 year after the permit denial or application withdrawal, may resubmit the application, together with the additional information as needed to address the reasons for denial or withdrawal, without paying an additional application fee.

(6) Subject to section 11510(2)(d), an application for a modification to a construction permit or for renewal of a construction permit that has expired shall be accompanied by a fee of $500.00.

(7) A person may apply for a single permit to construct more than 1 type of disposal area at the same facility. A person who applies to permit more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable fees listed in this section for each type of disposal area.

(8) The department shall deposit permit application fees collected under this section in the solid waste staff account of the solid waste management fund.

(9) The department shall not approve an application for a construction permit for a new type II landfill that is not contiguous to an already permitted type II landfill or for a new municipal solid waste incinerator unless the approval is requested by the county board of commissioners and the department determines that the landfill or incinerator is needed for the planning area. The county board of commissioners' request shall include a demonstration that materials utilization options have been exhausted. The department's

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determination of need shall be based on public health, solid waste disposal capacity, and economic issues that would arise without the new site.

(10) As used in this section, "contiguous" means either of the following:

(a) On the same property. The property may be divided by either of the following:

(*i*) The boundary of a local unit of government.

(*ii*) A public or private right-of-way if access to and from the right-of-way for each piece of the property is opposite the access for the other piece of the property so that movement between the 2 pieces of the property is by crossing the right-of-way.

(b) On 2 or more properties owned by the same person if the properties are connected by a right-of-way that the owner controls and to which the public does not have access.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11510 Advisory analysis of proposed disposal area; duties of department upon receipt of construction permit application.

Sec. 11510. (1) Before submitting a construction permit application under section 11509 for a new disposal area, a person shall request a local health officer or the department to provide an advisory analysis of the proposed disposal area. Beginning 15 days after the request, and notwithstanding an analysis result, the person may file an application for a construction permit.

(2) Upon receipt of a construction permit application, the department shall do all of the following:

(a) Immediately notify the clerk of the municipality in which the disposal area is located or proposed to be located, the local soil erosion and sedimentation control agency under part 93, each division within the department and the department of natural resources that has responsibilities in land, air, or water management, the regional planning agency, and the designated planning agency for the planning area.

(b) Publish a notice in a newspaper or by electronic media having major circulation or viewership in the vicinity of the proposed disposal area. The notice shall contain all of the following:

(*i*) A map indicating the location of the proposed disposal area.

(*ii*) A description of the proposed disposal area.

(*iii*) The location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate in the notices under subdivisions (a) and (b) that the department will hold a public hearing in the area of the proposed disposal area if a written request is submitted by the applicant, a municipality, or a designated planning agency within 30 days after the date of publication of the notice, or by a petition submitted to the department containing a number of signatures equal to not less than 10% of the number of registered voters of the municipality where the proposed disposal area is to be located who voted in the last gubernatorial election. The petition shall be validated by the clerk of the municipality. The department shall hold the public hearing after the department makes a preliminary review of the application and all pertinent data and before a construction permit is issued or denied.

(d) Conduct a consistency review of the proposed disposal area, including the site, plans, and application, to determine if they comply with part 115. The review shall be conducted by persons qualified in hydrogeology and, if the disposal area is a landfill, landfill engineering. The department shall not issue a construction permit unless the persons conducting the review acknowledge that the application package complies with the requirements of part 115. The construction permit may contain a stipulation specifically applicable to the site and operation. An expansion of the area of a disposal area, an enlargement in capacity of a disposal area, a change in the solid waste boundary, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application constitutes a new proposal for which a new construction permit, rather than a modification of a construction permit, is required. The upgrading of a disposal area type required by the department to comply with part 115 or to comply with a consent order does not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a landfill that is a new site or a lateral expansion or vertical expansion of an existing unit proposed to be located within 5 miles of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The department shall make a copy of the application available to the Michigan aeronautics commission. If, not more than 60 days after receiving

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notification from the department, the Michigan aeronautics commission informs the department that operation of the proposed disposal area would present a potential hazard to air navigation and presents the basis for its findings, the department may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The department shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation.

(3) The Michigan aeronautics commission shall notify the department and the owner or operator of a landfill if the Michigan aeronautics commission is considering approving a plan that would provide for a runway or the extension of a runway within 5 miles of the landfill.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 1998, Act 397, Imd. Eff. Dec. 17, 1998;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11511 Construction permit; approval or denial of issuance; expiration; renewal; fee.

Sec. 11511. (1) The department shall notify the clerk of the municipality in which the disposal area is proposed to be located and the applicant of its approval or denial of an application for a construction permit under section 11509 within 10 days after the final decision is made.

(2) A construction permit expires 1 year after the date of issuance, unless development under the construction permit is initiated within that year. A construction permit that has expired may be renewed upon payment of a permit renewal fee of $500.00 and submission of any additional relevant information the department may require.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11511a Coal ash landfill, coal ash impoundment, or lateral expansion of landfill or impoundment; standard and location requirements; construction permit; detection monitoring program.

Sec. 11511a. (1) A new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or coal ash impoundment shall comply with the requirements of R 299.4304, R 299.4305, and R 299.4307 to R 299.4317 of the MAC, except that the minimum design standard for a new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or coal ash impoundment pursuant to R 299.4307(4) of the MAC is solely R 299.4307(4)(b) of the MAC and not R 299.4307(4)(a), (c), or (d) of the MAC.

(2) A new coal ash landfill, a new coal ash impoundment, or a new lateral expansion of a coal ash landfill or coal ash impoundment shall comply with the location requirements of R 299.4411 to R 299.4413 and R 299.4415 to R 299.4418 of the MAC, except that a new coal ash landfill or coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment shall maintain a permanent minimum clearance from the bottom of the primary liner of not less than 5 feet to the natural groundwater level.

(3) The department shall not issue a construction permit for a new coal ash landfill or new coal ash impoundment or a new lateral expansion of a coal ash landfill or coal ash impoundment unless all of the following apply:

(a) The landfill, impoundment, or expansion, respectively, complies with subsections (1) and (2), as applicable.

(b) The landfill, impoundment, or expansion, respectively, complies with R 299.4306 of the MAC.

(c) The owner or operator has provided to the department a detection monitoring program in a hydrogeological monitoring plan that complies with R 299.4440 to R 299.4445 and R 299.4905 to R 299.4908 of the MAC, as applicable. However, R 299.4440(3) and R 299.4440(6) of the MAC do not apply to coal ash impoundments or coal ash landfills. The waiver described in R 299.4440(2) of the MAC is not available to coal ash impoundments or coal ash landfills. Groundwater sampling related to coal ash impoundments or coal ash landfills shall not be field filtered. The constituents monitored in the detection monitoring program shall include all of the following:

(*i*) Boron.

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(*ii*) Calcium.
(*iii*) Chloride.
(*iv*) Fluoride.
(*v*) Iron.
(*vi*) pH.
(*vii*) Sulfate.
(*viii*) Total dissolved solids.

(d) The landfill, impoundment, or expansion, respectively, complies with 1 of the following, if applicable:

(*i*) Section 11519b(2) and (4).

(*ii*) A schedule, approved by the department, of remedial measures, including a sequence of actions or operations, that leads to compliance with part 115 within a reasonable time period but not later than December 28, 2020.

(4) The constituents listed in this section shall be analyzed by methods identified in "Standard Methods for the Examination of Water and Wastewater, 20th Edition," (jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation) or "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846, Third Edition, Final Updates I (1993), II (1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB (2005), IV (2008), and V (2015) or by other methods approved by the director or his or her designee.

History: Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Compiler's note: Former MCL 324.11511a, which pertained to permit to construct, modify, or expand landfill, was repealed by Act 38 of 2004, Eff. Jan 1, 2006.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11511b RDDP; research, development, and demonstration project.

Sec. 11511b. (1) A person may submit to the department a project abstract for an RDDP. If, based on the project abstract, the department determines that the RDDP will provide beneficial data on alternative landfill design, construction, or operating methods, the person may apply for a construction permit under section 11509, including the renewal or modification of a construction permit, authorizing the person to establish the RDDP.

(2) An RDDP is subject to the same requirements, including, but not limited to, permitting, construction, licensing, operation, closure, postclosure, financial assurance, fees, and sanctions as apply to other type II landfills or landfill units under part 115, except as provided in this section.

(3) An extension of the processing period for an RDDP construction permit is not subject to the limitations under section 1307.

(4) An application for an RDDP construction permit shall include, in addition to the applicable information required in other type II landfill construction permit applications, all of the following:

(a) A description of the RDDP goals.

(b) Details of the design, construction, and operation of the RDDP as necessary to ensure protection of the environment, natural resources, and the public health, safety, and welfare. The design shall be at least as protective of the environment, natural resources, and the public health, safety, and welfare as other designs that are required under part 115.

(c) A list and discussion of the types of waste that will be disposed of, excluded, or added, including the types and amount of liquids that will be added under subsection (5) and how the addition will benefit the RDDP.

(d) A list and discussion of the types of compliance monitoring and operational monitoring that will be performed.

(e) Specific means to address potential nuisance conditions, including, but not limited to, odors and health concerns as a result of human contact.

(5) The department may authorize the addition of liquids, including, but not limited to, septage waste or other liquid waste, to solid waste in an RDDP if the applicant has demonstrated that the addition is necessary to accelerate or enhance the biostabilization of the solid waste and is not merely a means of disposal of the liquids. If an RDDP is intended to accelerate or enhance biostabilization of solid waste, the construction permit application shall include, in addition to the information required under subsection (4), all of the following:

(a) An evaluation of the potential for a decreased slope stability of the waste caused by any of the

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following:

(*i*) Increased presence of liquids.

(*ii*) Accelerated degradation of the waste.

(*iii*) Increased gas pressure buildup.

(*iv*) Other relevant factors.

(b) An operations management plan that incorporates all of the following:

(*i*) A description of and the proportion and expected quantity of all components that are needed to accelerate or enhance biostabilization of the solid waste.

(*ii*) A description of any solid or liquid waste that may be detrimental to the biostabilization of the solid waste intended to be disposed of or to the RDDP goals.

(*iii*) An explanation of how the detrimental waste described in subparagraph (*ii*) will be prevented from being disposed of in cells approved for the RDDP.

(c) Parameters, such as moisture content, stability, gas production, and settlement, that will be used by the department to determine the beginning of the postclosure period for the RDDP under subsection (10).

(d) Information to ensure that the requirements of subsection (6) will be met.

(6) An RDDP shall meet all of the following requirements:

(a) Ensure that added liquids are evenly distributed and that side slope breakout of liquids is prevented.

(b) Ensure that daily cover practices or disposal of low permeability solid wastes does not adversely affect the free movement of liquids and gases within the waste mass.

(c) Include all of the following:

(*i*) A means to monitor the moisture content and temperature of the waste.

(*ii*) A leachate collection system of adequate size for the anticipated increased liquid production rates. The design's factor of safety shall take into account the anticipated increased operational temperatures and other factors as appropriate.

(*iii*) A means to monitor the depth of leachate on the liner.

(*iv*) An active gas collection and control system. The system shall be of adequate size for the anticipated methane production rates and to control odors. The system must be operational before the addition of any material to accelerate or enhance biostabilization of the solid waste.

(7) The owner or operator of an RDDP for which a construction permit has been issued shall submit a report to the department at least once every 12 months on the progress of the RDDP in achieving its goals. The report shall include a summary of all monitoring and testing results, as well as any other operating information specified by the permit or in a subsequent permit modification or operating condition.

(8) A permit for an RDDP shall specify the term of the permit, which shall not exceed 3 years. However, the owner or operator of an RDDP may apply for and the department may grant an extension of the term of the permit, subject to all of the following requirements:

(a) The application to extend the term of the permit must be received by the department at least 90 days before the expiration of the permit.

(b) The application shall include a detailed assessment of the RDDP showing the progress of the RDDP in achieving its goals, a list of problems with the RDDP and progress toward resolving those problems, and other information that the department determines is necessary to accomplish the purposes of part 115.

(c) If the department fails to make a final decision within 90 days after receipt of an administratively complete application for an extension of the term of a permit, the term of the permit is extended for 3 years.

(d) An individual extension shall not exceed 3 years, and the total term of the permit with all extensions shall not exceed 21 years.

(9) If the department determines that the overall goals of an RDDP, including, but not limited to, protection of the environment, natural resources, and the public health, safety, and welfare, are not being achieved, the department may order immediate termination of all or part of the operations of the RDDP or may order other corrective measures.

(10) The postclosure period for a facility authorized as an RDDP begins when the department determines that the unit or portion of the unit where the RDDP was authorized has reached a condition similar to the condition that non-RDDP landfills would reach before postclosure. The parameters, such as moisture content, stability, gas production, and settlement, to attain this condition shall be specified in the permit. The landfill care fund shall be maintained for the period after final closure of the landfill as specified under section 11523(1)(a).

(11) The department may authorize the conversion of an RDDP to a full-scale operation if the owner or operator of the RDDP demonstrates to the satisfaction of the department that the goals of the RDDP have been met and the authorization does not constitute a less stringent permitting requirement than is required under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a, and regulations promulgated

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thereunder.

History: Add. 2005, Act 236, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 215, Imd. Eff. Nov. 10, 2011;—Am. 2016, Act 437, Eff. Apr. 4, 2017;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11512 Disposal of solid waste at licensed disposal area; license required to conduct, manage, maintain, or operate disposal area; application; contents; fee; certification; resubmitting application; additional information or corrections; operation of incinerator without operating license; additional fees; operation of coal ash landfill and coal ash impoundment; application; fees; public notice and meeting; hydrogeologic monitoring program; annual report.

Sec. 11512. (1) This section applies to disposal areas as provided in section 11509(1).

(2) A person shall not dispose of solid waste at a disposal area unless the disposal area is licensed under this section. However, a person authorized by state law or rules promulgated by the department to do so may dispose of the solid waste at the site of generation. Waste placement in existing landfill units shall be consistent with past operating practices or modified practices to ensure good management.

(3) Except as otherwise provided in this section, a person shall not conduct, manage, maintain, or operate a disposal area except as authorized by an operating license issued by the department pursuant to part 13. The owner or operator of the disposal area shall submit a license application to the department through a certified health department. Existing coal ash impoundments are exempt from the licensing requirements of this part through December 28, 2020. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department. A person authorized by part 115 to operate more than 1 type of disposal area at the same facility may apply for a single license.

(4) An applicant for a license for a type II or type III landfill shall submit evidence of financial assurance that meets the requirements of section 11523a, the maximum waste slope in the active portion, an estimate of remaining permitted capacity, and documentation of the amount of waste received at the disposal area during the previous license period or expected to be received, whichever is greater.

(5) An application for a license for a disposal area other than an existing coal ash impoundment shall include a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. An applicant for a license for an existing coal ash impoundment shall submit with the application documentation in the applicant's possession or control regarding the construction of the impoundment. If construction of a portion of a landfill is not complete, the owner or operator shall submit additional construction certification of that portion of the landfill under section 11516(3).

(6) An applicant for an operating license, within 6 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

(7) To conduct tests and assess operational capabilities, the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license, upon notice to the department, for a period not to exceed 60 days.

(8) The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, subject to subsection (9):

(a) Landfills receiving less than 100 tons per day, $500.00.

(b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, $1,500.00.

(c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, $4,000.00.

(d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, $6,500.00.

(e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, $12,500.00.

(f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, $22,500.00.

(g) Landfills receiving more than 3,000 tons per day, $33,000.00.

(9) Type II landfill application fees shall be based on the average amount of waste in tons projected to be received daily during the license period. Application fees for license renewals shall be based on the average amount of waste received daily in the previous calendar year based on a 365-day calendar year. Application fees shall be adjusted in the following circumstances:

(a) If a landfill accepts more than the amount of waste on which the application fee was based, a supplemental fee equal to the difference shall be submitted with the next license application.

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(b) If a landfill accepts less than the amount of waste on which the application fee was based, the department shall credit the applicant an amount equal to the difference with the next license application.

(c) A landfill used exclusively for municipal solid waste incinerator ash that measures waste by volume rather than weight shall pay a fee based on 1 cubic yard per ton.

(10) The operating license application for a type III landfill shall be accompanied by a fee of $5,000.00.

(11) An application for an operating license for a coal ash landfill shall be accompanied by a fee of $13,000.00. By the anniversary of the issuance of the operating license, while the operating license remains in effect, the coal ash landfill owner or operator shall pay the department a fee of $13,000.00. If the anniversary of the issuance of the operating license falls on a legal holiday, the annual fee shall be paid by the next business day.

(12) An application for an operating license by a coal ash impoundment shall be accompanied by a fee of $13,000.00. On the anniversary of the issuance of the operating license, while the operating license remains in effect, the coal ash impoundment owner or operator shall pay the department a fee of $13,000.00. If the anniversary of the issuance of the operating license falls on a legal holiday, the annual fee shall be paid on the next business day.

(13) The department shall deposit the fees collected under subsections (11) and (12) in the coal ash care fund created in section 11550.

(14) Upon receipt of a license application for either a coal ash impoundment or a coal ash landfill, the department shall do all of the following:

(a) Immediately send notice to the clerk of the municipality where the disposal area is located and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the disposal area.

(15) The notices under subsection (14) shall meet all of the following requirements:

(a) Include a map indicating the location of the disposal area and a description of the disposal area.

(b) Specify the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate that the department will accept comments for 45 days after the date of publication of the notice.

(d) Indicate that the department shall hold a public meeting in the area of the disposal area if, within 15 days after the date of publication of the notice, any of the following occur:

(*i*) A written request for a public meeting is submitted to the department by the applicant or a municipality.

(*ii*) The department determines that there is a significant public interest in or known public controversy over the application or that for any other reason a public meeting is appropriate.

(16) A public meeting referred to in subsection (15)(d) shall be held after the department makes a preliminary review of the application and all pertinent data and before an operating license is issued or denied. During its review, the department shall consider input provided at the public meeting.

(17) If an application is returned to the applicant as administratively incomplete, the department shall refund the entire fee. An applicant for a license, within 12 months after a license denial or withdrawal of a license application, may resubmit the application with the additional information as needed to address the reasons for denial, without being required to pay an additional application fee.

(18) The operating license application for a solid waste processing and transfer facility that manages more than 200 cubic yards at any time, or other disposal area that is not a landfill or surface impoundment shall be accompanied by a fee of $1,000.00.

(19) Except as provided in subsection (13), the department shall deposit operating license application fees collected under this section in the perpetual care account of the solid waste management fund.

(20) A person who applies for an operating license for more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable application fees listed in this section.

(21) The department shall not license a landfill or coal ash impoundment unless the landfill or coal ash impoundment has an approved hydrogeologic monitoring program and the owner or operator has provided the department with the monitoring results. The department shall use this information in conjunction with other information required by part 115 to determine a course of action regarding licensing of the facility consistent with section 4005 of subtitle D of the solid waste disposal act, 42 USC 6945, and with part 115. In deciding a course of action, the department shall consider, at a minimum, the environment, natural resources, the public health, safety, and welfare, and other public or private alternatives. If a landfill or coal ash impoundment violates part 115, the department may do any of the following:

(a) Revoke the landfill's or coal ash impoundment's license.

(b) If the disposal area is a coal ash impoundment that has not been previously licensed under this part, deny a license.

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(c) Issue a timetable or schedule of corrective action, including a sequence of actions or operations, that leads to compliance with part 115 within a reasonable time period but not more than 1 year.

(22) A type II landfill does not require a separate solid waste processing and transfer facility permit or license to solidify industrial waste sludges on-site if that activity meets all of the following requirements:

(a) Occurs in containers or tanks as specified in part 121.

(b) Complies with part 55.

(c) Is approved by the department as part of the facility's operations plan.

(23) An existing industrial waste landfill may accept any of the following:

(a) Industrial waste.

(b) Solid waste that originates from an industrial site and is not a hazardous waste regulated under part 111.

(24) The owner or operator of a landfill shall annually submit a report to the department and the county and municipality in which the landfill is located that specifies the tonnage and type of solid waste received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin and the amount of remaining disposal capacity at the landfill. Remaining disposal capacity shall be calculated as the permitted capacity less waste in place for any area that has been constructed and is not yet closed plus the permitted capacity for each area that has a permit for construction under part 115 but has not yet been constructed. The report shall be submitted within 45 days after the end of each state fiscal year. By January 31 of each year, the department shall submit to the legislature a report summarizing the information obtained under this subsection.

(25) The owner or operator of a licensed processing and transfer facility, within 45 days after the end of each state fiscal year, shall submit to the department on a form and in a medium provided by the department, a report on the amount of materials managed at the facility during that state fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11512a Issuance of license for coal ash landfill or a coal ash impoundment; requirements.

Sec. 11512a. (1) The department shall not issue a license to a coal ash landfill or a coal ash impoundment unless the applicant has provided to the department both of the following:

(a) An approved hydrogeological monitoring program that does both of the following:

(*i*) Complies with R 299.4440 to R 299.4445, if applicable, and R 299.4905 to R 299.4908 of the part 115 rules.

(*ii*) Includes a detection monitoring program that meets the requirements of section 11511a(3).

(b) All reports and other information required under 40 CFR 257.90 for the preceding 5 years, as applicable. Based on this information, the department shall determine whether any additional licensing requirements are necessary for the coal ash landfill or coal ash impoundment. Any report or other information available on the applicant's website or already submitted to the department is not required to be provided with the application.

(2) The department shall not issue a license to a coal ash landfill unless the applicant has provided to the department a run-on and run-off control system plan that complies with 40 CFR 257.81(c)(1) and was prepared and certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised every 5 years in compliance with 40 CFR 257.81(c)(4).

(3) The department shall not issue a license to a coal ash impoundment unless the applicant has provided to the department an inflow design flood control system plan that complies with 40 CFR 257.82(c)(1) and was prepared and certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised every 5 years in compliance with 40 CFR 257.82(c)(4).

(4) The department shall not issue a license to a coal ash landfill or a coal ash impoundment unless that landfill or impoundment complies with section 11511a(3) and, if applicable, section 11519b(4) or a schedule, approved by the department, of remedial measures, including a sequence of actions or operations, that leads to compliance with this part within a reasonable time period but not more than 2 years after the effective date of the amendatory act that added this subsection.

(5) The department shall not issue a license for a coal ash impoundment that is not a low-hazard-potential coal ash impoundment unless the applicant has provided to the department an emergency action plan that

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complies with 40 CFR 257.74(a)(3) and was prepared and certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules.

History: Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11512b Active gas collection and control system; prevention of the migration of explosive gases; system requirements; compliance with gas migration monitoring plan; alternative gas venting.

Sec. 11512b. (1) A landfill that accepts waste with the potential to generate gas must be designed to prevent the migration of explosive gases generated by the waste.

(2) A landfill that accepts municipal solid waste must be designed with an active gas collection and control system. Except as otherwise provided for in this section or approved by the department, the active gas collection and control system shall include all of the following features:

(a) Vertical gas extraction wells that meet all of the following requirements:

(*i*) Are installed throughout the landfill with a maximum radius of influence of 150 feet per well and lesser radii for wells located near the perimeter of the landfill. The radii of influence of adjacent wells shall overlap. Alternate well spacings may be used for portions of a site or the entire site if approved by the department after a site-specific demonstration.

(*ii*) Have target depths of at least 75% of the waste depth at the well location. However, the wells should not extend closer than 10 feet above the leachate collection system.

(*iii*) Are constructed of pipe that meets all of the following requirements:

(A) Is at least 6 inches in diameter.

(B) Is manufactured from polyvinylchloride, high-density polyethylene, chlorinated polyvinyl chloride, or an alternate material approved by the department.

(C) Is designed to convey projected amounts of gas; withstand installation, static, and settlement forces; and withstand planned overburden and traffic loads.

(D) When constructed, is slotted or otherwise perforated and is screened in the lower 2/3 to 3/4 of its length in the borehole. The department may approve alternative perforated screened length requirements based on waste thickness or other factors.

(*iv*) Has boreholes that meet all of the following requirements:

(A) Are 36 inches in diameter. The department may approve alternate diameter boreholes as part of a design prepared by a licensed professional engineer and approved by the department.

(B) Are backfilled around the perforated pipe with 3/4- to 3- inch washed stone or an alternate material if approved by the department after a site-specific demonstration.

(C) The top 10 feet are sealed in a manner approved by the department.

(b) Horizontal gas extraction wells that are properly sloped to drain accumulated liquids and designed to withstand expected overburden pressures.

(c) A flow control valve and sampling access port on each gas extraction well.

(d) A gas header system that meets all of the following requirements:

(*i*) The entire gas header system is designed with a loop to allow alternative flow paths for the gas as soon as practicable during both the interim and final development phases of construction.

(*ii*) The slope on the header pipe over the waste mass is at least 2% wherever possible. The slope outside of the waste mass shall allow efficient removal of condensate and prevents sags.

(*iii*) The header and lateral pipes meet both of the following requirements:

(A) Are manufactured from polyethylene or another material approved by the department.

(B) Are designed to convey projected amounts of gas and liquids; withstand installation, static, and settlement forces; and withstand planned overburden and traffic loads.

(e) A blower, header, and laterals designed so that a vacuum of at least 10 inches of water column is available at the well located furthest from the blower. An available header vacuum of less than 10 inches of water column at the well located furthest from the blower complies with this subdivision if the owner or operator of the landfill demonstrates to the department that the available vacuum is adequate to meet performance criteria.

(f) A drip leg or equivalent installed immediately before the blower to separate condensate from gas while preserving the suction at the wells when under maximum operating vacuum.

(g) An approved secondary containment method for condensate and liquid transfer piping if the piping is

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located outside of the limits of the waste and installed after the effective date of the amendatory act that added this section.

(h) The ability to collect and manage all condensate, measure volumes of liquid removed from the gas extraction wells, and collect samples of landfill gas.

(i) A control device to which collected landfill gas is routed that meets all of the following requirements:

(*i*) Operates at all times gas is routed to it.

(*ii*) Is designed and operated to meet the requirements of part 55 or the new source performance standards under 40 CFR part 60.

(*iii*) Operates backup blower or control equipment required under subdivision (j).

(j) Available backup equipment to effectively control landfill gas emissions during an equipment breakdown.

(k) The active gas collection and control system shall not be inoperable or unable to maintain a vacuum required by subdivision (e) for more than 5 consecutive days.

(3) A landfill that has a potential to generate gas shall have and comply with a gas migration monitoring plan. The plan shall include at least 1 gas monitoring probe on each side of the landfill. The plan shall be based on all of the following factors:

(a) Soil conditions.

(b) Hydrogeologic conditions surrounding the landfill.

(c) Hydraulic conditions surrounding the landfill.

(d) The location of landfill structures and property boundaries.

(4) A landfill that accepts industrial waste or other nonmunicipal solid waste with the potential to generate gas and that does not utilize an active gas collection and control system shall be designed with a system that allows gas venting from the entire landfill surface. The owner or operator of the landfill shall perform an analysis to determine the spacing needed between gas venting trenches for an effective system. The system shall be designed with a continuous layer, which may be utilized as part of the infiltration layer that protects the final cover liner from the waste and minimizes the effect of settlement. The continuous layer shall meet all of the following requirements:

(a) Be located below the capping layer.

(b) Allow surficial venting from the waste final surface.

(c) Consist of at least 1 foot of granular soil with hydraulic conductivity of at least 1.0x10-3 cm/sec and a series of flexible, perforated pipes connected to a series of outlets or an alternative design approved by the department as providing equivalent performance.

History: Add. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11512d Installation of monitoring port; sampling of gas extractions for effectiveness; surface monitoring design plan; submission and retention of records.

Sec. 11512d. (1) The owner or operator of a landfill with an active gas collection and control system or a venting system shall install monitoring ports and conduct monitoring as specified by the department to determine the effectiveness of the system.

(2) The owner or operator of a landfill with an active gas collection and control system shall sample each gas extraction well for nitrogen or oxygen and for methane, pressure, temperature, liquid level, and, if existing wellheads allow flow measurement, flow. The owner or operator shall monitor gas flow to the control device, methane content at the control device, and other parameters as specified in an approved monitoring plan.

(3) The owner or operator of a landfill shall sample each gas extraction well monthly for the parameters, other than liquid level, listed in subsection (2). Except as provided in this subsection, the liquid level in each well shall be monitored at least semi-annually. If for 2 consecutive monitoring events the liquid level in a well exceeds 50% but does not exceed 75% of the screened interval length, the owner or operator shall submit to the department for review a liquids removal evaluation and corrective action report for the well, unless the well has a functional, operated liquid pump. If the liquid level in a well exceeds 75% of the screened interval length during a monitoring event, then the liquid level monitoring frequency for that well shall be increased to quarterly. If the liquid level in a well exceeds 75% of the screened interval length for 2 consecutive monitoring events, the owner or operator of the landfill shall install a liquids pump, unless the department approves an alternative corrective action plan. If the liquid level in a well did not exceed 50% for the immediately preceding 2 consecutive monitoring events, the owner or operator may petition the department

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for a decreased monitoring frequency. However, decreased monitoring shall be conducted at least annually. For the purposes of the petition, the 2 consecutive monitoring events may include monitoring conducted before the effective date of the amendatory act that added this section.

(4) The owner or operator of a landfill required to have an active landfill gas collection and control system shall operate the system so that the methane concentration is 500 parts per million or less above background at the surface of the landfill.

(5) Not later than 180 days after initial waste receipt in a portion of a landfill, the owner or operator of the landfill shall commence surface monitoring for methane at all of the following locations:

(a) Where visual observations, such as of distressed vegetation or cracks or seeps in the cover, indicate elevated concentrations of landfill gas.

(b) At each penetration of daily, interim, or final landfill cover.

(c) Around the perimeter of the active gas collection and control system.

(d) Along a pattern that traverses the landfill at no more than 30-meter intervals, unless the owner or operator establishes an alternative traversing pattern that is approved by the department after a site-specific demonstration.

(6) The owner or operator of a landfill shall conduct monitoring under subsection (5) in compliance with a surface monitoring design plan approved by the department that includes a topographical map showing the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals under subsection (5)(d). The department may approve a surface monitoring design plan that excludes steep slopes or other dangerous areas from the surface monitoring.

(7) The owner or operator of a landfill shall do all of the following:

(a) Submit gas monitoring results to the department upon request.

(b) Prepare field records of all monitoring activities under this section in sufficient detail to document whether the sampling plan has been complied with.

(c) Retain the field records required under subdivision (b) in an operating record at the landfill or in an alternative location approved by the department until the end of the long-term care period for the landfill.

(d) Make the field records available for department inspection on request.

History: Add. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11512f Type II landfill; revised engineering plans; compliance requirements; report.

Sec. 11512f. (1) The owner or operator of a type II landfill shall submit to the department revised engineering plans and reports required by this section in compliance with the following schedule:

(a) If, on the effective date of the amendatory act that added this section, the landfill has an active gas collection and control system and is subject to monthly wellhead monitoring pursuant to the new source performance standards under 40 CFR part 60, the owner or operator shall submit revised engineering plans that incorporate the approved new source performance standard plans within 90 days after the effective date of the amendatory act that added this section. The revised plans need not require upgrading of the initial active gas collection and control system in previously constructed areas unless it is necessary to correct surface emissions of methane at concentrations exceeding 500 parts per million above background that cannot be corrected within 1 quarterly monitoring period by following the procedures of 40 CFR 60.765(c)(4)(i) to (iv), to correct a nuisance odor violation, or to maintain vacuum requirements at the wellhead located farthest from the blower. The design requirements of section 11512b(2) apply to lateral extensions, lateral expansions, and all new units at the facility.

(b) If, on the effective date of the amendatory act that added this section, the landfill has an active gas collection and control system and is not subject to monthly wellhead monitoring pursuant to the new source performance standards under 40 CFR part 60, the owner or operator shall submit revised plans within 1 year after the effective date of the amendatory act that added this section. The revised plans need not require upgrading of the initial system in previously constructed areas unless it is necessary to correct surface emissions exceeding 500 parts per million of methane above background that cannot be corrected within 1 quarterly monitoring period by following the procedures of 40 CFR 60.765(c)(4)(i) to (iv), to correct a nuisance odor violation, or to maintain vacuum requirements at the well located furthest from the blower. The design requirements of section 11512b(2) apply to lateral extensions and all new units at the landfill.

(c) If, on the effective date of the amendatory act that added this section, the landfill does not have an active gas collection and control system, the owner or operator shall submit revised plans for an active gas

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collection and control system within 1 year after detecting surface methane emissions at concentrations exceeding 500 parts per million above background that cannot be corrected within 1 quarterly monitoring period by following the procedures of 40 CFR 60.765(c)(4)(i) to (iv) or within 1 year after the department documents a nuisance odor violation, unless an extension of the deadline is approved by the department. The revised plans need not include upgrading of the initial system in all previously constructed areas. The revised plans shall address the areas causing the surface emissions exceedance or nuisance odor violation plus all future lateral extensions at the landfill. The design requirements of section 11512b(2) apply to the proposed active gas collection and control system. Construction of the system shall be completed within 180 days after the department approves the revised engineering plans, unless an extension is approved by the department.

(d) If the landfill is a new unit or lateral expansion, the owner or operator must submit engineering plans and reports for an active gas collection and control system before the department issues a solid waste disposal area construction permit.

(2) The design plans and engineering reports for a type II landfill required by part 115 shall be sufficient to demonstrate compliance with 40 CFR 60.759. The engineering reports shall include a monitoring plan that is sufficient to demonstrate compliance with section 11512d. The department shall incorporate the design plans and engineering reports into the landfill's solid waste disposal area construction permit and solid waste disposal area operating license.

(3) Within 45 days after the end of each state fiscal year, the owner or operator of a type II landfill shall update engineering plans to show the as-built location of all active gas collection and control system components, unless no changes have been made. The update shall include plan views and details for any changes proposed but not previously approved. The plan views shall include proposed wells and collection headers to collect landfill gas from the landfill in future final stages as well as as-built locations for all components above grade and currently functioning below grade.

(4) The owner or operator of a type II landfill shall submit plans to the department before beginning an active gas collection and control system expansion project. Repairs, changes, or installations are not considered to be an expansion project if they are minor and necessary for proper maintenance of the existing active gas collection and control system. The plans shall identify gas extraction well locations, include a schedule of extraction well depths, and identify gas well pump locations, compressed air and pump force main locations, header and lateral vacuum pipe locations, condensate drip leg and sump locations, and any other relevant infrastructure, as well as construction details for these items. If, during construction, conditions require that any of the approved or proposed extraction well locations deviate more than 50 feet from the proposed location or more than 25% from the proposed depth, the owner or operator shall submit to the department 1 of the following:

(a) A statement from a licensed professional engineer that the gas wells installed will provide adequate control of landfill gas emissions and meet the intent of the design.

(b) A schedule for installing additional gas collectors to meet the design requirements included with the approved engineering plans.

(5) Within 180 days after completion of construction of portions of the active gas collection and control system, the owner or operator shall submit to the department a documentation report by a construction quality assurance officer or other department-approved designee of the landfill owner or operator that the construction complies with part 115 and the engineering plans approved by the department. All of the following information shall accompany the documentation report:

(a) A daily activity log, containing all of the information required by R 299.4921(3) of the MAC.

(b) Landfill gas well logs that include all of the following:

(*i*) Observations of the depth, composition, degree of decay, temperature, and moisture content of the waste.

(*ii*) Details of the construction of the well including borehole size and depth, pipe size and type, perforated length, aggregates utilized, soils utilized, and the location and types of seals utilized.

(c) An as-built engineering plan view of the active gas collection and control system with the location of existing wells and headers and the location of newly installed wells, headers, and other active gas collection and control system infrastructure.

History: Add. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11512h Schedule for operating and monitoring an active gas collection and control

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system; surface emission scans.

Sec. 11512h. (1) The owner or operator of a type II landfill shall begin operating and monitoring an active gas collection and control system in compliance with the following schedule:

(a) If the landfill is described in section 11512f(1)(a), within 90 days after the date of approval of the revised engineering plans.

(b) If the landfill is described in section 11512f(1)(b), within 1 year after the effective date of the amendatory act that added this section.

(2) The owner or operator of a type II landfill without an active gas collection and control system shall begin surface emission scans within 1 year after the effective date of the amendatory act that added this section.

(3) The owner or operator of a type II landfill shall install an active gas collection and control system in compliance with the following schedule:

(a) If the landfill is a new unit, a lateral expansion, or a lateral extension and if the approved design plan includes an active gas collection and control system, the initial active gas collection and control system must be installed before waste is accepted. An initial active gas collection and control system may include horizontal collectors installed directly above the leachate collection system or vacuum applied to the leachate collection risers, or both. The initial active gas collection and control system shall be operated upon detection of landfill gas pressure in a landfill cell, as determined by any of the following:

(*i*) Surface emission scans detecting methane at concentrations exceeding 500 parts per million above background that cannot be corrected within 1 quarterly period by following the procedures of 40 CFR 60.765(c)(4)(i) to (iv).

(*ii*) Positive pressure in leachate collection riser pipes.

(*iii*) Nuisance odors.

(*iv*) Visual evidence of gas emissions, such as stressed vegetation or gas bubbling through the cover.

(b) If, on the effective date of the amendatory act that added this section, the landfill has an active gas collection and control system and is not subject to monthly wellhead monitoring, gas extraction wells at locations as shown in the approved engineering plans shall be installed as soon as practicable, but not later than 180 days after engineering plan approval, unless an extension is approved by the department.

(c) If the landfill does not have an active gas collection and control system, gas extraction wells at locations as shown in the approved engineering plans shall be installed as soon as practicable, but not later than 180 days after engineering plan approval, unless an extension is approved by the department.

(4) After waste placement and operation of the initial collection devices, if a location is identified to have methane emissions at concentrations exceeding 500 parts per million above background, the owner or operator of the landfill shall comply with 40 CFR 60.765(c)(4)(i) to (iv). If a location is identified to have methane emissions at concentrations exceeding 500 parts per million above background 3 times within a quarterly monitoring period, the owner or operator shall, within 120 days, install additional extraction devices in compliance with the approved engineering plans. The department may approve an alternative remedy or deadline.

History: Add. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11513 Operation of solid waste processing and transfer facility; notification and reporting requirements; registration application; applicability to existing operations.

Sec. 11513. (1) Subject to subsection (4), unless the person has notified the department, a person shall not operate a solid waste processing and transfer facility that does not at any time have on-site more than 50 cubic yards of solid waste and that is not designed to accept waste from vehicles with mechanical compaction devices. Notification shall be given upon initial operation and, subsequently, within 45 days after the end of each state fiscal year. The subsequent notices shall report the amount of solid waste managed at the facility during the preceding state fiscal year.

(2) Subject to subsection (4), unless the person has registered the facility with the department, a person shall not operate a solid waste processing and transfer facility that at any time has on-site more than 50 cubic yards and does not at any time have on-site more than 200 cubic yards of solid waste and that is not designed to accept waste from vehicles with mechanical compaction devices. The term of a registration is 5 years. The person shall submit an application to renew a registration at least 90 days before the expiration of the current registration. An application for registration under this subsection shall contain the name and mailing address

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of the applicant, the location of the proposed or existing solid waste processing and transfer facility, and other information required by part 115. The application shall be accompanied by a fee of $750.00. In addition, within 45 days after the end of each state fiscal year, the person shall submit to the department a report on the amount of materials managed at the facility during that state fiscal year.

(3) An application for registration submitted under subsection (2) shall be accompanied by an operations plan and site map. The department shall review operations and the operations plan for existing solid waste disposal areas to ensure compliance with operating requirements. If the department determines that an existing solid waste disposal area is noncompliant, the department may issue a schedule of remedial measures that will lead to compliance within a reasonable period of time not to exceed 1 year from the determination of deficiency.

(4) For a disposal area in operation before the effective date of the amendatory act that added this subsection, both of the following apply:

(a) Except as provided in subdivision (b), the disposal area shall follow its existing licensing renewal schedule.

(b) For a disposal area described in subsection (1) or (2), the operator shall submit to the department the notification or application for registration required under those subsections within 1 year after the effective date of the amendatory act that added this subsection.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11514 Materials prohibited from disposal in landfill; disposal of yard clippings; notice of prohibitions; report.

Sec. 11514. (1) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly allow disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13832.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard waste, unless it meets the requirements of section 11555(1)(j).

(2) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, allow disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the MAC.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(*i*) Household waste other than septage waste.

(*ii*) Leachate or gas condensate that is approved for recirculation.

(*iii*) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(3) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly allow disposal in the incinerator of, more than a de minimis amount of yard waste, unless the requirements of section 11555(1)(j) are met.

(4) The department shall post, and a hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of subsection (3) in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (1) or (3), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the

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standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 34, Imd. Eff. Mar. 29, 2004;—Am. 2005, Act 243, Imd. Eff. Nov. 22, 2005;—Am. 2007, Act 212, Eff. Mar. 26, 2008;—Am. 2008, Act 394, Imd. Eff. Dec. 29, 2008;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11514b Disposal of certain technologically enhanced naturally occurring radioactive material (TENORM) in type II landfill prohibited; annual report; disposal requirements; TENORM defined.

Sec. 11514b. (1) A person shall not deliver to a type II landfill in this state for disposal and the owner or operator of a type II landfill shall not permit disposal in the landfill of technologically enhanced naturally occurring radioactive material with any of the following:

(a) A concentration of radium-226 more than 50 picocuries per gram.

(b) A concentration of radium-228 more than 50 picocuries per gram.

(c) A concentration of lead-210 more than 260 picocuries per gram.

(2) The owner or operator of a type II landfill shall not permit a delivery of TENORM for disposal at the landfill unless the generator has provided the following information in writing to the owner or operator of the landfill:

(a) The concentrations of radium-226, radium-228, lead-210, and any other radionuclide identified using gamma spectroscopy, or an equivalent analytical method, in the TENORM based on techniques for representative sampling and waste characterization approved by the department.

(b) An estimate of the total mass of the TENORM.

(c) An estimate of the total radium-226 activity, the total radium-228 activity, and the total lead-210 activity of the TENORM.

(d) The proposed date of delivery.

(3) The department may test TENORM proposed to be delivered to a landfill.

(4) Within 45 days after the end of each state fiscal year, the owner or operator of a type II landfill shall submit to the department an annual report that summarizes the information obtained under subsection (2) for all TENORM disposed at the landfill during the previous state fiscal year.

(5) The owner or operator of a type II landfill that disposes of TENORM with a concentration of radium-226 more than 25 picocuries per gram, a concentration of radium-228 more than 25 picocuries per gram, or a concentration of lead-210 more than 25 picocuries per gram shall do all of the following:

(a) Ensure that all TENORM is deposited at least 10 feet below the bottom of the future landfill cap.

(b) Maintain records of the location and elevation of TENORM disposed of at the landfill.

(c) Conduct a monitoring program that complies with all of the following:

(*i*) Radiological monitoring of site workers and at the landfill property boundary are conducted as specified in the license.

(*ii*) Radium-226, radium-228, and lead-210 are included among the parameters analyzed in leachate and groundwater at the frequency specified in the license.

(*iii*) Results of all monitoring required under this subsection are included in the environmental monitoring reports required under rules promulgated under this part and the facility operating license.

(6) As used in this section, "technologically enhanced naturally occurring radioactive material" or "TENORM" means naturally occurring radioactive material whose radionuclide concentrations have been increased as a result of human practices. TENORM does not include any of the following:

(a) Source material, as defined in section 11 of the atomic energy act of 1954, 42 USC 2014, and its progeny in equilibrium.

(b) Material with concentrations of radium-226, radium-228, and lead-210 each less than 5 picocuries per gram.

History: Add. 2018, Act 688, Eff. Mar. 28, 2019;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11515 Inspection of site; compliance with part 115 as condition of eligibility for permit, license, or registration; written inspection report; authorized representative defined.

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Sec. 11515. (1) The department or an authorized representative of the department may inspect and investigate conditions relating to the generation, storage, processing, transportation, management, or disposal of solid waste or any material regulated under part 115. In conducting an inspection or investigation, the department or its authorized representative may, at reasonable times and after presenting credentials and stating its authority and purpose, do any of the following:

(a) Enter any property.

(b) Have access to and copy any information or records that are required to be maintained pursuant to part 115 or an order issued under part 115.

(c) Inspect any facility, equipment, including monitoring and pollution control equipment, practices, or operations regulated or required under part 115 or an order issued under part 115.

(d) Sample, test, or monitor substances or parameters for the purpose of determining compliance with part 115 or an order issued under part 115.

(2) Upon receipt of an application for a permit, license, approval under a general permit, or registration under part 115, the department or an authorized representative of the department shall inspect the materials management facility, property, site, or proposed operation to determine eligibility for the permit, license, approval under a general permit, or registration. Before issuing a permit, license, approval under a general permit, or registration, the department shall file a written inspection report.

(3) If the department or an authorized representative of the department is refused entry or access under subsection (1) or (2), the attorney general, on behalf of this state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing entry or access to property, information or records or authorizing sampling, testing, or monitoring pursuant to this section.

(b) Commence a civil action to compel compliance with a request for entry or access to property, information, or records or to sample, test, or monitor pursuant to this section.

(4) The department or an authorized representative may receive and initiate complaints of an alleged violation of part 115 and take action with respect to the complaint as provided in part 115.

(5) As used in this section, "authorized representative" means any of the following:

(a) A full- or part-time employee of another state department or agency acting pursuant to law or to which the department delegates certain duties under part 115.

(b) A local health officer.

(c) For the purpose of sampling, testing, or monitoring under subsection (1)(d), a contractor retained by the state or a local health officer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11516 Final decision on license application; expiration and renewal of operating license; issuance of license as authority to accept waste for disposal; final exterior landfill slope requirements.

Sec. 11516. (1) Before making a final decision on an operating license application under section 111512, the department shall review the application for consistency with the requirements of part 115. The department shall notify the clerk of the municipality in which the disposal area is located and the applicant of its approval or denial of a license application within 10 days after the final decision is made.

(2) An operating license expires 5 years after the date of issuance. An operating license may be renewed before expiration upon payment of a renewal application fee specified in section 11512 if the licensee is in compliance with part 115.

(3) Issuance of an operating license by the department authorizes the licensee to accept waste for disposal in certified portions of the disposal area for which a bond was established under section 11523 and, for type II landfills, for which financial assurance was demonstrated under section 11523a. If the construction of a portion of a landfill licensed under this section is not complete by the time the license application is submitted, the owner or operator of the landfill shall submit a certification under the seal of a licensed professional engineer verifying that the construction of that portion of the landfill has proceeded according to the approved plans at least 60 days before the anticipated date of waste disposal in that portion of the landfill. If the department does not deny the certification within 60 days of receipt, the owner or operator may accept waste for disposal in the certified portion. In the case of a denial, the department shall issue a written statement of the reasons why the construction or certification is not consistent with part 115 or the approved plans.

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(4) The final exterior landfill slopes approved by the department, including the slope of the top of waste beneath the final cover, shall not be steeper than 25% except where necessary for either of the following:

(a) To install berms for erosion control.

(b) To vertically transition the side slope back to permitted final waste grades upslope from an area that has received final cover and has settled below permitted grades. The department may approve the transition slope if it does not exceed 33% and the owner or operator demonstrates, through revised engineering plans and analyses, that the steeper slope will not result in increased erosion or reduced stability in either the interim or final cover conditions. The landfill owner or operator shall provide enhanced soil erosion protection to the top surface of the transition slope to ensure interim and long-term erosion control and stability equivalent to a 25% side slope.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Compiler's note: In subsection (1), the reference to "section 111512" evidently should be to "section 11512".

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11517 Approval of closure certification and postclosure plan; modification of postclosure care period; release from postclosure care; duties of owner or operator.

Sec. 11517. (1) After the department approves the closure certification for a landfill unit under section 11523a, the owner or operator shall conduct postclosure care of that unit in compliance with a postclosure plan approved by the department and shall maintain financial assurance in compliance with part 115 including any additional financial assurance required based on an extension of the postclosure care period under subsection (3). The postclosure plan may include monitoring and maintenance provisions not otherwise required by part 115 if designed to achieve and demonstrate functional stability, such as monitoring settlement. Postclosure care shall be conducted for 30 years, except as provided under subsection (2) or (3), and consist of at least all of the following conducted as required by part 115:

(a) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover.

(b) Maintaining and operating the leachate collection system, if any. The department may waive the requirements of this subdivision if the owner or operator demonstrates that leachate no longer poses a threat to the environment, natural resources, or the public health, safety, or welfare.

(c) Monitoring the groundwater and maintaining the groundwater monitoring system, if any.

(d) Maintaining and operating the gas monitoring and collection system, if any.

(2) The department, by written notification to the landfill owner or operator, shall shorten the postclosure care period specified under subsection (1) if the landfill owner or operator submits to the department, and the department approves, a petition certified by a licensed professional engineer and a qualified groundwater scientist that demonstrates all of the following:

(a) The landfill's closure certification was approved by the department under section 11523a.

(b) The owner or operator has complied with postclosure care maintenance and monitoring requirements for at least 15 years.

(c) The landfill has achieved functional stability, including, but not limited to, meeting all of the following requirements:

(*i*) There has been no release from the landfill into groundwater or surface water requiring ongoing corrective action.

(*ii*) There is no ongoing subsidence or significant past subsidence of waste in the unit that may result in ponding or erosion that would significantly increase infiltration through or cause damage to the final cover.

(*iii*) The landfill does not produce more than minimal amounts of combustible gases.

(*iv*) Combustible gases from the landfill have not been detected at or beyond the landfill's property boundary or in facility structures.

(*v*) The landfill does not produce nuisance odors requiring control.

(*vi*) Leachate and gas collection and control system condensate generation has ceased, leachate and condensate quality meets criteria for acceptable surface water or groundwater discharge, or leachate and condensate can be discharged through existing leachate and condensate handling facilities, such as sewers connected to a publicly owned treatment works.

(*vii*) The final exterior landfill slopes are as approved by the department under section 11516(4).

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(d) Any other conditions necessary, as determined by the department, to protect the environment, natural resources, or the public health, safety, or welfare are met.

(3) The department shall extend the postclosure care period specified in subsection (1) for a landfill unit if any of the following apply:

(a) The owner or operator did not close the landfill unit as required by part 115.

(b) The final cover of the landfill unit has not been maintained and has significant ponding, erosion, or detrimental vegetation present.

(c) Groundwater monitoring has not been conducted in compliance with the approved monitoring plan or groundwater affected by the landfill unit exceeds criteria established under part 201.

(d) There is ongoing differential settlement of waste, as evidenced by significant ponding of water on the landfill cover.

(e) Gas monitoring has detected combustible landfill gases at or beyond the landfill boundary or in a facility structure above applicable criteria or gas from the unit continues to be generated at a rate that produces nuisance odors.

(f) Leachate or gas collection and control system condensate continues to be generated by the landfill unit in quantities or quality that may threaten groundwater or surface water.

(4) The owner or operator of a landfill unit that has been released from postclosure care of the unit shall do all of the following with respect to the landfill unit:

(a) Exercise custodial care by undertaking any activity necessary to maintain the effectiveness of the final cover, prevent the unauthorized discharge of leachate, prevent impacts to the surface or groundwater, mitigate the fire and explosion hazards due to combustible gases, and manage the landfill unit in a manner that protects environment, natural resources, and the public health, safety, and welfare.

(b) Comply with any land use or resource use restrictions established for the landfill unit.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11518 Landfill and coal ash impoundment; instrument imposing restrictive covenant on land; filing; contents of covenant; authorization; exemption; construction of part 115.

Sec. 11518. (1) When a landfill cell is first licensed, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the land and the department. If the land is owned by this state, the state administrative board shall execute the covenant on behalf of this state. The department or a local health officer shall file the instrument imposing the restrictive covenant for record in the office of the register of deeds of the county, or counties, in which the land is located. The covenant shall state that the land described in the covenant will be used as a landfill and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns shall, without authorization from the department, engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following approval by the department of the landfill's closure certification under section 11523a. In giving authorization, the department shall consider the original design, type of operation, material deposited, and the stage of decomposition of the fill. The department may grant an exemption from this section if the land involved is federally owned or if agreements existing between the landowner and the licensee on January 11, 1979 are not renegotiable.

(2) Part 115 does not prohibit the department from conveying, leasing, or permitting the use of state land for a disposal area or a resource recovery facility as provided by applicable state law.

(3) When a disposal area that is a coal ash impoundment is first licensed under this part, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the land and the department. If the land is owned by this state, the state administrative board shall execute the covenant on behalf of this state. The department or a local health officer shall file the instrument imposing the restrictive covenant for record in the office of the register of deeds of the county, or counties, the land is located. The covenant shall state that the land described in the covenant will be used as a coal ash impoundment and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns shall, without authorization from the department, engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the impoundment. In giving authorization, the department shall consider the original design, type of operation, material deposited, and any removal of the materials as part of the closure of the impoundment.

(4) An industrial waste landfill may accept industrial waste of different types and from different

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generators, but shall not accept hazardous waste generated by conditionally exempt small quantity generators.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11519 Specifying reasons for denial of permit, operating license, or registration; cease and desist order; grounds for order revoking, suspending, or restricting permit, license, or registration; contested case hearing; violation or inconsistency; summary suspension of permit or license; judicial review.

Sec. 11519. (1) The department shall specify, in writing, the reasons for denial of an application for a permit, an operating license, an approval under a general permit, or a registration, including the sections of part 115 that may be violated by granting the application and the manner in which the violation may occur.

(2) If a materials management facility is established, constructed, or operated in violation of the conditions of a permit, license, approval under a general permit, or registration, in violation of part 115 or an order issued under part 115, or in a manner not consistent with an MMP, all of the following apply:

(a) A local health officer or the department may issue a cease and desist order specifying a schedule of closure or remedial action in compliance with part 115 or may enter a consent agreement specifying a schedule of closure or remedial action under part 115.

(b) The department may issue a final order revoking, suspending, or restricting the permit, license, approval under a general permit, or registration or a notification after a contested case hearing as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(c) The department may issue an order summarily suspending the permit, license, approval under a general permit, or registration or a notification, if the department determines that the violation or inconsistency constitutes an emergency or poses an imminent risk of injury to the environment, natural resources, or the public health, safety, or welfare. Summary suspension may be ordered effective on the date specified in the order or upon service of a certified copy of the order on the owner or operator, whichever is later, and remains effective during the proceedings. The proceedings shall be commenced within 7 days after the issuance of the order and shall be promptly determined.

(3) A final order issued pursuant to this section is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11519a Duties of owner or operator of a coal ash impoundment or a coal ash landfill; compliance with federal regulations; assessment.

Sec. 11519a. (1) The owner or operator of an existing coal ash impoundment or a coal ash impoundment licensed under this part shall do all of the following:

(a) Comply with R 299.4311 of the part 115 rules.

(b) Ensure that the impoundment is not in violation of part 31 or part 55 and does not create a nuisance.

(c) Comply with the requirements of 40 CFR 257.83, as applicable. The inspection report required by 40 CFR 257.83(b)(2) shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules.

(d) Comply with the requirements of 40 CFR 257.74(a)(2). The hazard potential classification assessment reports shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This assessment shall be revised every 5 years pursuant to 40 CFR 257.74(f)(2).

(e) Maintain in the operating record a history of construction that complies with 40 CFR 257.74(c)(1)(*i*) to (*xi*).

(f) Comply with 40 CFR 257.74(d). The periodic structural stability assessment reports shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This assessment shall be revised every 5 years pursuant to 40 CFR 257.74(f)(2).

(g) Comply with 40 CFR 257.74(e). The periodic safety factor assessment reports shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This assessment shall be revised every 5 years pursuant to 40 CFR 257.74(f)(2).

(h) Implement the detection monitoring program required in sections 11511a(3) and 11512a(1)(a).

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(i) Comply with requirements of 40 CFR 257.82, as applicable. The inflow design flood control plan shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised at least every 5 years pursuant to 40 CFR 257.82(c)(4).

(2) The owner or operator of an existing coal ash landfill or coal ash impoundment or a coal ash landfill or impoundment licensed under this part shall do all of the following:

(a) Maintain a fugitive dust control plan that complies with 40 CFR 257.80(b) and is certified by a registered professional engineer pursuant to R 299.4910(9) of the part 115 rules. An annual fugitive dust control report shall be prepared and completed in compliance with 40 CFR 257.80(c).

(b) Maintain an up-to-date operating record in compliance with 40 CFR 257.105.

(c) Maintain an up-to-date publicly accessible internet site in compliance with 40 CFR 257.107.

(3) The owner or operator of an existing coal ash landfill or a coal ash landfill licensed under this part shall comply with both of the following:

(a) The requirements of 40 CFR 257.84, as applicable. The inspection report required by 40 CFR 257.84(b)(2) shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules.

(b) The requirements of 40 CFR 257.81, as applicable. The run-on and run-off control system plan shall be certified by a professional engineer pursuant to R 299.4910(9) of the part 115 rules. This plan shall be revised every 5 years pursuant to 40 CFR 257.81(c)(4).

(4) Within 1 year after the effective date of the amendatory act that added this subsection, the owner or operator of an existing coal ash landfill or existing coal ash impoundment shall assess whether the landfill or impoundment is located in an unstable area as defined in R 299.4409 of the part 115 rules. If the owner or operator determines that the landfill, the impoundment, or a unit thereof is located in an unstable area, the owner or operator shall cease placing coal ash into the landfill, impoundment, or unit and proceed to close the landfill, impoundment, or unit in compliance with this part and the rules promulgated under this part.

History: Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11519b Placement of coal ash and associated liquids; assessment monitoring program; response action plan; closure of facility.

Sec. 11519b. (1) Placement of coal ash and associated liquids into an existing coal ash impoundment or coal ash impoundment licensed under this part is permitted and shall be conducted consistent with section 11519a and this section.

(2) If the detection monitoring required in sections 11511a(3), 11512a(1), and 11519a(1)(h) confirms a statistically significant increase over background for 1 or more of the constituents listed in section 11511a(3), the owner and operator of a coal ash landfill or coal ash impoundment shall comply with R 299.4440 and 299.4441 of the MAC, including, as applicable, conducting assessment monitoring and preparation of a response action plan in compliance with R 299.4442 of the MAC. The constituents to be monitored in the assessment monitoring program shall include those listed in section 11511a(3) and all of the following:

(a) Antimony.
(b) Arsenic.
(c) Barium.
(d) Beryllium.
(e) Cadmium.
(f) Chromium.
(g) Cobalt.
(h) Copper.
(i) Lead.
(j) Lithium.
(k) Nickel.
(*l*) Mercury.
(m) Molybdenum.
(n) Selenium.
(o) Silver.
(p) Thallium.
(q) Vanadium.
(r) Zinc.

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(s) Radium 226 and 228 combined.

(3) The constituents listed in this section shall be analyzed by methods identified in "Standard Methods for the Examination of Water and Wastewater, 20th edition", (jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation) or "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846, Third Edition, Final Updates I (1993), II (1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB (2005), IV (2008), and V (2015) or by other methods approved by the director or his or her designee.

(4) If the owner or operator of a coal ash landfill or coal ash impoundment is obligated to prepare a response action plan, the owner or operator shall comply with R 299.4442 to R 299.4445 of the MAC, as applicable.

(5) The owner or operator of a coal ash landfill shall place landfill cover materials that are described in R 299.4304 of the MAC, over the entire surface of each portion of the final lift not more than 6 months after the final placement of coal ash within the landfill or landfill unit.

(6) The owner or operator of a coal ash impoundment shall begin to implement closure as described in R 299.4309(7) of the MAC not more than 6 months after the final placement of coal ash within the impoundment and shall diligently pursue the closure. The closure shall be completed in compliance with 40 CFR 257.102(f)(1) and (2).

(7) A coal ash impoundment or coal ash landfill may be closed as a type III landfill pursuant to the applicable rules or by removal of the coal ash from the coal ash impoundment or coal ash landfill as described in part 115.

(8) If a coal ash impoundment is closed by December 28, 2020, and the department accepts the certification of the closure, the owner is not required to provide financial assurance under section 11523 or pay into a perpetual care fund under section 11525.

(9) Closure by removal of coal ash under subsection (7) is complete when either of the following requirements are met:

(a) The owner or operator certifies compliance with the requirements of 40 CFR 257.102(c).

(b) The owner or operator certifies that testing confirms that constituent concentrations remaining in the coal ash impoundment or landfill unit and any concentrations of soil or groundwater affected by releases therefrom do not exceed the lesser of the applicable standards adopted by the department pursuant to section 20120a or the groundwater protection standards established pursuant to 40 CFR 257.95(h) and the department accepts the certification, or, if the constituent concentrations do exceed those standards, the department has approved a remedy consistent with R 299.4444 and R 299.4445 of the MAC.

(10) Upon completion of the closure by removal under subsection (9), all of the following apply:

(a) The financial assurance under section 11523 and perpetual care fund under section 11525 shall be terminated.

(b) The owner or operator is not required to provide financial assurance or contribute to a perpetual care fund.

(c) Any claim to the assurance or fund by the department is terminated and released. The termination and release do not impair the department's authority to require, whether upon completion of closure under subsection (9)(b) or subsequently, financial assurance for corrective action as provided under this act.

History: Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11519c Groundwater contamination in unlined coal ash impound; owner or operator duties; "unlined coal ash impoundment" defined.

Sec. 11519c. (1) If assessment monitoring of an unlined coal ash impoundment confirms the presence of groundwater contamination in excess of maximum contaminant levels in effect as provided in section 6 of the safe drinking water act, 1976 PA 399, MCL 325.1006, or a groundwater protection standard established under 40 CFR 257.95(h), the owner or operator of the coal ash impoundment shall do all of the following:

(a) Notify the department of the confirmation within 14 days.

(b) Cease acceptance of coal ash at the impoundment within 180 days after the confirmation.

(c) Begin to implement closure as described in R 299.4309(7) of the part 115 rules not more than 180 days after such confirmation and diligently pursue the closure. The closure shall be completed in compliance with 40 CFR 257.102(c), with 40 CFR 257.102(f)(1) and (2), or with 40 CFR 257.103.

(d) Prepare a response action plan in compliance with R 299.4442 of the part 115 rules and submit the

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response action plan to the department for review and approval. Upon receipt of department approval, the owner or operator shall implement and diligently pursue the response action plan and shall comply with R 299.4443 to 299.4445 of the part 115 rules.

(2) For purposes of this section, "unlined coal ash impoundment" means a coal ash impoundment without a liner as described in 40 CFR 257.70(b) or another construction or system in place that is determined by the department to be as protective as a liner as described in 40 CFR 257.70(b).

History: Add. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11520 Disposition of fees; special fund; disposition of solid waste on private property.

Sec. 11520. (1) Fees collected by a health officer under this part shall be deposited with the city or county treasurer. The treasurer shall deposit the fees in a special fund designated for use in implementing this part. If an ordinance or charter provision prohibits such a special fund, the fees shall be deposited and used in compliance with the ordinance or charter provision.

(2) Part 115 does not prohibit an individual from disposing of solid waste from the individual's own household upon the individual's own land if the disposal does not create a nuisance or hazard to health. Solid waste accumulated as a part of an improvement or the planting of privately owned farmland may be disposed of on the property if the method used is not injurious to human life or property and does not create a nuisance.

SUBPART 3 WASTE DIVERSION CENTERS

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11521 Repealed. 2022, Act 245, Eff. Mar. 29, 2023.

Compiler's note: The repealed section pertained to the management of yard clippings.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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SUBPART 3
WASTE DIVERSION CENTERS

324.11521b Operator of waste diversion center; duties; requirements; rejection of diverted waste.

Sec. 11521b. (1) The operator of a waste diversion center shall comply with all of the following requirements:

(a) On an annual basis, not receive an amount of solid waste equal to or greater than 15%, by weight, of the diverted waste received by the facility.

(b) Ensure that personnel operating the waste diversion center are knowledgeable about the safe management of the types of diverted waste that are accepted at the waste diversion center.

(c) Manage the diverted waste in a manner that prevents the release of any diverted waste or component of diverted waste to the environment.

(d) Not store diverted waste overnight at the waste diversion center except in a secure location and with containment that is adequate to prevent any release of diverted waste.

(e) Within 1 year after diverted waste is collected by the waste diversion center, transfer that diverted waste to another waste diversion center, a recycling facility, or a disposal facility that meets the requirement of section 11508(1)(a), for processing, recycling, or disposal.

(f) Not process diverted waste except to the extent necessary for the safe and efficient transportation of the diverted waste.

(g) Record the types and quantities of diverted waste collected, the period of storage, and where the diverted waste was transferred, processed, recycled, or disposed of. The operator shall maintain the records for at least 3 years and shall make the records available to the department upon request.

(h) Allow access to the waste diversion center only when a responsible individual is on duty.

(i) As appropriate for the type of diverted waste, protect the area where the diverted waste is accumulated

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from weather, fire, physical damage, and vandals.

(j) Keep the waste diversion center clean and free of litter and operate in a manner that does not create a nuisance or hazard to the environment, natural resources, or the public health, safety, or welfare.

(k) If the primary function of an entity is to serve as a waste diversion center, notify the department of the waste diversion center. Notification shall be given upon initial operation and subsequently within 45 days after the end of each state fiscal year. The subsequent notices shall report the amount of solid waste diverted at the facility during the preceding state fiscal year. The notification requirement applies to both of the following:

(*i*) For the initial notification, entities that anticipate collecting more than 50 tons of diverted or recyclable materials in the state fiscal year in which the notification is given.

(*ii*) For subsequent notifications, entities that collected more than 50 tons of diverted or recyclable materials in the preceding state fiscal year.

(2) The operator of a waste diversion center may reject any diverted waste.

History: Add. 2014, Act 24, Imd. Eff. Mar. 4, 2014;—Am. 2022, Act 245, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11522 Repealed. 2022, Act 245, Eff. Mar. 29, 2023.

Compiler's note: The repealed section pertained to open burning of grass clippings, leaves, or household waste.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 4

FINANCIAL ASSURANCE

324.11523 Financial assurance; bond requirements; interest; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; alternate financial assurance; risk pooling financial mechanism.

Sec. 11523. (1) The department shall not issue a license to operate a disposal area until the applicant has filed, as a part of the application for a license, evidence of the following financial assurance, as applicable:

(a) Subject to section 11523b, financial assurance for a landfill described in this subdivision shall be a bond in an amount equal to $20,000.00 per acre of licensed landfill within the solid waste boundary. However, the total amount of the bond shall not be less than $20,000.00 or more than $2,000,000.00. Each bond shall provide assurance for the maintenance of the landfill site or a portion thereof for a period of 30 years beginning when the department approved a closure certification as described in section 11523a(5)(b) for the landfill or portion thereof, respectively. In addition to this bond, the owner or operator of a landfill described in this subdivision shall maintain a perpetual care fund. All of the following landfills are subject to this subdivision, unless the owner or operator of the landfill, by written notice to the department, elects to provide financial assurance under subdivision (b):

(*i*) A preexisting unit at a type II landfill.

(*ii*) A type II landfill that stopped receiving waste and was certified as closed before April 9, 1997.

(*iii*) A type III landfill that stopped receiving waste before the effective date of the amendatory act that added this subparagraph.

(*iv*) A type III landfill that received waste on or after the effective date of the amendatory act that added this subparagraph. However, beginning 2 years after the effective date of the amendatory act that added this subparagraph, upon the issuance of a new license for such a landfill, the landfill is not subject to this subdivision but is subject to subdivision (b).

(b) Financial assurance for a type II or type III landfill that is an existing unit not subject to subdivision (a) or a new unit or for a landfill, otherwise subject to subdivision (a), whose owner or operator elects to be subject to this subdivision shall be a bond in an amount equal to the cost, in current dollars, of hiring a third party to conduct closure, postclosure maintenance and monitoring, and, if necessary, corrective action. A license application for a type II landfill that is subject to this subdivision shall demonstrate financial assurance in compliance with section 11523a. A license application for a type III landfill shall demonstrate financial assurance in compliance with section 11523a if the application is filed on or after the date 2 years after the

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effective date of the amendatory act that added subsection (2).

(c) Financial assurance for an existing coal ash impoundment shall be a bond in an amount equal to $20,000.00 per acre within the impoundment boundary. However, the total amount of the bond shall not be less than $20,000.00 or more than $1,000,000.00. The bond shall provide assurance for the maintenance of the coal ash impoundment or a portion thereof for a period of 30 years after the coal ash impoundment or any approved portion is completed. In addition to the bond, the owner or operator of an existing coal ash impoundment shall maintain a perpetual care fund. For applications for a license to operate submitted to the department after December 28, 2020, an applicant that demonstrates that it meets the requirements of R 299.9709 of the MAC may utilize the financial test under that rule for an amount not exceeding 95% of the closure, postclosure, and corrective action cost estimate.

(d) Financial assurance established for a licensed solid waste processing and transfer facility or incinerator shall be a bond in the amount of $20,000.00. The financial assurance shall be maintained in effect for 2 years after the disposal area is closed.

(2) The department shall not issue an approval under a general permit for a materials utilization facility unless the applicant has filed, as a part of the application for the approval, evidence of the following financial assurance, as applicable:

(a) Financial assurance established for a materials recovery facility or anaerobic digester that requires a general permit shall be a bond in the amount of $20,000.00. The bond shall be maintained in effect until the facility has ceased accepting material, all managed material has been removed from the site, and the facility's closure certification has been approved by the department as described in section 11525b(4)(a).

(b) Financial assurance established for a composting facility with a general permit shall be a bond in the amount of $20,000.00. The financial assurance shall be maintained in effect until the facility has ceased accepting compostable materials, any finished or partially finished compost has been removed from the site, and the facility's closure certification has been approved by the department as described in section 11525b(4)(a).

(c) An innovative technology facility shall submit to the department a detailed written estimate, in current dollars, of the cost for the owner or operator to hire a third party to close the facility, including the cost to dispose of any remaining waste material, or otherwise contain and control any remaining waste residues. The department shall approve, approve with modifications, or disapprove the closure cost estimate in writing. The financial assurance shall be a bond in the amount of the approved closure cost estimate. The bond shall be maintained in effect until the facility has ceased accepting material, all managed material has been removed from the site, and the facility's closure certification has been approved by the department as described in section 11525b(4)(a).

(3) An owner or operator of a materials management facility who elects to post cash as a bond shall accrue interest on that bond quarterly at the annual rate of 6%, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund. An owner or operator who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(4) An owner or operator of a disposal area that is not a landfill may, beginning 2 years after closure of the disposal area, request that the department terminate the bond required under this section. Within 60 days after the request is made, the department shall approve or deny the request in writing. The department shall approve the request if all waste and waste residues have been removed from the disposal area and closure has been certified by a licensed professional engineer and approved by the department.

(5) If the owner or operator violates the closure and postclosure monitoring and maintenance requirements of part 115, the department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area to the extent necessary to correct the violations. At least 7 days before utilizing the bond, the department shall issue a notice of violation or other order that alleges violation of part 115 and shall provide the owner or operator an opportunity for a hearing. This subsection does not apply to a perpetual care fund.

(6) The terms of a surety bond, irrevocable letter of credit, insurance policy, or perpetual care fund bond shall require the issuing institution to notify both the department and the owner or operator at least 120 days before the expiration date or cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice from the issuing institution, both of the following apply:

(a) The department may draw on the bond.

(b) In the case of a perpetual care fund bond, the issuing institution shall deposit the proceeds into the

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standby trust fund or escrow account unless the department agrees to the expiration or cancellation of the perpetual care fund bond.

(7) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 USC 101 to 1532, or any successor statute.

(8) An owner or operator of a landfill that utilizes a financial test as financial assurance for the landfill may utilize a financial test for other types of materials management facilities that are located on the permitted landfill site.

(9) The department may utilize a bond required under this section for a facility subject to approval under a general permit for bringing the facility into compliance with part 115, including, but not limited to, removing managed material from the facility, cleanup at the facility, and fire suppression or other emergency response at the facility, including reimbursement to any local unit of government that incurred emergency response costs. Not less than 7 days before utilizing the bond, the department shall issue a notice of violation or order that alleges violation of part 115 and shall provide the owner or operator an opportunity for a hearing.

(10) Before closure of a landfill, if money is disbursed from the perpetual care fund, the department may require a corresponding increase in the amount of a required bond if necessary to meet the requirements of this section.

(11) If an owner or operator of a disposal area fulfills the financial assurance requirements of part 115 by obtaining a bond, including, but not limited to, a perpetual care fund bond, and the surety company, insurer, trustee, bank, or financial or other institution that issued or holds the bond becomes the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 USC 101 to 1532, or any successor statute or has its authority to issue or hold the bond suspended or revoked, the owner or operator shall, within 60 days after receiving notice of that event, establish alternate financial assurance under part 115.

(12) Owners or operators may demonstrate all or a portion of required financial assurance for 2 or more materials management facilities that are not landfills with a risk pooling financial mechanism approved by the department that meets all of the following requirements:

(a) The mechanism is administered by a surety company, insurer, surety, bank, or other financial institution that has authority to issue such a mechanism and is regulated and examined by a state or federal agency.

(b) The mechanism is irrevocable and renews automatically unless, not less than 120 days before the automatic renewal date, the insurer, surety, bank, or other financial institution notifies the department and the owners or operators of the covered facilities that the mechanism will not be renewed, and the department agrees in writing to termination of the mechanism.

(c) The amount of financial assurance available for any single covered facility is not less than would be available for that facility if it was covered alone under a bond.

(d) The addition or deletion of facilities covered under the mechanism requires written agreement of the director.

(13) The department shall access and use funds under a mechanism approved under subsection (12) subject to the provisions for bonds under subsection (9).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11523a Operation of landfill subject to MCL 324.11523(1)(b).

Sec. 11523a. (1) The department shall not issue a license to operate a landfill that is subject to section 11523(1)(b) unless the applicant demonstrates that the combination of the landfill care fund and the financial capability of the applicant as evidenced by a financial test provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount not more than 70% of the closure, postclosure, and corrective action cost estimate. For applications for a license to operate submitted on or after the date 2 years after the effective date of the amendatory act that added subsection (3)(c), an applicant may utilize a financial test for an amount more than 70% but not more than 95% of the closure, postclosure, and corrective action cost estimate if the owner or operator demonstrates that the owner or operator passes a financial test under and otherwise meets the requirements of R 299.9709 of the MAC.

(2) An applicant may demonstrate compliance with this section by submitting to the department evidence that the applicant has financial assurance for any existing unit or new unit in an amount equal to or more than the sum of the following standardized costs:

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(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in 2018 dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

(*i*) A base cost of $40,000.00 per acre to construct a compacted soil final cover using on-site material.

(*ii*) A supplemental cost of $40,000.00 per acre, to install a synthetic cover liner, if required by rules under this part.

(*iii*) A supplemental cost of $10,000.00 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used instead of low permeability soil in a composite cover.

(*iv*) A supplemental cost of $9,000.00 per acre, to construct a passive gas collection system in the final cover or a supplemental cost of $15,000.00 per acre for an active gas collection and control system, for those areas without a gas collection and control system already installed.

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section 11525(3):

(*i*) A final cover maintenance cost of $400.00 per acre per year.

(*ii*) A leachate disposal cost of $400.00 per acre per year.

(*iii*) A leachate transportation cost of $4,000.00 per acre per year, if leachate is required to be transported off-site for treatment.

(*iv*) An active gas collection and control system maintenance cost of $900.00 per acre per year for active gas collection and control systems subject to the requirements of standards of performance for new stationary sources, 40 CFR part 60.

(*v*) An active gas collection and control system maintenance cost of $500.00 per acre per year for landfills not subject to the requirements of standards of performance for new stationary sources, 40 CFR part 60.

(*vi*) A passive gas collection system maintenance cost of $35.00 per acre per year.

(*vii*) A groundwater monitoring cost of $2,000.00 per monitoring well per year.

(*viii*) A gas monitoring cost of $200.00 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary.

(c) A corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in compliance with part 115.

(3) Instead of using some or all of the standardized costs specified in subsection (2), an applicant may use the site-specific costs of closure or postclosure maintenance and monitoring. A site-specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. For the purposes of this subsection, a parent corporation or a subsidiary of the owner or operator is not a third party. Site-specific cost estimates shall comply with the following, as applicable:

(a) For closure, be based on the cost to close the largest area of the landfill requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in compliance with the approved closure plan. The closure cost estimate shall not incorporate any salvage value from the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

(b) For postclosure, be based on the cost at any given time to conduct postclosure maintenance and monitoring in compliance with the approved postclosure plan for the next 30 years of the postclosure period, or for the remainder of the postclosure period if the remainder is less than 30 years. However, the applicant shall submit to the department an estimate of the postclosure maintenance and monitoring cost for the entire postclosure period.

(c) For costs for operation and maintenance of an on-site wastewater treatment facility managing leachate at a landfill that are substituted for the standardized leachate disposal and transportation costs of this section, be based on an engineering evaluation of total wastewater flow and include utilities, staffing, and incidental costs to maintain and ensure compliance with all applicable permits.

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation. The standard closure cost estimate and corrective action cost estimate shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent United States Department of the Interior, Bureau of Reclamation Composite Index published by the United States Department of Commerce or another index that is more representative of the costs of closure and postclosure monitoring and maintenance as approved by the department. The owner or operator shall document the adjustment on a form consistent with part 115 as provided or approved by the department and shall place the documentation in the operating record of the facility.

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(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill. Within 60 days after receiving the financial assurance reduction request under this subdivision, the department shall approve or deny the request in writing. A denial shall state the reasons for the denial. A financial assurance reduction request shall certify completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall submit with the request a certification under the seal of a licensed professional engineer of both of the following:

(*i*) That a portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and part 115.

(*ii*) The maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

(b) Final closure of the landfill. An owner or operator requesting a cost estimate reduction for final closure shall submit with the request a certification under the seal of a licensed professional engineer that closure of that landfill unit has been fully completed in compliance with the approved closure plan for the landfill. Within 60 days of receiving a certification under this subdivision, the department shall perform a consistency review of the submitted certification and do 1 of the following:

(*i*) Approve the certification and notify the owner or operator that the closure cost estimate may be reduced to zero.

(*ii*) Disapprove the certification and provide the owner or operator with a detailed written statement of the reasons the department has determined that closure certification has not been conducted in compliance with part 115 or an approved closure plan.

(c) Postclosure maintenance and monitoring. A landfill owner or operator may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if final closure of a landfill unit has been completed and the landfill has been monitored and maintained in compliance with the approved postclosure plan. Within 60 days after receiving a cost estimate reduction request, the department shall grant written approval or issue a written denial stating the reason for denial. If the department grants the request, the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period. The department shall deny the request if the owner or operator has not performed the specific tasks consistent with part 115 and an approved postclosure plan. The department shall not grant a request under this subdivision to reduce the postclosure cost estimate and the corresponding financial assurance to below the maximum required perpetual care fund amount specified in section 11525(3) unless the owner or operator has demonstrated within the past 5-year period that the landfill is on target to achieve functional stability as described in section 11517 within the time remaining in the postclosure period.

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of 1 or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the amount required under this section, the department shall approve the request.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11523b Trust fund or escrow account.

Sec. 11523b. (1) The owner or operator of a landfill or coal ash impoundment may establish a trust fund or escrow account to fulfill the requirements of sections 11523 and 11523a.

(2) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for the custodian's responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay taxes owed by the trust fund or escrow account, without permission of the department.

(3) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account

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as of the end of the month immediately preceding the submittal of the report.

(4) The owner or operator may request that the department authorize the release of funds from a trust fund or escrow account. The department shall grant the request if the owner or operator demonstrates that the value of the fund or account exceeds the owner's or operator's financial assurance obligation. A payment or disbursement from the fund or account shall not be made without the prior written approval of the department.

(5) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

(6) If an owner or operator of a disposal area fulfills the financial assurance requirements of part 115 by establishing a trust fund or escrow account and the custodian has its authority to act as a custodian suspended or revoked, the owner or operator shall, within 60 days after receiving notice of the suspension or revocation, establish alternative financial assurance under part 115.

(7) As used in this section, "custodian" means the trustee of a trust fund or escrow agent of an escrow account.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11524 Repealed. 2013, Act 250, Imd. Eff. Dec. 26, 2013.

Compiler's note: The repealed section pertained to request for reduction in amount of financial assurance.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525 Perpetual care fund; applicability.

Sec. 11525. (1) This section does not apply to a landfill unless the landfill is subject to section 11523(1)(a).

(2) The owner or operator of a landfill or coal ash impoundment shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill or coal ash impoundment as specified in this section. A perpetual care fund may be established as a trust fund, an escrow account, or a perpetual care fund bond and may be used to demonstrate financial assurance for a landfill or coal ash impoundment.

(3) Except as otherwise provided in this section, the owner or operator of a landfill shall increase the amount of the perpetual care fund 75 cents for each ton or portion of a ton of solid waste, other than materials described in subsection (4), that is disposed of in the landfill until the fund reaches the maximum required fund amount. As of July 1, 2018, the maximum required fund amount for a landfill or coal ash impoundment is $2,257,000.00. The department shall annually adjust this amount for inflation by multiplying the amount by an inflation factor derived from the most recent United States Department of the Interior, Bureau of Reclamation Composite Index published by the United States Department of Commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as approved by the department. The department shall round the resulting amount to the nearest thousand dollars. Increases to the amount of a perpetual care fund required under this subsection shall be calculated based on solid waste disposed of in the landfill as of the end of the state fiscal year and shall be made within 30 days after the end of each state fiscal year.

(4) The owner or operator of a landfill or coal ash impoundment shall increase the amount of the perpetual care fund 7.5 cents for each ton or portion of a ton of the following that are disposed of after December 28, 2018 until the fund reaches the maximum required fund amount under subsection (3):

(a) Coal ash, wood ash, cement kiln dust, or a combination thereof that is disposed of in the landfill or coal ash impoundment if the disposal area is used only for the disposal of these materials or these materials are permanently segregated in the disposal area.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill if the landfill is used only for the disposal of these materials or these materials are permanently segregated in the landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at a landfill if it is an operating landfill, foundry sand that is disposed of in a landfill if the landfill is used only for the disposal of foundry sand, or foundry sand that is permanently segregated in a landfill.

(5) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (4)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall increase the amount of the perpetual care fund 7.5 cents for each ton or portion

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of a ton of these materials that are disposed of in the landfill.

(6) The amount of a perpetual care fund is not required to be increased for materials that are regulated under part 631.

(7) The owner or operator of a landfill may increase the amount of the perpetual care fund above the amount otherwise required by this section at his or her discretion.

(8) The custodian of a perpetual care fund trust fund or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund trust fund or escrow account reaches the maximum required fund amount, the custodian of the perpetual care fund trust fund or escrow account shall credit any interest and earnings of the perpetual care fund trust fund or escrow account to the perpetual care fund trust fund or escrow account. After the perpetual care fund trust fund or escrow account reaches the maximum required fund amount, any interest and earnings shall be distributed as directed by the owner or operator. The custodian may be compensated from the fund for reasonable fees and costs incurred in discharging the custodian's responsibilities. The custodian of a perpetual care fund trust fund or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(9) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill or coal ash impoundment for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay taxes owed by the perpetual care fund without permission of the department. The owner or operator of the landfill or coal ash impoundment shall provide notice of requests for disbursement and the department's denials and approvals to the custodian of the perpetual care fund. The owner or operator of a landfill or coal ash impoundment may request disbursement of funds from a perpetual care fund if the amount of money in the fund exceeds the maximum required fund amount under subsection (3), unless a disbursement for that reason has been approved by the department within the preceding 180 days. The department shall approve the disbursement if the total amount of financial assurance maintained meets the requirements of section 11523(1)(a) or (c), as applicable.

(10) If the owner or operator of a landfill or coal ash impoundment fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the environment, natural resources, or the public health, safety, or welfare, or fails to request the disbursement of money from a perpetual care fund when necessary to protect the environment, natural resources, or the public health, safety, or welfare, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may draw on the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action or for payment of the fee or surcharge, as necessary. The department may also draw on a perpetual care fund for administrative costs associated with actions taken under this subsection.

(11) Upon approval by the department of a request to terminate financial assurance for a landfill or coal ash impoundment under section 11525b, any money in the perpetual care fund for that landfill or coal ash impoundment shall be disbursed by the custodian to the owner of the landfill or coal ash impoundment unless an agreement between the owner and the operator provides otherwise.

(12) The owner of a landfill or coal ash impoundment shall provide notice to the custodian of the perpetual care fund for that landfill or coal ash impoundment if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill or coal ash impoundment during the period of existence of the perpetual care fund.

(13) This section does not relieve an owner or operator of a landfill or coal ash impoundment of any liability that the owner or operator may have under part 115 or as otherwise provided by law.

(14) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(15) A perpetual care fund that is established as a trust fund or escrow account may be replaced with a perpetual care fund that is established as a perpetual care fund bond that complies with this section. Upon such replacement, the department shall authorize the custodian of the trust fund or escrow account to disburse the money in the trust fund or escrow account to the owner of the landfill or coal ash impoundment unless an agreement between the owner and operator specifies otherwise.

(16) An owner or operator of a landfill or coal ash impoundment that uses a perpetual care fund bond to satisfy the requirements of this section shall also establish a standby trust fund or escrow account. All payments made under the terms of the perpetual care fund bond shall be deposited by the custodian directly into the standby trust fund or escrow account in compliance with instructions from the department. The

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standby trust fund or escrow account must meet the requirements for a trust fund or escrow account established as a perpetual care fund under subsection (2), except that until the standby trust fund or escrow account is funded pursuant to the requirements of this subsection, the following are not required:

(a) Payments into the standby trust fund or escrow account as specified in subsection (3).

(b) Annual accountings as required in subsection (8).

(17) As used in this section, "custodian" means the trustee or escrow agent of any of the following:

(a) A perpetual care fund that is established as a trust fund or escrow account.

(b) A standby trust fund or escrow account for a perpetual care fund bond.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 1996, Act 506, Imd. Eff. Jan. 9, 1997;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525a Owner or operator of landfill or coal ash impoundment; surcharge; payment of surcharge; deposit.

Sec. 11525a. (1) The owner or operator of a landfill or coal ash impoundment shall pay a surcharge as follows:

(a) Except as provided in subdivision (b), for a landfill or coal ash impoundment that is not a captive facility, 36 cents for each ton or portion of a ton of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill or coal ash impoundment before October 1, 2027.

(b) For a landfill or coal ash impoundment that is not a captive facility, 12 cents per ton or portion of a ton of foundry sand, slag from metal melting, baghouse dust, furnace refractory brick, pulp and paper mill material, paper mill ash, wood ash, coal bottom ash, mixed wood ash, fly ash, flue gas desulfurization sludge, contaminated soil, cement kiln dust, lime kiln dust, and other industrial waste that weighs at least 1 ton per cubic yard, as determined by the generator.

(c) For a type III landfill or coal ash impoundment that is a captive facility and annually receives the following amount of waste, the following annual corresponding surcharge for each state fiscal year, based on the amount of waste received during that fiscal year:

(*i*) 100,000 or more tons of waste, $3,000.00.

(*ii*) 75,000 or more but less than 100,000 tons of waste, $2,500.00.

(*iii*) 50,000 or more but less than 75,000 tons of waste, $2,000.00.

(*iv*) 25,000 or more but less than 50,000 tons of waste, $1,000.00.

(*v*) Less than 25,000 tons of waste, $500.00.

(2) Within 30 days after the end of each quarter of a state fiscal year, the owner or operator of a landfill or coal ash impoundment that is not a captive facility shall pay the surcharge under subsection (1)(a) for waste received during that quarter of the state fiscal year. Within 30 days after the end of a state fiscal year, the owner or operator of a type III landfill or coal ash impoundment that is a captive facility shall pay the surcharge under subsection (1)(b) for waste received during that state fiscal year.

(3) If the owner or operator of a landfill or coal ash impoundment is required to pay the surcharge under subsection (1), the owner or operator shall pass through and collect the surcharge from any person that generated the solid waste or arranged for its delivery to the hauler or solid waste processing and transfer facility, notwithstanding the provisions of any agreement to the contrary or the absence of any agreement.

(4) Surcharges collected under this section must be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 149, Imd. Eff. Sept. 21, 2011;—Am. 2013, Act 72, Imd. Eff. June 25, 2013;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2019, Act 77, Imd. Eff. Sept. 30, 2019;—Am. 2022, Act 246, Eff. Mar. 29, 2023;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525b Continuous financial assurance coverage required; request for termination of financial assurance requirements.

Sec. 11525b. (1) The owner or operator of a materials utilization facility for which financial assurance is

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required under section 11523 or of a disposal area shall provide continuous financial assurance coverage until released from these requirements by the department as provided in part 115.

(2) Upon transfer of a materials utilization facility for which financial assurance is required under section 11523 or of a disposal area, the former owner or operator shall continue to maintain financial assurance until the financial assurance is replaced by the new owner or operator or until the materials utilization facility or disposal area is released from the financial assurance obligation at the end of the postclosure period.

(3) If the owner or operator of a landfill or coal ash impoundment has completed postclosure maintenance and monitoring in compliance with part 115 and the approved postclosure plan, the owner or operator may request that financial assurance required by sections 11523 and 11523a be terminated. The person requesting termination of financial assurance shall submit to the department a statement that the landfill or coal ash impoundment has been monitored and maintained in compliance with part 115 and the approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the landfill or coal ash impoundment is not subject to corrective action under section 11512(21). Within 60 days after receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement and do 1 of the following:

(a) Approve the statement, notify the owner or operator that the owner or operator is no longer required to maintain financial assurance, return or release all financial assurance mechanisms, and, if the perpetual care fund was established as a trust fund or escrow account, notify the custodian of the perpetual care fund to disburse money from the fund as provided in section 11525(11).

(b) Disapprove the statement and provide the owner or operator with a detailed written explanation of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in compliance with part 115 or the approved postclosure plan.

(4) The owner or operator of a materials utilization facility required to provide financial assurance under section 11523(2) may request that the financial assurance be terminated. The person requesting termination of financial assurance shall submit to the department a statement that the facility has been maintained in compliance with part 115 and that all managed material has been removed from the facility. Within 60 days after receiving a statement under this subsection, the department shall perform a consistency review of the statement and do 1 of the following:

(a) Approve the statement, notify the owner or operator that the owner or operator is no longer required to maintain financial assurance, and return or release all financial assurance mechanisms.

(b) Disapprove the statement and provide the owner or operator with a detailed written explanation of the reasons why the department has determined that all managed material has not been removed from the facility or that the facility has not been maintained in compliance with part 115.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2013, Act 250, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525d Landfill care fund; applicability; liability under part 115; cause of action.

Sec. 11525d. (1) This section applies only to landfills subject to section 11523(1)(b).

(2) The owner or operator of a landfill shall establish and maintain a landfill care fund as specified in this section. A landfill care fund may be established as a trust fund, an escrow account, or a landfill care fund bond and may be used to demonstrate financial assurance for landfills under section 11523a.

(3) The owner or operator of a landfill may increase the amount of the landfill care fund above the amount otherwise required by this section at the owner's or operator's discretion.

(4) The custodian of a landfill care fund trust fund or escrow account shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Any interest and earnings on the fund shall be distributed as directed by the owner or operator of the landfill. The custodian may be compensated from the fund for reasonable fees and costs incurred for the custodian's responsibilities as custodian. The custodian of a landfill care fund trust fund or escrow account shall make an accounting to the department within 30 days following the close of each state fiscal year.

(5) The custodian of a landfill care fund trust fund or escrow account shall not disburse any funds to the owner or operator of a landfill for the purposes of the landfill care fund and the issuer or holder of a landfill care fund bond shall not reduce the amount of the bond except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the landfill

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care fund is liable and shall disburse funds to pay taxes owed by the landfill care fund, without permission of the department. The owner or operator of the landfill shall provide notice of requests for disbursement from a landfill care fund trust fund or escrow account or reduction of a landfill care fund bond and the department's denials and approvals to the custodian of the landfill care fund trust fund or escrow account or the issuer or holder of the landfill care fund bond. Requests for disbursement from a landfill care fund trust fund or escrow account or a reduction of a landfill care fund bond shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a landfill care fund trust fund or escrow account or a reduction of a landfill care fund bond. The department shall approve the request if the total amount of financial assurance maintained meets the requirements of section 11523a.

(6) If the owner or operator of a landfill fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the environment, natural resources, or public health, safety, or welfare, or fails to request the disbursement of money from a landfill care fund when necessary to protect the environment, natural resources, or the public health, safety, or welfare, or fails to pay the surcharge required under section 11525a, the department may draw on the landfill care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may also draw on a landfill care fund for administrative costs associated with actions taken under this subsection.

(7) Upon approval by the department of a request to terminate financial assurance for a landfill under section 11525b, any money in the landfill care fund for that landfill shall be disbursed by the custodian to the owner of the landfill unless an agreement between the owner and the operator of the landfill provides otherwise.

(8) The owner of a landfill shall provide notice to the custodian of the landfill care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the period of existence of the landfill care fund.

(9) This section does not relieve an owner or operator of a landfill of any liability the owner or operator may have under part 115 or as otherwise provided by law.

(10) This section does not create a cause of action at law or in equity against a custodian of a landfill care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable landfill care fund.

(11) A perpetual care fund and any other bond that is utilized by a landfill to demonstrate financial assurance under part 115 and that is in existence on the effective date of the amendatory act that added this section is considered a landfill care fund under this section for purposes of demonstrating compliance with section 11523a until the issuance of a new license for the landfill on or after the date 2 years after the effective date of the amendatory act that added this section. A landfill owner or operator may replace a perpetual care fund or a bond with a landfill care fund that complies with this section at any time without a license modification and without the issuance of a new license. Upon such replacement, the department shall authorize the custodian of a perpetual care fund trust fund or escrow account to disburse the money in the trust fund or escrow account to the owner of the landfill unless an agreement between the owner and operator of the landfill specifies otherwise.

(12) An owner or operator of a landfill that uses a landfill care fund bond to satisfy the requirements of this section shall also establish a standby trust fund or escrow account. All payments made under the terms of the landfill care fund bond shall be deposited by the custodian directly into the standby trust fund or escrow account in compliance with instructions from the department. The standby trust fund or escrow account shall meet the requirements for a trust fund or escrow account established as a landfill care fund under subsection (2), except that, until the standby trust fund or escrow account is funded pursuant to the requirements of this subsection, annual accountings of the standby trust fund or escrow account are not required.

(13) As used in this section, "custodian" means the trustee or escrow agent of any of the following:

(a) A landfill care fund that is established as a trust fund or escrow account.

(b) A standby trust fund or escrow account for a landfill care fund bond.

History: Add. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11525f Establishment and approval of other bonds.

Sec. 11525f. If the owner or operator of a materials management facility is required to establish a bond under another state statute or a federal statute, the owner or operator may request the department to approve that bond as meeting the requirements of part 115. The department shall so approve the bond if the bond

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provides equivalent funds and access by the department as other financial instruments under part 115.

History: Add. 2022, Act 246, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 5
MISCELLANEOUS

324.11526 Inspection of managed materials transporting unit; determination; administration; inspections.

Sec. 11526. (1) The department, a local health officer, or a law enforcement officer of competent jurisdiction may inspect a managed materials transporting unit that is being used to transport managed materials along a public road to determine any of the following:

(a) If the managed materials transporting unit is designed, maintained, and operated in a manner to prevent littering.

(b) If the owner or operator of the managed materials transporting unit is performing in compliance with part 115.

(2) To protect the environment, natural resources, and the public health, safety, and welfare from items and substances being illegally disposed of in landfills in this state, the department shall do all of the following:

(a) Ensure that each materials management facility is in full compliance with part 115.

(b) Provide for the inspection, for compliance with part 115, of each licensed disposal area at least 4 times annually and each materials utilization facility that is approved under a general permit or registered under part 115 at least once annually. Each inspection shall be conducted by the department or a health officer. The department or the health officer shall do both of the following:

(*i*) Prepare a written inspection report.

(*ii*) Submit a copy of the inspection report to the municipality in which the licensed disposal area is located if the municipality arranges with the department or the health officer to pay the cost of duplicating and mailing the reports.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with part 115.

(3) The department and the department of state police may conduct random inspections of waste being transported to a materials management facility in this state. Inspections under this subsection may be conducted during transportation or at the materials management facility.

(4) An inspection described in this section may also be conducted upon receipt of a complaint or as the department determines to be necessary to ensure compliance with part 115.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 43, Imd. Eff. Mar. 29, 2004;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.

Sec. 11526a. (1) The owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following conditions are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under part 115.

(b) The solid waste was received through a facility that has documented that it has removed from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding any other provision of part 115, if there is sufficient disposal capacity for a planning area's disposal needs in or within 130 miles of the planning area, the department is not required to issue a construction permit for a new landfill or municipal solid waste incinerator in the planning area.

History: Add. 2004, Act 40, Imd. Eff. Mar. 29, 2004;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

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Popular name: Solid Waste Act

324.11526b Compliance with MCL 324.11526b required; notice requirements; compilation of list; documentation.

Sec. 11526b. (1) Not later than October 1, 2004, the department shall do all of the following:

(a) Notify each state, the country of Canada, and each province in Canada that landfills in this state will not accept for disposal solid waste that does not comply with section 11526a.

(b) Compile a list of countries, states, provinces, and local jurisdictions that prohibit from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that prevent from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part.

(c) Prepare and provide to each landfill in the state a copy of a list of the countries, states, provinces, and local jurisdictions compiled under subdivision (b).

(2) The department shall include a country, state, province, or local jurisdiction on the list described in subsection (1) if the country, state, province, or local jurisdiction, or another person, provides the department with documentation that the country, state, province, or local jurisdiction prohibits from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that it prevents from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part. Such documentation shall include all pertinent statutes, administrative regulations, and ordinances.

History: Add. 2004, Act 37, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11526c Order restricting or prohibiting solid waste transportation or disposal in this state.

Sec. 11526c. (1) The director may issue an order restricting or prohibiting the transportation or disposal in this state of solid waste originating within or outside of this state if both of the following apply:

(a) The director, after consultation with appropriate officials, has determined that the transportation or disposal of the solid waste poses a substantial threat to the public health or safety or to the environment.

(b) The director determines that the restriction or prohibition on the transportation or disposal of the solid waste is necessary to minimize or eliminate the substantial threat to public health or safety or to the environment.

(2) At least 30 days before the director issues an order under subsection (1), the department shall post the proposed order and its effective date on its website with information on how a member of the public can comment on the proposed order and shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment. Before issuing the order, the director shall consider comments received on the proposed order. The department shall post the final order on its website beginning not later than the final order's effective date. This subsection does not apply in an emergency situation described in subsection (3).

(3) In an emergency situation posing an imminent and substantial threat to public health or safety or to the environment, the director, before issuing an order under subsection (1), shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment and publicize the proposed order in any manner appropriate to help ensure that interested parties are provided notice of the proposed order and its effective date. The department shall post the final order on its website as soon as practicable.

(4) An order issued pursuant to this section shall expire 60 days after it takes effect, unless the order provides for an earlier expiration date.

(5) Subsections (2) and (3) do not apply to the reissuance of an order if the reissued order takes effect upon the expiration of the identical order it replaces. However, the department shall post the reissued order on its website beginning not later than the reissued order's effective date.

(6) A person may seek judicial review of an order issued under this section as provided in section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) The director shall rescind an order issued under this section when the director determines that the threat upon which the order was based no longer exists.

History: Add. 2004, Act 36, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

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Popular name: NREPA

Popular name: Solid Waste Act

324.11526e Disposal of municipal solid waste generated outside of United States; applicability of subsections (1) and (2).

Sec. 11526e. (1) Subject to subsection (3), a person shall not deliver for disposal, in a landfill or incinerator in this state, municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(2) Subject to subsection (3), the owner or operator of a landfill or incinerator in this state shall not accept for disposal municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(3) Subsections (1) and (2) apply notwithstanding any other provision of this part. However, subsections (1) and (2) do not apply unless congress enacts legislation under clause 3 of section 8 of article I of the constitution of the United States authorizing such prohibitions. Subsections (1) and (2) do not apply until 90 days after the effective date of such federal legislation or 90 days after the effective date of the amendatory act that added this section, whichever is later.

History: Add. 2006, Act 57, Imd. Eff. Mar. 13, 2006.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11527 Delivery of waste to licensed disposal area or solid waste processing and transfer facility; hauler recycling services.

Sec. 11527. (1) A hauler transporting solid waste over a public road in this state shall deliver all solid waste to a disposal area licensed under part 115 or a solid waste processing and transfer facility licensed or registered or for which a notification has been submitted under part 115.

(2) A hauler operating within a county with a materials management plan prepared by the department shall provide recycling services that meet the requirements of the benchmark recycling standard for single-family residences for which it provides solid waste hauling services within that county.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11527a Website listing materials prohibited from disposal; notice to customers.

Sec. 11527a. (1) The department shall post on its website a list of materials prohibited from disposal in a landfill under section 11514 and appropriate disposal options for those materials.

(2) A solid waste hauler that disposes of solid waste in a landfill shall annually notify each of its customers of each of the following:

(a) The materials that are prohibited from disposal in a landfill under section 11514.

(b) The appropriate disposal options for those materials as described on the department's website.

(c) The department's website address where the disposal options are described.

History: Add. 2004, Act 42, Imd. Eff. Mar. 29, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11528 Managed materials transporting unit; watertight; construction, maintenance, and operation; ordering unit out of service.

Sec. 11528. (1) A managed materials transporting unit used for food waste, industrial or domestic sludges, or other moisture laden materials not specifically covered by part 121 shall be watertight and constructed, maintained, and operated to prevent littering. A managed materials transporting unit shall be designed and operated to prevent littering or any other nuisance.

(2) The department, a local health officer, or a law enforcement officer may order a managed materials transporting unit out of service if the unit does not comply with the requirements of part 115. Continued use of a managed materials transporting unit ordered out of service is a violation of this part.

(3) A hauler that is responsible for a vehicle that contributes to a violation of part 115 is rebuttably

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presumed to have committed the violation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11529 Repealed. 2022, Act 247, Eff. Mar. 29, 2023.

Compiler's note: The repealed section pertained to permit and license exemptions for certain solid waste transfer facilities.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11530 Collection center for junk motor vehicles and farm implements; competitive bidding; bonds; "collect" defined.

Sec. 11530. (1) A municipality or county may establish and operate a collection center for junk motor vehicles and farm implements.

(2) A municipality or county may collect junk motor vehicles and farm implements and dispose of them through its collection center through the process of competitive bidding.

(3) A municipality or county may issue bonds as necessary pursuant to Act No. 342 of the Public Acts of 1969, being sections 141.151 to 141.153 of the Michigan Compiled Laws, to finance the cost of constructing or operating facilities to collect junk motor vehicles or farm implements. The bonds shall be general obligation bonds and shall be backed by the full faith and credit of the municipality or county.

(4) As used in this section, "collect" means to obtain a vehicle pursuant to section 252 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.252 of the Michigan Compiled Laws, or to obtain a vehicle or farm implement and its title pursuant to a transfer from the owner.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11531 Solid waste removal; frequency; disposal; ordinance.

Sec. 11531. (1) A municipality or county shall ensure that all solid waste is removed from the site of generation frequently enough to protect the environment, natural resources, and the public health, safety, and welfare and is delivered to a materials management facility that meets the requirements of section 11508(1)(a), except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation.

(2) An ordinance adopted before February 8, 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1), notwithstanding that the ordinance, in the case of a county, has not been approved by the governor. This subsection does not validate or invalidate an ordinance adopted on or after February 8, 1988 as an acceptable means of compliance with subsection (1).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11532 Impact fees; agreement; collection, payment, and disposition; reduction; use of revenue; trust fund; board of trustees; membership and terms; expenditures from trust fund.

Sec. 11532. (1) Except as provided in subsection (2), a municipality may impose an impact fee of not more than 30 cents per ton on solid waste, including municipal solid waste incinerator ash, that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons. However, if the landfill is located within a village, the impact fee shall be imposed only by the township pursuant to an agreement with the village. An impact fee shall be assessed uniformly on all wastes accepted for disposal.

(2) A municipality may enter into an agreement with the owner or operator of a landfill to establish a

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higher impact fee than that provided for in subsection (1).

(3) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements, special use permit conditions, court settlement agreement conditions, and trusts.

(4) Unless a trust fund is established by a municipality pursuant to subsection (5), the revenue collected by a municipality pursuant to subsection (1) shall be deposited in its general fund. Subject to subsection (8), the revenue shall be used for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality.

(5) A municipality may establish a trust fund to receive revenue collected pursuant to this section. The trust fund shall be administered by a board of trustees. The board of trustees shall consist of the following members:

(a) The chief elected official of the municipality.

(b) A resident of the municipality appointed by the governing body of the municipality.

(c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing body of the municipality.

(6) Individuals appointed to serve on the board of trustees under subsection (5)(b) and (c) shall serve for terms of 2 years.

(7) Subject to subsection (8), money in a trust fund under subsection (5) may be expended, pursuant to a majority vote of the board of trustees, for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality.

(8) Revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against a landfill owner or operator that is collecting an impact fee under subsection (3) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11533 Promulgation of rules for implementation of part 115.

Sec. 11533. The department may promulgate rules to implement this part. The rules may include, but are not limited to, standards for any of the following:

(a) Hydrogeologic investigations.

(b) Monitoring.

(c) Liner materials.

(d) Leachate collection and treatment, if applicable.

(e) Groundwater separation distances.

(f) Environmental assessments.

(g) Gas control.

(h) Soil erosion.

(i) Sedimentation control.

(j) Groundwater and surface water quality.

(k) Noise.

(*l*) Air pollution odors.

(m) The use of floodplains and wetlands.

(n) Managed materials transporting units.

(o) Grants.

(p) Materials management planning.

(q) Closure and postclosure.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11534-324.11538 Repealed. 2022, Act 247, Eff. Mar. 29, 2023.

Compiler's note: The repealed sections pertained to municipal planning committees and agencies and the approval of county

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management plans and the promulgation of rules.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 6
INCINERATORS AND OPEN BURNING

324.11539 Open burning of yard waste or leaves; prohibition; effect of local ordinance and part 55; open burning of household waste, materials; application of subpart 7; violations and penalties; open burning of certain storage bins; disposal of unserviceable flag.

Sec. 11539. (1) The open burning of yard waste or leaves is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance. Within 30 days after adoption of such an ordinance, the clerk of the municipality shall notify the department of its adoption.

(2) Subsection (1) does not permit a county or municipality to authorize open burning of yard waste or leaves by an ordinance that is prohibited under part 55 or rules promulgated under part 55.

(3) A person shall not conduct open burning of household waste that contains plastic, rubber, foam, chemically treated wood, textiles, electronics, chemicals, or hazardous materials.

(4) Subpart 7 does not apply to an individual who violates subsection (3) by open burning of waste from that individual's household. The individual is responsible for a state civil infraction and is subject to the following:

(a) For a first offense within a 3-year period, a warning by the judge or magistrate.

(b) For a second offense within a 3-year period, a civil fine of not more than $75.00.

(c) For a third offense within a 3-year period, a civil fine of not more than $150.00.

(d) For a fourth or subsequent offense within a 3-year period, a civil fine of not more than $300.00.

(5) Notwithstanding section 5512, the department shall not promulgate or enforce a rule that extends the prohibition under subsection (3) to materials not listed in subsection (3).

(6) Part 115, part 55, or rules promulgated under part 55 do not prohibit a person from conducting open burning of wooden fruit or vegetable storage bins constructed from untreated lumber if all of the following requirements are met:

(a) The burning is conducted for disease or pest control.

(b) The burning is not conducted at any of the following locations:

(*i*) Within a priority I area as listed in table 33 or a priority II area as listed in table 34 of R 336.1331 of the MAC.

(*ii*) In a city or village.

(*iii*) Within 1,400 feet outside the boundary of a city or village.

(7) Subsections (5) and (6) do not authorize open burning that is prohibited by a local ordinance.

(8) A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or sanction for violating state law or a local ordinance pertaining to open burning.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

Administrative rules: R 299.4101 et seq. of the Michigan Administrative Code.

324.11539a Repealed. 2022, Act 247, Eff. Mar. 29, 2023.

Compiler's note: The repealed section pertained to an update report of solid waste management plans to the legislature.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11540 Incinerator operator or owner; compliance with permit and license requirements of subpart 2.

Sec. 11540. (1) The owner or operator of an incinerator may, but is not required to, comply with the disposal area construction permit and operating license requirements of subpart 2 if both of the following conditions are met:

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(a) Solid waste to be incinerated is managed in a properly enclosed area in a manner that prevents fugitive dust, litter, leachate generation, precipitation runoff, or any release of solid waste to the air, soil, surface water, or groundwater.

(b) The incinerator has a permit issued under part 55.

(2) An incinerator that, as authorized by subsection (1), does not comply with the construction permit and operating license requirements of subpart 2 is subject to the planning provisions of part 115 and must be included in the county materials management plan for the county in which the incinerator is located.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

Administrative rules: R 299.4101 et seq. of the Michigan Administrative Code.

324.11540a Repealed. 2010, Act 345, Eff. Mar. 1, 2011.

Compiler's note: The repealed section pertained to promulgation of rules affecting inert material before March 1, 2011.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11541 Municipal solid waste incinerator; materials management plan; implementation schedule.

Sec. 11541. (1) Within 9 months after the completion of construction of a municipal solid waste incinerator, the owner or operator shall submit a plan to the department for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by-products at the incinerator. The plan shall include an implementation schedule. Within 30 days after receiving the plan, the department shall approve or disapprove the plan and notify the owner or operator in writing. In reviewing the plan, the department shall consider the current materials management plan for the planning area where the incinerator is located and available markets, disposal alternatives, and collection practices for the managed materials. If the department disapproves a plan, the notice shall specify the reasons for disapproval. If the department disapproves the plan, the owner or operator shall, within 30 days after receipt of the department's disapproval, submit a revised plan that addresses all of the reasons for disapproval specified by the department. The department shall approve or disapprove the revised plan within 30 days after receiving the revised plan and notify the owner or operator in writing. If the department disapproves the revised plan, the notice shall specify the reasons for disapproval. If the department disapproves the revised plan, the department may continue with the approval process under this subsection or take appropriate enforcement action.

(2) Not later than 6 months after the approval of the plan by the department under subsection (1), the owner or operator shall implement the plan in compliance with the implementation schedule. The operation of a municipal solid waste incinerator without an approved plan under this section subjects the owner or operator, or both, to the sanctions provided by this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11542 Municipal solid waste incinerator ash; disposal.

Sec. 11542. (1) Except as provided in subsection (5) and except for municipal solid waste incinerator ash that is described and used as provided in section 11506(6)(h), municipal solid waste incinerator ash shall be disposed of in 1 of the following:

(a) A landfill that meets all of the following requirements:

(*i*) The landfill is in compliance with this part and the rules promulgated under this part.

(*ii*) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(*iii*) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) A compacted clay liner of 5 feet or more with a maximum hydraulic conductivity of 1 x 10^{-7}

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centimeters per second.

(D) A leak detection and leachate collection system.

(E) A compacted clay liner at least 3 feet thick with a maximum hydraulic conductivity of 1 x 10^{-7} centimeters per second or a synthetic liner at least 40 mils thick.

(b) A landfill that meets all of the following requirements:

(*i*) The landfill is in compliance with this part and the rules promulgated under this part.

(*ii*) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(*iii*) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A composite liner, as defined in R 299.4102 of the part 115 rules.

(C) A leak detection and leachate collection system.

(D) A second composite liner.

(*iv*) If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph (*iii*)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(c) A landfill that is a monitorable unit, as defined in R 299.4104 of the part 115 rules, and that meets all of the following requirements:

(*i*) The landfill is in compliance with this part and the rules promulgated under this part.

(*ii*) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(*iii*) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) Immediately below the synthetic liner, either 2 feet of compacted clay with a maximum hydraulic conductivity of 1 x 10^{-7} centimeters per second or a bentonite geocomposite liner, as specified in R 299.4914 of the part 115 rules.

(D) At least 10 feet of either natural or compacted clay with a maximum hydraulic conductivity of 1 x 10^{-7} centimeters per second, or equivalent.

(d) A landfill with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subdivisions (a) to (c).

(e) A type II landfill, as described in R 299.4105 of the part 115 rules if both of the following conditions apply:

(*i*) The ash was generated by a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit.

(*ii*) The ash from any individual municipal solid waste incinerator is disposed of pursuant to this subdivision for a period not to exceed 60 days.

(2) Except as provided in subsection (3), a landfill that is constructed pursuant to the design described in subsection (1) shall be capped following its closure by all of the following in descending order:

(a) Six inches of top soil with a vegetative cover.

(b) Two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation.

(c) An infiltration collection system.

(d) A synthetic liner at least 30 mils thick.

(e) Two feet of compacted clay with a maximum hydraulic conductivity of 1 x 10^{-7} centimeters per second.

(3) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsection (2).

(4) If leachate is collected from a landfill under this section, the leachate shall be monitored and tested in accordance with this part and the rules promulgated under this part.

(5) As an alternative to disposal described in subsection (1), the owner or operator of a municipal solid

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waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (1), if the process has been approved by the department as provided by rule, and if the ash is tested after processing in accordance with a protocol approved by the department as provided by rule. The department shall approve the process and testing protocol under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the department shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a municipal solid waste landfill, as defined by R 299.4104 of the part 115 rules, licensed under this part or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not comply with the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (1).

(6) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (1) does not constitute a new proposal for which a new construction permit is required under section 11509, if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval pursuant to part 13. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of the ash at the landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. When the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area.

(7) The owner or operator of a municipal solid waste incinerator or a disposal area that receives municipal solid waste incinerator ash shall allow the department access to the facility for the purpose of supervising the collection of samples or obtaining samples of ash to test or to monitor air quality at the facility.

(8) As used in subsection (1), "landfill" means a landfill or a specific portion of a landfill.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 359, Imd. Eff. July 1, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11543 Municipal solid waste incinerator ash; transportation.

Sec. 11543. (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

(2) If municipal solid waste incinerator ash is transported by rail, it shall be transported in covered, leakproof railroad cars.

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(3) The outside of all vehicles and accessory equipment used to transport municipal solid waste incinerator ash shall be kept free of the ash.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11544 List of laboratories capable of performing test provided for in MCL 324.11542; compilation; publication; definitive testing; fraudulent or careless testing.

Sec. 11544. (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 11542.

(2) The department shall publish the list compiled under subsection (1) on or before July 1, 1989, and shall after that date make the list available to any person upon request.

(3) Except as provided in subsection (4), a test conducted by an approved laboratory from the list compiled under subsection (1) is definitive for purposes of this part.

(4) If the department has reason to believe that test results provided by an approved laboratory are fraudulent or that a test was carelessly performed, the department may conduct its own test or may have an additional test performed at the department's expense.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11545 Incineration of used oil prohibited; "oil" defined.

Sec. 11545. Beginning June 21, 1993, a municipal solid waste incinerator shall not incinerate used oil. As used in this section, used oil has the meaning ascribed to this term in part 167.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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SUBPART 7
ENFORCEMENT

324.11546 Action for appropriate relief; penalties for violation or noncompliance; restoration; return; civil action.

Sec. 11546. (1) The department or a local health officer may request that the attorney general bring an action in the name of the people of this state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of part 115.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates part 115 a civil fine as follows:

(a) Except as provided in subdivision (b), not more than $10,000.00 for each day of violation.

(b) For a second or subsequent violation, not more than $25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates part 115 to restore, or to pay to this state an amount equal to the cost of restoring, the natural resources of this state affected by the violation to their original condition before the violation, and to pay to this state the costs of surveillance and enforcement incurred by this state as a result of the violation.

(4) In addition to any other relief provided by this section, the court shall order a person who violates section 11526e to return, or to pay to this state an amount equal to the cost of returning, the solid waste that is the subject of the violation to the country in which that waste was generated.

(5) Part 115 does not preclude any person from commencing a civil action based on facts that may constitute a violation of part 115.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 41, Imd. Eff. Mar. 29, 2004;—Am. 2006, Act 56, Imd. Eff. Mar. 13, 2006;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11547, 324.11548 Repealed. 2022, Act 247, Eff. Mar. 29, 2023.

Compiler's note: The repealed sections pertained to the establishment of a grant program to provide financial assistance to the county or regional planning agencies and the legislative intent regarding private sector participation.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11549 Violation as misdemeanor; violation as felony; penalty; separate offenses.

Sec. 11549. (1) A person who violates part 115 is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 for each violation and costs of prosecution and, if in default of payment of fine and costs, imprisonment for not more than 6 months.

(2) A person who knowingly violates section 11526e is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $5,000.00, or both.

(3) Each day upon which a violation described in this section occurs is a separate offense.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 58, Imd. Eff. Mar. 13, 2006;—Am. 2022, Act 247, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 8

FUNDS AND GRANTS

324.11550 Solid waste management fund; creation; deposit of money into fund; establishment of solid waste staff account and perpetual care account; expenditures; grants and loans for recycling programs; report; coal ash care fund; creation; deposit of money; expenditures.

Sec. 11550. (1) The solid waste management fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The department shall be the administrator of the fund for auditing purposes.

(2) Money in the solid waste management fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) The state treasurer shall establish, within the solid waste management fund, a solid waste staff account and a perpetual care account.

(4) Subject to subsection (5), money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(a) Preparing generally applicable guidance regarding the materials management facility program or its implementation or enforcement.

(b) Reviewing and acting on any notification, registration, application for approval under a general permit, application for a permit or license, permit or license revision, or permit or license renewal under part 115, including the cost of public notice and public hearings.

(c) Providing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit, license, registration, and notification program under part 115, including permit, license, registration, and notification tracking and data entry.

(e) Inspection of materials management facilities and open dumps.

(f) Implementing and enforcing the conditions of any permit, license, approval under a general permit, registration, or order under part 115.

(g) Groundwater monitoring audits at disposal areas that are or have been licensed under this part or at any other materials management facility that requires groundwater monitoring because of a release or suspected release.

(h) Reviewing and acting upon corrective action plans for materials management facilities, if required under part 115.

(i) Review of certifications of closure under part 115.

(j) Postclosure maintenance and monitoring inspections and review under part 115.

(k) Review of bonds and financial assurance documentation at materials management facilities, if required under part 115.

(*l*) Materials management planning.

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(m) Materials utilization education and outreach.

(n) Development of a materials utilization and recycled materials market directory.

(o) Administration of grants and loans under part 115 for planning, market development and recycling infrastructure, outreach, and education.

(p) Up to 1 full-time equivalent employee for the Michigan economic development corporation to address recycled materials market development.

(5) Money shall be expended from the perpetual care account, upon appropriation, only for the following activities at materials management facilities for which the requirements of section 11508(1)(a) are or were met and for which fees have been collected and deposited into the perpetual care account:

(a) To conduct postclosure maintenance and monitoring if the owner or operator is no longer required to do so.

(b) To conduct closure, postclosure maintenance and monitoring, and necessary corrective action if the owner or operator has failed to do so. Money shall be expended from the account only after funds from any other financial assurance mechanisms held by the owner or operator have been expended and the department has made reasonable efforts to obtain funding from other sources.

(6) Subject to appropriations, the department shall provide grants for the following purposes:

(a) The recycling markets program established under subsection (7).

(b) The local recycling innovation program established under subsection (8).

(c) The recycling access and voluntary participation program established under subsection (9).

(7) The department shall establish a recycling markets program. The program shall provide grants or loans for acquiring equipment or technology, for research and development, or for associated activities to provide for new or increased use of recycled materials or to support the development of recycling markets. Local units of government and nonprofit and for-profit entities are eligible for funding under the program. The funding is not limited to entities in counties with approved materials management plans. In addition to any other reporting requirements established by the department, grant recipients under the program shall provide information on the materials managed.

(8) The department shall establish a local recycling innovation program. The program shall provide grants or loans for developing local recycling infrastructure, for recycling education campaigns for residents and businesses, technology, or other activities that result in increasing recycling access, quality, or participation, for reducing waste, or for sustainable materials management. Local units of government and nonprofit and for-profit entities are eligible for funding under the program. The funding is not limited to entities in counties with approved materials management plans. In addition to any other reporting requirements established by the department, grant recipients under the program shall provide the department information on the materials managed.

(9) The department shall establish a recycling access and voluntary participation program. The program shall provide grants or loans to assist local units of government in implementing best materials utilization practices or identifying ways to innovate and to collaborate with other local units and the private sector. To be eligible for a grant, a local unit of government must be a county that meets, or a municipality located within a county that meets, both of the following requirements:

(a) Has a materials management plan.

(b) Has documented progress toward meeting or has met its benchmark recycling standards and ultimately the municipal solid waste recycling rate goal under section 11507.

(10) The department shall publish and make available to grant and loan applicants criteria upon which the grants and loans will be made.

(11) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund. This report shall include, at a minimum, all of the following as they apply to the department:

(a) The number of full-time equated positions performing solid waste management authorization, compliance, and enforcement activities.

(b) All of the following information related to the construction permit applications received under section 11509:

(*i*) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(*ii*) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications

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approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The percentage and number of applications determined to be administratively complete for which a final decision was made within the period required by part 13.

(c) All of the following information related to the operating license applications received under section 11512:

(*i*) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(*ii*) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(*iii*) The percentage and number of applications determined to be administratively complete for which a final decision was made within the period required by part 13.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519 and the number of inspections conducted at materials utilization facilities as required by section 11526.

(e) The number of letters of warning sent to licensed disposal areas.

(f) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(g) For each enforcement action that includes a penalty, a description of the corrective actions required by the enforcement action.

(h) The number of solid waste complaints received, investigated, resolved, and not resolved by the department.

(i) The amount of revenue in the staff account of the solid waste management fund and the amount of revenue in the coal ash care fund at the end of the fiscal year.

(12) The coal ash care fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(13) Money shall be expended from the coal ash care fund, upon appropriation, only for the following purposes relating to coal ash impoundments and coal ash landfills:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas that are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas that are or have been licensed under this part.

(i) Review of certifications of closure.

(j) Postclosure maintenance and monitoring inspections and review.

(k) Review of bonds and financial assurance documentation at disposal areas that are or have been licensed under this part.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996;—Am. 2003, Act 153, Eff. Oct. 1, 2003;—Am. 2018, Act 640, Imd. Eff. Dec. 28, 2018;—Am. 2020, Act 201, Imd. Eff. Oct. 15, 2020;—Am. 2022, Act 248, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 9

BENEFICIAL USE BY-PRODUCTS

324.11551 Beneficial use by-product; qualification; requirements; analysis of representative sample by initial generator; determination; storage and use; beneficial uses 1 and 2 at and along roadways; registration or licensure under MCL 290.531 to 290.538; submission of

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information; open dumping; notice to prospective transferee.

Sec. 11551. (1) Except for a material that the department approves as a beneficial use by-product under section 11553(3) or (4), to qualify as a beneficial use by-product, a material or the use of the material, as applicable, shall meet all of the following requirements:

(a) The material is not a part 111 hazardous waste or mixed with a hazardous waste.

(b) The material is not stored at the site of generation or use for more than 3 years, or the amount that is transferred off site for use during a 3-year period equals at least 75% by weight or volume of the amount of that material stored on site for beneficial use at the beginning of the 3-year period.

(c) The material is stored in a manner that maintains its usefulness, controls wind dispersal, and prevents loss of the material beyond the storage area.

(d) The material is stored in a manner that does not cause groundwater to no longer be fit for 1 or more protected uses, does not cause a violation of a part 31 surface water quality standard, and otherwise does not violate part 31.

(e) The material is transported in a manner that prevents accidental leakage, spillage, or wind dispersal.

(f) The use of the material is for a legitimate beneficial purpose other than a means to discard the material and the material is used according to generally accepted engineering, industrial, or commercial standards for that use.

(g) For beneficial use 2, the material, if specified below, meets the following environmental standards using, at the option of the generator of the by-product, EPA method 1311, 1312, or ASTM test method 3987:

Constituent-maximum leachate mg/l	Coal ash or wood ash	Pulp and paper mill ash, mixed wood ash	Foundry sand	Cement kiln dust, lime kiln dust	Water softening limes, dewatered grinding sludge	Stamp sand	Spent media from sand blasting
Arsenic – 0.2	X	X	X	X	X		
Boron – 10	X						
Cadmium – 0.1	X	X		X	X		
Chromium – 2.0	X						X
Lead – 0.08	X	X	X	X	X		
Mercury – 0.04	X	X		X	X		
Copper – 20		X			X	X	
Nickel – 2.0		X	X		X		X
Selenium – 1.0	X				X		
Thallium – 0.04	X			X			
Zinc – 48	X	X			X		

(h) For beneficial use 3, the material or use of the material, as applicable, meets all of the following requirements:

(*i*) The material is coal bottom ash, wood ash, pulp and paper mill material, pulp and paper mill ash, mixed wood ash, foundry sand from ferrous or aluminum foundries, cement kiln dust, lime kiln dust, lime water softening residuals, flue gas desulfurization gypsum, soil washed or otherwise removed from sugar beets, or dewatered concrete grinding slurry from public transportation agency road projects.

(*ii*) The amount of any constituent listed below applied to an area of land over any period of time does not exceed the following:

CONSTITUENT	CUMULATIVE LOAD POUNDS PER ACRE
Arsenic	37

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Cadmium	35
Copper	1,335
Lead	267
Mercury	15
Nickel	374
Selenium	89
Zinc	2,492

(*iii*) If the department of agriculture and rural development determines, based on peer-reviewed scientific literature, that any other constituent is subject to a cumulative loading requirement, the amount of that constituent applied to an area of land over any period of time does not exceed that cumulative loading requirement. The cumulative load for that constituent shall be calculated as follows: constituent concentration (mg/kg dry weight) x conversion factor of 0.002 (concentration to pounds per dry ton) x the material application rate in dry tons per acre.

(i) For beneficial use 5, the material is foundry sand from ferrous or aluminum foundries and representative sampling of the foundry sand using either a totals analysis, a leachate analysis (using EPA method 1311, EPA method 1312, ASTM method 3987, or other leaching protocol approved by the department), or any combination of the 2 types of analyses demonstrates that none of the following maximum concentrations are exceeded:

CONSTITUENT	TOTALS ANALYSIS MG/KG	LEACHATE ANALYSIS MG/L
Antimony	4.3	0.006
Cobalt	0.8	0.04
Copper	5,800	1
Iron	23,185	2.0
Lead	700	0.004
Manganese	1,299	0.86
Molybdenum	5	0.073
Nickel	100	0.1
Thallium	2.3	0.002
Vanadium	72	0.0045
Zinc	2,400	2.4
Benzene	0.1	0.005
Formaldehyde	26	1.3
Phenol	88	4.4
Trichloroethylene	0.1	0.005

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(2) The determination whether a material meets the requirements of subsection (1)(a) or (g) shall be based on the analysis of a representative sample of the material by the initial generator. The initial generator shall maintain records of the test results for not less than 10 years after the date the material was sent off site and make the records available to the department upon request. The generator shall resample and analyze the material when raw materials or processes change in a way that could reasonably be expected to materially affect analysis results.

(3) Except as otherwise provided in this act, storage and use of beneficial use by-products shall comply with all other applicable provisions of this act.

(4) The storage of a material for beneficial use 3 that complies with regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code, shall be considered to comply with the storage requirements of this part.

(5) A person that actively manages and reuses a beneficial use by-product that has already been used in compliance with this part may rely on analytical data from the prior use.

(6) All of the following apply to beneficial uses 1 and 2 at and along roadways:

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(a) Routine repair and replacement of roadways constructed using beneficial use materials does not constitute generation of beneficial use by-products triggering the requirements of this section if the beneficial use by-products remain or are reused at the same roadway and are used in a manner that meets the definition of beneficial use 1 or beneficial use 2, as appropriate. If the beneficial use by-products will be reused at some place other than the same roadway, then the requirements applicable to generators of beneficial use by-products must be met, except as follows:

(*i*) As set forth in subsection (5).

(*ii*) The requirements of section 11552 apply only if the category of beneficial use will change.

(b) For beneficial use 2, the requirement that beneficial use materials be covered by concrete, asphalt, or 6 inches of gravel applies at the time of placement and use. The development of potholes, shoulder erosion, or similar deterioration does not result in a violation of this part.

(c) If road materials containing beneficial use by-products are ground, reheated, or melted for reuse, the requirements of part 55 must be met.

(d) This part does not prohibit the state transportation department from seeking additional data or information for road building materials or from requiring that road building materials meet state transportation department specifications and standards.

(7) For beneficial use 3, the material that is offered for sale or use shall be annually registered or licensed under part 85 or 1955 PA 162, MCL 290.531 to 290.538. In addition to the information required under part 85 or 1955 PA 162, MCL 290.531 to 290.538, the following information shall be submitted to the department of agriculture and rural development with the license or registration application:

(a) Directions for use to ensure that the material is applied at an agronomic rate that has been reviewed by a certified crop advisor.

(b) A laboratory analysis report that contains all of the following:

(*i*) Sampling results that demonstrate that the material does not pose harm to human health or the environment. One method by which this demonstration can be made is by sampling results that comply with both of the following:

(A) The levels established pursuant to the association of American plant food control officials' statement of uniform interpretation and policy #25, as follows:

(I) A fertilizer with a phosphorus or micronutrient guarantee shall apply the policy in its entirety.

(II) A fertilizer with only a nitrogen, potassium, or secondary nutrient guarantee shall use the micronutrients column in the policy and apply a multiplier of 1 to determine the maximum allowable concentration of each metal.

(III) A soil conditioner or liming material shall use the micronutrients column in the policy and apply a multiplier of 1 to determine the maximum allowable concentration of each metal.

(B) The part 201 generic residential soil direct contact cleanup criteria for volatile organic compounds (as determined by U.S. EPA method 8260), semivolatile organic compounds (as determined by U.S. EPA method 8270c), and dioxins (as determined by U.S. EPA method 1613b). Results for dioxins shall be reported on a dry weight basis, and total dioxin equivalence shall be calculated and reported utilizing the U.S. EPA toxic equivalency factors (U.S. EPA/100/R10/005).

(*ii*) For a fertilizer, all of the following used by a certified crop advisor to determine an agronomic rate consistent with generally accepted agricultural and management practices:

(A) A demonstration that the material contains the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(B) The percentage of dry solids, nitrogen, ammonium nitrogen, nitrate nitrogen, phosphorus, and potassium in the material.

(C) The levels of calcium, magnesium, acidity or basicity measured by pH, sulfur, chromium, copper, silver, chlorine, and boron.

(*iii*) For a soil conditioner or a liming material, all of the following used by a certified crop advisor to determine an agronomic rate consistent with generally accepted agricultural and management practices:

(A) The percentage of dry solids in the material.

(B) The levels of calcium, magnesium, acidity or basicity measured by pH, sulfur, chromium, copper, silver, chlorine, and boron.

(*iv*) For a soil conditioner, scientifically acceptable data that give reasonable assurance that the material will improve the physical nature of the soil by altering the soil structure by making soil nutrients more available or otherwise enhancing the soil media resulting in beneficial crop response or other plant growth.

(*v*) For a liming material, scientifically acceptable data demonstrating that the material will correct soil acidity.

(8) When a material is licensed or registered as described in subsection (7), the laboratory analysis report

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and the scientifically acceptable data submitted with a prior application may be resubmitted for a subsequent application unless the raw materials or processes used to generate the material change in a way that could reasonably be expected to materially affect the laboratory analysis report or scientifically acceptable data.

(9) This part does not authorize open dumping prohibited by the solid waste disposal act, 42 USC 6901 to 6992k.

(10) If an owner of property has knowledge that a material has been used on the property for beneficial use 2, before transferring the property, the owner shall provide notice to a prospective transferee that the material was used for beneficial use 2, including the date and location of the use, if known. If a contractor, consultant, or agent of an owner of property uses a material on the property for beneficial use 2, the contractor, consultant, or agent shall provide notice to the owner that the material was used for beneficial use 2, including the date and location of the use.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11551a Beneficial use by-product not required.

Sec. 11551a. This part does not require the use of any beneficial use by-product, including, but not limited to, the uses and beneficial use by-products identified in sections 11502 to 11506, by any governmental entity or any other person.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11552 Notice; report; confidentiality.

Sec. 11552. (1) Written notice shall be submitted to the department before a beneficial use by-product is used for beneficial use 2 as construction fill at a particular site for the first time, if the amount used will exceed 5,000 cubic yards. The generator of the beneficial use by-product shall submit the notice unless the generator transfers material to a broker, in which case the broker shall submit the notice.

(2) By October 30 of each year, any generator or broker of more than 1,000 cubic yards of material used as beneficial use by-products for beneficial use 1, 2, or 4 in the immediately preceding period of October 1 to September 30 or any person that uses or reuses more than 1,000 cubic yards of a source separated material in that period shall submit a report to the department containing all of the following information, as applicable:

(a) The business name, address, telephone number, and name of a contact person for the generator, broker, or other person.

(b) The types and approximate amounts of beneficial use by-products generated, brokered, and stored during that period.

(c) The approximate amount of beneficial use by-products shipped off site during that period and the uses and conditions of use.

(d) The amount of source separated materials used or reused.

(3) A generator or broker may designate the information required in the report under subsection (2)(b) and (c) as confidential business information. If the scope of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, includes information designated by the generator or broker as confidential, the department shall promptly notify the generator or broker of the request, including the date the request was received by the department and, pursuant to that section, shall issue a notice extending for 10 business days the period during which the department shall respond to the request. The department shall grant the request for the information unless, within 12 business days after the date the request was received by the department, the generator or broker demonstrates to the satisfaction of the department that the information designated as confidential should not be disclosed because the information constitutes a trade secret or secret process or is production or commercial information the disclosure of which would jeopardize the competitive position of the generator or broker. If there is a dispute over the release of information between the generator or broker and the person requesting the information, the director shall grant or deny the request. The department shall notify the generator or broker of a decision to grant the request at least 2 days before the release of the requested information.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

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Popular name: NREPA

Popular name: Solid Waste Act

324.11553 Promoting and fostering use of wastes and by-products for recycling or beneficial purposes; approval of material, use, or material and use; request; approval or denial by department; determination made prior to September 16, 2014; applicability to material used under part 115.

Sec. 11553. (1) Consistent with the requirements of part 115, the department shall apply this section so as to promote and foster the use of wastes and by-products for recycling or beneficial purposes.

(2) Any person may request the department, consistent with the definitions and other terms of part 115, to approve a material, a use, or a material and use as a source separated material; a beneficial use by-product for beneficial use 1, 2, 4, or 5; an inert material; a low-hazard industrial waste; nondetrimental material managed for agricultural or silvicultural use; or another material, use, or material and use that can be approved under part 115. Among other things, a person may request the department to approve a use that does not meet the definition of beneficial use 2 under section 11502(8)(a) because the property is not nonresidential property or under section 11502(8)(a), (b), or (c) because the material exceeds 4 feet in thickness. A request under this subsection shall be in writing and contain a description of the material including the process generating it; results of analyses of representative samples of the material for any hazardous substances that the person has knowledge or reason to believe could be present in the material, based on its source, its composition, or the process that generated it; and, if applicable, a description of the proposed use. The analysis and sampling of the material under this subsection shall be consistent with the methods identified in "Standard Methods for the Examination of Water and Wastewater, 20th Edition," (jointly published by the American Public Health Association, the American Water Works Association, and the Water Environment Federation) or "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846, Third Edition, Final Updates I (1993), II (1995), IIA (1994), IIB (1995), III (1997), IIIA (1999), IIIB (2005), IV (2008), AND V (2015); 1 or more peer-reviewed standards developed by a national or international organization, such as ASTM International; or 1 or more standards or methods approved by the department or the EPA. The department shall approve or deny the request in writing within 150 days after the request is received, unless the parties agree to an extension. If the department determines that the request does not include sufficient information, the department shall, not more than 60 days after receipt of the request, notify the requester. The notice shall specify the additional information that is required. The 150-day period is tolled until the requestor submits the information specified in the notice. If the department approves a request under this subsection, the approval shall include the following statement: "This approval does not require any use of any beneficial use by-product by a governmental entity or any other person." The department may impose conditions and other requirements consistent with the purposes of part 115 on a material, a use, or a material and use approved under this section that are reasonably necessary for the use. If a request is approved with conditions or other requirements, the approval shall specifically state the conditions or other requirements. If the request is denied, the denial shall, to the extent practical, state with specificity all of the reasons for denial. If the department fails to approve or deny the request within the 150-day period, the request is considered approved. A person requesting approval under this subsection may seek review of any final department decision pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(3) The department shall approve a material for a specified use as a beneficial use by-product if all of the following requirements are met:

(a) The material is an industrial or commercial material that is or has the potential to be generated in high volumes.

(b) The proposed use serves a legitimate beneficial purpose other than providing a means to discard the material.

(c) A market exists for the material or there is a reasonable potential for the creation of a new market for the material if it is approved as a beneficial use by-product.

(d) The material and use meet all federal and state consumer protection and product safety laws and regulations.

(e) The material meets all of the following requirements:

(*i*) Any hazardous substances in the material do not pose a direct contact health hazard to humans.

(*ii*) The material does not leach, decompose, or dissolve to form a leachate that exceeds either of the following:

(A) Part 201 generic residential groundwater drinking water criteria.

(B) Surface water quality standards established under part 31.

(*iii*) The material does not produce emissions that violate part 55 or that create a nuisance.

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(4) The department may approve a material for a specified use as a beneficial use by-product or as restricted use compost if the material meets the requirements of subsection (3)(a), (b), (c), and (d) but fails to meet the requirements of subsection (3)(e) and if the department determines that the material and use are protective of the environment, natural resources, and the public health, safety, and welfare. In making the determination, the department shall consider the potential for exposure and risk to the environment, natural resources, and the public health, safety, and welfare given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(5) The department shall approve a material as inert or as general use compost if all of the following requirements are met:

(a) The material is proposed to be used for a legitimate purpose other than a means to dispose of the material.

(b) Substances in the material do not pose a direct contact health hazard to humans.

(c) The material does not leach, decompose, or dissolve in water or other liquids likely to be found at the area of placement, disposal, or use to form a leachate that exceeds either of the following:

(*i*) Part 201 generic residential groundwater drinking water criteria.

(*ii*) Surface water quality standards established under part 31.

(d) The material does not produce emissions that violate part 55 or that create a nuisance.

(6) The department may approve a material as inert if the material meets the requirements of subsection (5)(a) but fails to meet the requirements of subsection (5)(b), (c), or (d) and if the department determines that the material is protective of the environment, natural resources, and the public health, safety, and welfare. In making the determination, the department shall consider the potential for exposure and risk to the environment, natural resources, and the public health, safety, and welfare given the nature of the material, its proposed use, and the environmental fate and transport of any hazardous substances in the material in soil, groundwater, or other relevant media.

(7) The department shall approve a material as a low-hazard industrial waste if hazardous substances in representative samples of the material do not leach, using, at the option of the generator, EPA method 1311, "Toxicity Characteristic Leaching Procedure", EPA method 1312, "Synthetic Precipitation Leaching Procedure", or any other method approved by the department that more accurately simulates mobility, above the higher of the following:

(a) One-tenth the hazardous waste toxicity characteristic threshold as set forth in rules promulgated under part 111.

(b) Ten times the generic residential groundwater drinking water cleanup criteria as set forth in rules promulgated under part 201.

(8) The department shall approve a material as a source separated material if the person who seeks the designation demonstrates that the material can be recycled or converted into raw materials or new products by being returned to the original process from which it was generated, by use or reuse as an ingredient in an industrial process to make a product, or by use or reuse as an effective substitute for a commercial product. To qualify as a source separated material, the material, product, or reuse must meet all federal and state consumer protection and product safety laws and regulations and must not create a nuisance. If a material will be applied to or placed on land, or will be used to produce products that are applied to or placed on land, the material must qualify as an inert material or beneficial use by-product.

(9) Any written determination by the department made before September 16, 2014, designating a material as an inert material, an inert material appropriate for general reuse, an inert material appropriate for reuse at a specific location, an inert material appropriate for specific reuse instead of virgin material, a source separated material, a low-hazard industrial waste, or a non-solid-waste material remains in effect according to its terms or until forfeited in writing by the person who received the determination. Upon termination, expiration, or forfeiture of the written determination, the current requirements of part 115 control. The amendments made to this part by 2014 PA 178 do not rescind, invalidate, limit, or modify any such prior determination in any way.

(10) Notwithstanding any other provision of part 115, a person in possession of material that is designated or approved for beneficial use or as inert material or in possession of material from an industrial facility that is designated or approved as source separated material is not subject to regulation as a materials management facility if the person manages and uses the material as provided in part 115 for that material.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2022, Act 248, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

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324.11554 Administration and enforcement of part 115.

Sec. 11554. The department of agriculture and rural development, and not the department of environment, Great Lakes, and energy, shall administer and enforce part 115 in connection with any material that is licensed or registered under part 85 or 1955 PA 162, MCL 290.531 to 290.538.

History: Add. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2022, Act 248, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 10
MATERIALS UTILIZATION FACILITIES

324.11555 Management of compostable materials; temporary accumulation of yard waste; composting on a farm; composting facility; location requirements; list of composting facilities.

Sec. 11555. (1) Compostable material shall be managed by 1 of the following means:

(a) Composted on the property where the compostable material is generated.

(b) If yard waste, temporarily accumulated subject to subsection (2).

(c) Composted at a class 1 composting facility where the quantity of compostable material does not at any time exceed 500 cubic yards and does not create a nuisance.

(d) Composted at a small composting facility for which notification has been given under section 11568(3), if applicable.

(e) Composted on a farm as described by subsection (3).

(f) Composted at a medium composting facility registered under section 11568(3), if applicable.

(g) Composted at any of the following that has received approval under a general permit under section 11568(3), if applicable:

(*i*) A large composting facility.

(*ii*) A small or medium class 1 composting facility that meets the requirements of subsection (4) and where the total volume of class 1 compostable material other than yard waste exceeds 10% of the total volume of compostable material on-site, unless otherwise approved by the department.

(*iii*) A class 2 composting facility.

(h) Decomposed in a controlled manner using a closed container to create and maintain anaerobic conditions if in compliance with part 55 and otherwise approved by the department under part 115.

(i) Composted by a type II landfill if the following requirements are met:

(*i*) The landfill reports annually the number of cubic yards of compost managed.

(*ii*) The composting and use meet the following requirements:

(A) Take place on property described in the landfill construction permit.

(B) Are described in and consistent with the landfill operations plans.

(C) Are otherwise in compliance with this act.

(*iii*) Yard waste or unfinished compost is not used as daily cover.

(j) Disposed of in a landfill or an incinerator. This subdivision applies to yard waste only if all of the following requirements, as applicable, are met:

(*i*) The yard waste is any of the following:

(A) Diseased or infested.

(B) Plants that are prohibited species or restricted species, as defined in part 413, and that were collected through an eradication or control program.

(C) A state or federal controlled substance.

(D) Contaminated, with hazardous material as determined by the department.

(*ii*) The yard waste includes no more than a de minimis amount of yard waste other than that described in subparagraph (*i*).

(*iii*) For yard waste described in subparagraph (*i*)(A), (B), or (C), if the yard waste is composted, use of the compost may contribute to the spread of the disease or infestation or of viable invasive plant or controlled substance seeds or other propagules.

(2) A person may temporarily accumulate yard waste under subsection (1)(b) at a site not designed for composting if all of the following requirements are met:

(a) The accumulation does not create a nuisance or result in a violation of this act.

(b) The yard waste is not mixed with other compostable material.

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(c) No more than 1,000 cubic yards are placed on-site unless a greater volume is approved by the department.

(d) Yard waste placed on-site on or after April 1 but before December 1 is moved to another location and managed as provided in subsection (1) within 30 days after being placed on-site. The department may approve a longer time period based on a demonstration that additional time is necessary.

(e) Yard waste placed on-site on or after December 1 but before the next April 1 is moved to another location and managed as provided in subsection (1) by the next April 1 after the yard waste is placed on-site.

(f) The owner or operator of the site maintains and makes available to the department records necessary to demonstrate that the requirements of this subsection are met.

(g) The owner or operator of the site annually notifies the department that it is a temporary yard waste accumulation site.

(3) A person may compost class 1 compostable material on a farm under subsection (1)(e) if all of the following requirements are met:

(a) All the compost is used on the farm.

(b) The composting does not result in a violation of this act and is done in compliance with GAAMPS.

(c) Any of the following apply:

(*i*) Only class 1 compostable material that is generated on the farm and does not contain paper products, dead animals, or compostable products is composted.

(*ii*) There is not more than 5,000 cubic yards of class 1 compostable material on the farm at any time.

(*iii*) All of the following requirements are met:

(A) The farm operation accepts class 1 compostable material only to assist in management of waste material generated by the farm operation or to supply the nutrient needs of the farm as determined by a certified crop advisor, Michigan agriculture environmental assurance program technician, comprehensive nutrient management plan writer, licensed professional engineer, or staff of the department of agriculture and rural development who administer the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(B) The farm operation does not accept compostable material generated at a location other than the farm for monetary or other valuable consideration.

(C) The owner or operator of the farm registers with the department of agriculture and rural development and certifies that the farm operation meets and will continue to meet the requirements of sub-subparagraphs (A) and (B).

(4) The owner or operator of a composting facility that is subject to a requirement for notification, registration, or approval under a general permit under section 11568(3) shall meet the following requirements, as applicable:

(a) Composting and management of the site occurs in a manner that meets all of the following requirements:

(*i*) Does not result in an accumulation of compostable material for a period of over 3 state fiscal years unless the site has the capacity to compost the compostable material and the owner or operator of the site can demonstrate, beginning with the third full state fiscal year after commencement of operation and each state fiscal year thereafter, unless a longer time is approved by the department, that the amount of compostable material and compost that is transferred off-site in a state fiscal year is not less than 75% by weight or volume, accounting for natural volume reduction, of the amount of compostable material and compost that was on-site at the beginning of the state fiscal year.

(*ii*) Results in finished compost with not more than 1%, by weight, of foreign matter that will remain on a 4-millimeter screen.

(*iii*) If yard waste is collected in bags other than paper bags or compostable bags meeting ASTM D6400 "Standard Specification for Compostable Plastics", by ASTM International, debags the yard waste by the end of each business day.

(*iv*) Prevents the pooling of water by maintaining proper slopes and grades.

(*v*) Operates in compliance with parts 31 and 55.

(*vi*) Does not attract or harbor rodents or other vectors.

(b) The owner or operator maintains, and makes available to the department, all of the following records:

(*i*) Records identifying the volume of compostable material accepted by the facility each month, the volume of compostable material and of compost transferred off-site each month, and the volume of compostable material on-site on October 1 each year.

(*ii*) Records demonstrating that the composting is performed in a manner that prevents nuisances and minimizes anaerobic conditions. Unless otherwise provided by the department, these records shall include carbon-to-nitrogen ratios, the amount of leaves and the amount of grass in tons or cubic yards, temperature readings, moisture content readings, and lab analysis of finished compost products.

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(c) If the site is a small composting facility, the site is operated in compliance with the following location conditions:

(*i*) If the site was in operation on December 1, 2007, the management or storage of compost, compostable material, and residuals does not expand from its location on that date to an area that is within the following distance from any of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(*ii*) If the site begins operation after December 1, 2007, the management and storage of compost, compostable material, and residuals occur at least the following distance from each of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(D) 2,000 feet from a type I or type IIa water supply well.

(E) 800 feet from a type IIb or type III water supply well.

(F) 500 feet from a church or other house of worship, hospital, nursing home, licensed day care center, or school, other than a home school.

(G) 4 feet above groundwater.

(5) A local unit of government may impose location requirements that are more restrictive than those in subsection (4)(c)(*i*) and (*ii*). However, the local requirements shall not be so restrictive that a facility that meets the requirements of the siting process in the materials management plan cannot be established.

(6) A site at which compostable material is managed in compliance with this section, other than a site described in subsection (1)(i) or (j), is not a disposal area.

(7) The department shall maintain and post on its website a list of composting facilities for which notification has been given, which are registered, or which are approved under a general permit under section 11568(3). Except as provided in section 11514, a hauler shall not deliver yard waste to a site that is not on the list. A contract between a local unit of government and a hauler for curbside pick-up of yard waste or collection of yard waste from a drop-off location shall require the delivery of the yard waste to a site on the list.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11556 Class 1 and 2 compostable materials; composting of dead animals.

Sec. 11556. (1) A person who composts class 1 compostable material shall do so at 1 of the following:

(a) A composting facility as described in section 11555(1)(c).

(b) A small or medium class 1 composting facility that meets the requirements of section 11555(4) and where the total volume of class 1 compostable material other than yard waste is equally distributed and does not exceed 5% for a small composting facility, or 10% for a medium composting facility, of the total volume of compostable material on-site or a greater percentage if approved by the department.

(c) A composting facility described in section 11555(1)(g).

(2) Class 1 compostable material is considered to be source separated for conversion into compost if the class 1 compostable material is composted at a site that is described in and meets the requirements of section 11555(4) or section 11557(2).

(3) Composting of class 2 compostable material shall be done at a class 2 composting facility. Class 2 compostable material is considered to be source separated for conversion into compost if the class 2 compostable material is composted at a class 2 composting facility.

(4) Composting of dead animals using bulking agents as defined in section 3 of 1982 PA 239, MCL 287.653, is subject to part 115 if the composting occurs at any of the following:

(a) A farm that maintains more than 5,000 cubic yards of bulking agents from a source other than the farm.

(b) A slaughtering facility that, for composting purposes, maintains on-site more than 5,000 cubic yards of bulking agents as defined in section 3 of 1982 PA 239, MCL 287.653.

(c) A facility that manages dead animals from more than 1 farm or slaughtering facility.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

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Popular name: Solid Waste Act

324.11557 Location of composting facilities; notification requirements near airport.

Sec. 11557. (1) The location at a medium or large composting facility, or a class 1 or class 2 composting facility, where class 1 and class 2 compostable material, finished compost, and residuals were managed and stored on the effective date of the amendatory act that added this section shall not be expanded to an area that is within the following distance from any of the following features:

(a) 100 feet from a property line.

(b) 300 feet from a residence.

(c) 200 feet from a body of surface water, including a lake, stream, or wetland.

(2) If a medium or large composting facility or a class 1 or 2 composting facility begins operation after the effective date of the amendatory act that added this section, the management and storage of class 1 and class 2 compostable material, compost, and residuals shall not occur in a wetland or floodplain, or in an area that is within the following distance from any of the following features:

(a) 100 feet from a property line.

(b) 300 feet from a residence.

(c) 200 feet from a body of surface water, including a lake, stream, or wetland.

(d) 2,000 feet from a type I or type IIa water supply well.

(e) 800 feet from a type IIb or type III water supply well.

(f) 4 feet above groundwater.

(g) 500 feet from a church or other house of worship, a hospital, a nursing home, a licensed day care center, or a school, other than a home school.

(3) Not later than 90 days after the establishment of a new class 1 or class 2 composting facility or the expansion of the location at a class 1 or class 2 composting facility where compostable material, finished compost, and residuals were managed and stored on the effective date of the amendatory act that added this section, the owner or operator of the composting facility shall, if the composting facility is located within 5 miles of the end of an airport runway that is used by turbojet or piston type aircraft, notify in writing the affected airport and the Federal Aviation Administration.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11558 Large class 1 composting facilities; owner or operator responsibilities; separation of class 2 compostable materials.

Sec. 11558. (1) The owner or operator of a large class 1 composting facility shall submit to the department the following items:

(a) A site map.

(b) An operations plan.

(c) An odor management plan.

(d) A training plan.

(e) A fire prevention plan.

(f) A facility closure plan.

(2) The owner or operator of a large class 1 composting facility shall ensure that all of the following requirements are met:

(a) Finished compost is tested in compliance with section 11564.

(b) The compostable material is not stored in a manner constituting speculative accumulation. The owner or operator of the large composting facility shall maintain and make available to the department records to demonstrate compliance with this requirement.

(c) Composting does not result in standing water or attract or harbor rodents or other vectors.

(d) Unless approved by the department, the composting operations do not result in more than the following volume on any acre:

(*i*) 5,000 cubic yards of compostable material, finished compost, compost additives, or screening rejects or any combination thereof.

(*ii*) 10,000 cubic yards of compostable material if the site is using forced air static pile composting.

(e) The composting facility complies with wellhead protection programs.

(3) Class 2 compostable material shall be separated out from other solid waste and maintained separately until used to produce compost, unless otherwise authorized by the department.

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History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11560 Annual report.

Sec. 11560. The owner or operator of a composting facility that is required to notify or register under part 115 or that is approved under a general permit shall, within 45 days after the end of each state fiscal year, report to the department all of the following information for that fiscal year:

(a) The amount of compostable material brought to the site, by county of origin.

(b) The amount of finished compost removed from the site.

(c) The amount of unfinished compostable material removed from the site.

(d) The volume of residuals removed from the site.

(e) The total amount of compostable material, compost, and residuals on-site at the end of the fiscal year.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11561 Characterization of finished compost; use of compost; approval by department.

Sec. 11561. (1) A person shall not use compost produced from class 2 compostable material unless the department approves the class 2 compostable material as appropriate for the use under part 115.

(2) A person shall not compost solid waste unless the person has filed a petition under R 299.4118a of the MAC and obtained approval from the department. To characterize the finished compost, the petitioner shall include all of the following information in the petition, in addition to the information required in R 299.4118a of the MAC:

(a) The type of waste and its potential for creating a nuisance or environmental contamination.

(b) The time required for compost to reach maturity, as determined by a reduction of organic matter content during composting. Organic matter content shall be determined by measuring the volatile residues content using a method that is approved by the department or EPA method 160.4, contained in "Methods for Chemical Analysis of Water and Waste", EPA-600, Revision 8, July 2014, Update V.

(c) The foreign matter content of finished compost. The foreign matter content shall be determined as follows:

(*i*) A weighed sample of the finished compost is sifted through a 4.0-millimeter screen.

(*ii*) The foreign matter remaining on the screen is separated and weighed.

(*iii*) The weight of the separated foreign matter is divided by the weight of the finished compost.

(*iv*) The quotient under subparagraph (*iii*) is multiplied by 100.

(d) Particle size, as determined by sieve analysis.

(3) The department shall approve a material for use as compostable material if the person who proposes the use demonstrates all of the following:

(a) The material has or will be converted to compost under controlled conditions at a class 2 composting facility.

(b) The material will not be a source of environmental contamination or cause a nuisance.

(c) The end user will be given written instructions on the proper use of the finished compost.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11562 Petition for classification; pilot composting project; testing parameters.

Sec. 11562. (1) A person may petition the department to do any of the following:

(a) Classify a solid waste, a class 2 compostable material, or a combination of class 1 compostable material and class 2 compostable material, as a class 1 compostable material.

(b) Classify compost produced from solid waste, class 2 compostable material, or a combination of class 1 compostable material and class 2 compostable material, as general use compost.

(2) A petition under subsection (1) shall meet the requirements of R 299.4118a of the MAC. If authorized by the department in writing, a person may conduct a pilot composting project to support a petition under subsection (1).

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(3) In granting a petition under subsection (1), the department shall specify which parameters listed in section 11565 shall be tested under subsection (4). The department's decision shall be based on both of the following:

(a) The difference between the concentration of a given parameter in the compost and the criteria for that parameter described in section 11553(5)(c)(*i*).

(b) The variability of the results among the samples.

(4) If a material is classified as a class 1 compostable material by the department based on the petition under subsection (1), the operator shall test compost produced from the class 1 compostable material when both of the following apply:

(a) There is a significant change in the process that generated the compost.

(b) The change has the potential to alter the classification of the finished compost as general use compost under section 11553(5).

(5) If any finished compost produced from class 2 compostable material that has been classified as a general use compost fails to meet the requirements for a general use compost under section 11553(5), both of the following apply:

(a) The finished compost is reclassified as a restricted use compost.

(b) The owner or operator of the composting facility shall notify the department within 10 business days after receipt of information that the finished compost no longer meets the requirements to be classified as general use compost, and shall do 1 of the following with the finished compost:

(*i*) Dispose of the remaining finished compost at a properly licensed landfill.

(*ii*) Stockpile the finished compost on-site until the generator re-petitions the department and the department reclassifies the compost as provided in this section.

(*iii*) Use the finished compost for a specified use if approved for that specified use under section 11553(4).

(6) If finished compost produced by a composing facility is restricted use compost, the owner or operator of the composting facility shall do the following, as applicable:

(a) Retest the finished compost annually, or biennially if the department has determined that the test results demonstrate insignificant variability over a 2-year period, using the procedures specified in R 299.4118a of the MAC. The owner or operator shall submit the test results to the department. The department shall specify a more frequent schedule for testing if the characteristics of the material vary significantly.

(b) If the owner or operator of the composting facility receives information that test results show a significant increase in any parameter or a significant decrease in pH from previous test results, notify the department within 10 business days and do any of the following with the finished compost:

(*i*) Dispose of the finished compost at a properly licensed landfill.

(*ii*) Stockpile the finished compost on-site until the generator re-petitions the department and the department reclassifies the compost under this section.

(*iii*) Use the finished compost for a use specified by the department under section 11553(3).

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Compiler's note: In subsection (6), the reference to "composing facility" evidently should read "composting facility."

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11563 Sale of general use compost; labeling requirements; management of restricted use compost.

Sec. 11563. (1) General use compost offered for sale shall be accompanied by a label, in the case of bagged compost, or an information sheet in the case of bulk sales. The label or information sheet shall contain all of the following information:

(a) The name and generator of the compost.

(b) The feedstock and bulking agents used to produce the compost.

(c) Use instructions, including application rates and any restrictions on use.

(d) If the compost is marketed as a fertilizer, micronutrient, or soil conditioner, the label shall list the applicable parameters under section 11565 and comply with the requirements of part 85, if applicable.

(e) If the compost is marketed as a liming material, the label shall list the applicable parameters under section 11565 and shall include a statement indicating that the generator of the compost is in compliance with the applicable requirements of 1955 PA 162, MCL 290.531 to 290.538. The label shall specify the generator's liming license number.

(f) A statement indicating how the user of the compost can obtain the results of all testing, including test

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parameters and concentration levels.

(2) Restricted use compost shall be managed as provided in any of the following:

(a) Disposed of at a properly licensed landfill.

(b) Stockpiled on-site until the generator petitions the department under section 11562 and the department reclassifies the compost as provided in that section.

(c) Used for a use specified by the department under section 11553(3).

(d) If offered for sale, accompanied by a label, in the case of bagged compost, or an information sheet in the case of bulk sales. The label or information sheet shall contain both of the following:

(*i*) The information required by subsection (1).

(*ii*) A statement that the compost has been approved for use by this state and further indicating how the user of the compost may obtain the results of all testing including test parameters, concentration levels, and the applicable standards.

(3) The department may impose conditions for use of restricted use compost to ensure the protection of the environment, natural resources, or the public health, safety, or welfare.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11564 Testing of finished compost; compliance.

Sec. 11564. (1) The following sites shall test their finished compost in compliance with the US Composting Council's Seal of Testing Assurance, unless the department has approved an alternate procedure:

(a) Class 1 composting facilities that produce over 2,000 cubic yards of finished compost per year. The finished compost shall be analyzed for the parameters listed in section 11565.

(b) Class 2 composting facilities. The finished compost shall be analyzed for the parameters listed in section 11565 and, if the compost is produced from class 2 compostable material, other parameters identified in the facility's general permit.

(2) All sites not listed in subsection (1) shall test at least 1 sample of finished compost per 4,000 cubic yards or 2,000 tons per year for the parameters listed in section 11565, unless the department has approved an alternate procedure.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11565 General use parameters for compost.

Sec. 11565. All of the following are general use parameters for compost:

(a) pH.

(b) Carbon-to-nitrogen ratio.

(c) Soluble salts.

(d) Total available nitrogen.

(e) Phosphorus reported as P2O5.

(f) Potassium reported as K2O.

(g) Calcium.

(h) Magnesium.

(i) Chloride.

(j) Sulfate.

(k) Arsenic.

(*l*) Cadmium.

(m) Copper.

(n) Lead.

(o) Mercury.

(p) Molybdenum.

(q) Nickel.

(r) Selenium.

(s) Zinc.

(t) Pathogens.

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(u) Fecal coliforms.
(v) Salmonella.
(w) Percent organic matter.
(x) Percent foreign matter.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11567 Creation of soil-like product; blending requirements; gypsum drywall.

Sec. 11567. (1) A person may blend low-hazard industrial waste or compost additives with general use compost or compost produced from yard waste to create a soil-like product if all of the following conditions are met, as applicable:

(a) The blending occurs at a class 1 or class 2 composting facility.

(b) The mixture meets the requirements of section 11553(5) or other requirements approved by the department.

(c) If the blending is with general use compost, the blending occurs within 30 days after the low-hazard industrial waste or compost additives are collected at the class 1 or class 2 composting facility.

(2) Gypsum drywall may be added to finished compost if the gypsum drywall constitutes less than 50% of the compost by weight and is less than 1/4 inch in diameter.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11568 Materials utilization facility; reporting and compliance requirements; anaerobic digester; application; approval; fees.

Sec. 11568. (1) The operator of a materials utilization facility shall comply with all of the following:

(a) The operator shall operate the facility in a manner that does not create a nuisance or a hazard to the environment, natural resources, or the public health, safety, or welfare and shall keep the facility clean and free of litter.

(b) The operator shall comply with this act, including parts 31 and 55, and not create a facility as defined in section 20101.

(c) Unless exempted, the operator shall record the types and quantities in tons, or cubic yards for composting facilities, of material collected, the period of storage, the planning area of origin of the material, and where the material is transferred, processed, recycled, or disposed. The operator shall report to the department this information for each state fiscal year within 45 days after the end of the state fiscal year.

(d) On an annual basis, the weight of solid waste residuals shall be less than 15% of the total weight of material received unless the requirements of subdivision (b) of the definition of materials recovery facility in section 11504 are met.

(e) The facility shall be operated by personnel who are knowledgeable about the safe management of the types of material that are accepted and utilized.

(f) The operator shall limit access to the facility to a time when a responsible individual is on duty.

(g) The operator shall not store material overnight at the facility except in a secure location and with adequate containment to prevent any release of material.

(h) Within 1 year after material is collected by the facility, the material shall be transported from the facility for use in production of ultimate end use products or disposal. This subdivision does not apply to a composting facility.

(i) The material shall be protected, as appropriate for the type of material, from weather, fire, physical damage, and vandalism.

(j) Operations shall not attract or harbor rodents or other vectors.

(k) If salvaging is permitted, salvaged material shall be removed from the site at the end of each business day or salvaging shall be confined to a storage area that is approved by the department.

(*l*) Handling and processing equipment that is of adequate size, quantity, and operating condition shall be available as needed to ensure proper management of the facility. If the handling or processing equipment is inoperable for more than 72 hours, an alternative method that is approved by the department shall be used to manage the material.

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(m) Solid waste shall not be burned at the facility.

(2) The operator of a materials recovery facility, including an electronic waste processor not required to report under part 173, shall comply with both of the following:

(a) Beginning 1 year after the effective date of the amendatory act that added this section, a person shall not operate a materials recovery facility that sorts, bales, or processes more than 100 tons of material per year and does not have more than 100 tons of managed material on-site at any time unless the owner or operator has registered the materials recovery facility with the department. The application for registration shall be accompanied by a fee of $750.00. The term of the registration is 5 years.

(b) Beginning 2 years after the effective date of the amendatory act that added this section, a person shall not operate a materials recovery facility that has more than 100 tons of managed material on-site at any time unless the owner or operator has obtained approval of the materials recovery facility under a general permit, subject to subsections (6) to (9).

(3) The operator of a composting facility shall comply with all of the following:

(a) Beginning 1 year after the effective date of the amendatory act that added this section, a person shall not operate a small class 1 composting facility unless the owner or operator has notified the department. Notification shall be given upon initial operation and, subsequently, within 45 days after the end of each state fiscal year. The subsequent notices shall report the amount of compostable material managed at the facility during the state fiscal year.

(b) Beginning 1 year after the effective date of the amendatory act that added this section, a person shall not operate a medium class 1 composting facility unless the owner or operator has registered with the department. The application for registration shall be accompanied by a fee of $750.00. The term of the registration is 5 years.

(c) Beginning 2 years after the effective date of the amendatory act that added this section, a person shall not operate a class 2 composting facility or a large class 1 composting facility unless approved by the department under a general permit, subject to subsections (6) to (9).

(4) The operator of an anaerobic digester shall comply with all of the following:

(a) Beginning 1 year after the effective date of the amendatory act that added this section, a person shall not operate an anaerobic digester if the anaerobic digester manages source separated material generated on-site and if not more than 20% of the material managed is generated off-site unless the owner or operator has notified the department. Notification shall be given upon initial operation and, subsequently, within 45 days after the end of each state fiscal year. The subsequent notices shall report the amount of material managed at the anaerobic digester during the state fiscal year.

(b) Beginning 1 year after the effective date of the amendatory act that added this section, a person shall not operate an anaerobic digester if the anaerobic digester manages source separated material generated on-site and if more than 20% of the material managed is generated off-site unless the owner or operator has registered the anaerobic digester with the department. The application for registration shall be accompanied by a fee of $750.00. The term of the registration is 5 years.

(c) Beginning 2 years after the effective date of the amendatory act that added this section, a person shall not operate an anaerobic digester that manages only source separated material, manures, bedding, or crop residuals that are generated off-site unless approved by the department under a general permit, subject to subsections (6) to (9).

(d) Liquid digestate that is generated by the anaerobic digester shall be managed by 1 or more of the following:

(*i*) On-site treatment and discharge by a facility that is permitted under part 31 or is otherwise approved by the department.

(*ii*) Discharge, by sewer or pipeline, to an off-site publicly owned treatment works or other facility that is permitted under part 31 or is otherwise approved by the department.

(*iii*) Discharge, by pumping and hauling, to an off-site publicly owned treatment works or other facility that is permitted under part 31 or is otherwise approved by the department.

(*iv*) Covered storage, as approved by the department, on-site for not less than 180 days followed by land application under R 299.4111 of the MAC.

(5) Beginning 2 years after the effective date of the amendatory act that added this section, a person shall not operate an innovative technology facility unless approved by the department under a general permit, subject to subsections (6) to (9).

(6) If the owner or operator of a materials utilization facility in operation on the effective date of the amendatory act that added this section is required to obtain approval under a general permit and submits a complete application for approval by the deadline for obtaining approval, the owner or operator is considered to be in compliance with the approval requirement pending the department's approval or denial of the

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application.

(7) An application for approval under a general permit under this section shall be accompanied by a fee of $1,000.00. The department shall approve or deny the application within 90 days after receiving a complete application. If the application is denied, within 6 months after the denial, the applicant may resubmit the application together with additional information or corrections necessary to address the reason for denial, without paying an additional application fee.

(8) The term of approval under a general permit under this section is 5 years, except that the term of approval under an innovative technology general permit is 2 years.

(9) An approval under a general permit under this section may be renewed upon the submittal of a timely and sufficient application. To be considered timely and sufficient for purposes of section 91 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.291, an application for renewal of a general permit approval shall meet both of the following requirements:

(a) Contain the information as required by the applicable general permit application.

(b) Be received by the department not later than 90 days before the expiration of the preceding authorization.

(10) Fees collected under this subpart shall be deposited in the perpetual care account established under section 11550.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11569 Materials utilization facilities; site map and operations plan; final closure plan; notification requirements.

Sec. 11569. (1) With a registration or an application for approval under a general permit required under section 11568, the owner or operator of a materials utilization facility shall submit a site map and operations plan for the materials utilization facility. With an application for approval under a general permit, the owner or operator shall submit a final closure plan. Pending registration or authorization under a general permit of a materials utilization facility in operation on the effective date of the amendatory act that added this section, the department shall review the operating requirements for the facility. If the department determines upon review that the operating requirements do not comply with part 115, the department shall issue a schedule of remedial measures that will lead to compliance within a reasonable period of time not to exceed 1 year from the determination of noncompliance.

(2) If an increase in the volume or change in the type of material managed by a materials utilization facility triggers a requirement for notification, registration, or approval under a general permit, the owner or operator of the facility shall submit the notification, complete application for registration, or complete application for approval under a general permit within 90 days.

History: Add. 2022, Act 249, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

SUBPART 11
MATERIALS MANAGEMENT PLANS

324.11571 Approved materials management plan (MMP); county approval; notification of intent; requirements; time period; county approval agency (CAA); duties; electronic mail.

Sec. 11571. (1) The department shall ensure that each county has an approved materials management plan. The approved solid waste management plan in effect on the effective date of the amendatory act that added this section remains in effect until a materials management plan has been approved for the planning area under this subpart. Before a materials management plan is approved for a county pursuant to section 11575, a solid waste management plan may be amended pursuant to the procedures that applied under section 11533 and former sections 11534 to 11537a immediately before the effective date of the amendatory act that added this section.

(2) The planning area of a single MMP may include 2 or more counties if the county boards of commissioners of those counties agree to the joint exercise of the powers and performance of the duties under this subpart of the county boards of commissioners and of the county approval agencies. In addition, if the

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department is responsible for preparing the MMP for 2 or more counties under section 11575, the department may include those counties in the planning area of a single MMP and may exercise its powers and perform its duties under this subpart for those counties jointly.

(3) Multicounty MMPs are subject to the same procedure for approval as single-county MMPs, and each county board of commissioners shall take formal action on a multicounty MMP as appropriate. A multicounty MMP shall include a process to ensure that the requirements of section 11578 are met.

(4) All of the municipalities of a county shall be included in the planning area of a single MMP. However, a municipality located in 2 counties that are not in the same planning area may request that the entire municipality be included in the planning area for 1 of those counties and excluded from the planning area of the other county. A municipality that is adjacent to a county boundary may request that it be included in the planning area of the MMP for the adjacent county. A request under this subsection shall be submitted to and is subject to the approval of the county board of commissioners of each of the affected counties.

(5) Within 180 days after the effective date of the amendatory act that added this section, the department shall, in writing, request the county board of commissioners of each county to submit to the department a notice of intent to prepare an MMP. Within 180 days after the request is delivered, the county board of commissioners shall submit the notice of intent. If the county board of commissioners declines to prepare an MMP, all of the following apply:

(a) The county board of commissioners shall notify the municipalities in the county and the regional planning agency for the county of its decision.

(b) All the municipalities in the county, acting jointly, or the regional planning agency may, within the remaining balance of the 180-day time period applicable to the county board of commissioners, submit to the department a notice of intent to prepare an MMP.

(c) Upon request of the municipalities or regional planning agency, the department may extend the deadline under subdivision (b) to allow the municipalities and regional planning agency an opportunity to determine which will submit the notice of intent.

(6) If a notice of intent is not submitted to the department by the applicable deadline under subsection (5), the department may prepare an MMP for the county, subject to section 11575(11).

(7) A notice of intent under subsection (5) shall meet the following requirements, as applicable:

(a) State that the county board of commissioners, all the municipalities in the county, acting jointly, or the regional planning agency for the county, whichever submits the notice of intent, will prepare an MMP and will be the county approval agency.

(b) For a county with a population of less than 250,000, be accompanied by both of the following:

(*i*) Documentation that the county approval agency consulted with each adjacent county regarding the option of preparing a multicounty MMP pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(*ii*) Documentation of the outcome of the consultations, including a copy of any interlocal agreement identifying the process for creating a multicounty MMP.

(c) For a county with a population of 250,000 or more, be accompanied by both of the following:

(*i*) Documentation that the county approval agency submitted to the county board of commissioners of each adjacent county a request to respond within 30 days indicating the adjacent county's interest in the option of preparing a multicounty MMP pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(*ii*) Documentation of the outcome of the request, including a copy of any interlocal agreement identifying the process for creating a multicounty MMP.

(8) The submittal of a notice of intent under subsection (5) commences the running of a 3-year deadline for municipal approval of the MMP and submission of the MMP to the department under section 11575.

(9) Not more than 30 days after the submission of a notice of intent to the department under subsection (5), the CAA shall do all of the following:

(a) Submit a copy of the notice of intent to the legislative body of each municipality located within the planning area.

(b) Publish the notice of intent in a newspaper or by electronic media having major circulation or viewership in the planning area.

(c) Request publication of the notice of intent on websites of local units of government in the planning area and other multimedia outlets as appropriate.

(10) The CAA shall also do all of the following:

(a) Within 120 days after submitting the notice of intent, designate a planning agency and an individual within the DPA who shall serve as the DPA's contact person for the purposes of this subpart.

(b) Appoint a planning committee under section 11572.

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(c) Oversee the creation and implementation of the DPA's work program under section 11587(4).

(d) Upon request of the department, submit a report on progress in the preparation of the MMP.

(11) All submittals and notices under this section and sections 11572 to 11576 shall be in writing. A written notice may be given by electronic mail if the recipient has indicated that the recipient will receive notice by electronic mail and has specified the electronic mail address to which the notice is to be sent.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11572 Planning committee; membership; terms.

Sec. 11572. (1) Within 180 days after the CAA submits a notice of intent to the department under section 11571, the CAA shall appoint a planning committee. The planning committee is a permanent body. Initial planning committee members shall be appointed for 5-year terms. Their immediate successors shall be appointed for 2-, 3-, 4-, or 5-year terms such that, as nearly as possible, the same number are appointed for each term length. Subsequently, members shall be appointed for terms of 5 years. A member may be reappointed.

(2) If a vacancy occurs on the planning committee, the CAA shall make an appointment for the unexpired term in the same manner as the original appointment. The CAA may remove a member of the planning committee for incompetence, dereliction of duty, or malfeasance, misfeasance, or nonfeasance in office.

(3) The first meeting of the planning committee shall be called by the designated planning agency. At the first meeting, the planning committee shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. A majority of the members of the planning committee constitute a quorum for the transaction of business at a meeting of the planning committee. For the purposes of determining the quorum, the number of members of the planning committee is the number as established under subsection (4), excluding any unfilled vacancies created in the past 90 days. The affirmative vote of a majority of the number of members of the planning committee as established under subsection (4) is required for official action of the planning committee. A planning committee shall adopt procedures for the conduct of its business.

(4) A planning committee shall consist of the following members:

(a) A representative of a solid waste disposal facility operator that provides service in the planning area.

(b) A representative of a hauler that provides service in the planning area.

(c) A representative of a materials recovery facility operator that provides service in the planning area.

(d) A representative of a composting facility or anaerobic digester operator that provides service in the planning area.

(e) A representative of a waste diversion, reuse, or reduction facility operator that provides service in the planning area.

(f) A representative of an environmental interest group that has members residing in the planning area.

(g) An elected official of the county.

(h) An elected official of a township in the planning area.

(i) An elected official of a city or village in the planning area.

(j) A representative of a business that generates a managed material in the planning area.

(k) A representative of the regional planning agency whose territory includes the planning area.

(*l*) Any additional members appointed under subsections (5) or (6) or section 11578(3), as applicable.

(5) The CAA may appoint to the planning committee as an additional regular member 1 representative that does business in or resides in an adjacent municipality outside the planning area.

(6) CAAs preparing a multicounty MMP under section 11571 shall appoint a single planning committee. For each county, both of the following additional members may be appointed to the planning committee:

(a) An elected official of the county or a municipality in the planning area.

(b) A representative from a business that generates managed materials within the planning area.

(7) If the CAA has difficulty finding qualified individuals to serve on the planning committee, the department may approve a reduction in the number of members of the planning committee. However, at a minimum, the planning committee shall include all of the following members:

(a) A representative of the solid waste disposal industry that provides service in the planning area.

(b) A representative of a materials utilization facility that provides service in the planning area.

(c) Two individuals, each of whom is either a member of an environmental interest group who resides in the planning area or a representative of the regional planning agency.

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(d) An elected official of the county.
(e) An elected official of a township in the planning area.
(f) An elected official of a city or village in the planning area.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11573 Planning committee; responsibilities.

Sec. 11573. In addition to its other responsibilities under part 115, the planning committee shall do all of the following:

(a) Direct the DPA in the preparation of the MMP.
(b) Review and approve the DPA's work program under section 11587(4).
(c) Identify relevant local materials management policies and priorities.
(d) Ensure coordination in the preparation of the MMP.
(e) Advise counties and municipalities with respect to the MMP.
(f) Ensure that the DPA is fulfilling the requirements of part 115 as to both the content of the MMP and public participation. The planning committee shall notify the DPA of any deficiencies. If the deficiencies are not addressed by the DPA to the planning committee's satisfaction, the planning committee shall notify the CAA. If the deficiencies are not addressed by the CAA to the planning committee's satisfaction, the planning committee shall notify the department. The department shall address the deficiencies and may prepare the MMP under section 11575(11).

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11574 Designated planning agency (DPA); responsibilities; copies; revisions; formal action.

Sec. 11574. (1) In addition to its other responsibilities under part 115, a DPA shall do all of the following:

(a) Serve as the primary government resource in the planning area for information about the MMP and the MMP development process.
(b) Under the direction of the planning committee, prepare an MMP.
(c) During the preparation of an MMP, solicit the advice of and consult with all of the following:
(*i*) Periodically, the municipalities, appropriate organizations, and the private sector, including materials management facility operators, in the planning area.
(*ii*) The appropriate county or regional planning agency.
(*iii*) Counties adjacent to the planning area and municipalities in those counties.
(d) Not less than 10 days before each public meeting at which the DPA will discuss the MMP, give notice of the meeting to the chief elected official of each municipality within the planning area and any other person within the planning area that requests notice. The notice shall indicate as precisely as possible the subject matter being discussed.
(e) Obtain written approval of the MMP from the planning committee.
(f) Submit a copy of the MMP as approved by the planning committee to all of the following with a notice specifying the end of the public comment period under subdivision (h):
(*i*) The department.
(*ii*) The legislative body of each municipality within the planning area.
(*iii*) The legislative body of each county or municipality adjacent to the planning area that has requested the opportunity to review the MMP.
(*iv*) The regional planning agency for each county included in the planning area.
(g) Publish a notice in a newspaper or by electronic media having major circulation or viewership in the planning area. The notice shall indicate a location where copies of the proposed MMP are available for public inspection or copying at cost, specify the end of the public comment period under subdivision (h), and solicit public comment. Notice posted in electronic media shall remain posted until the end of the public comment period.
(h) Receive public comments on the MMP for not less than 60 days after the publication of the notice under subdivision (g).

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(i) During the public comment period under subdivision (h), conduct a public hearing on the MMP. Not less than 30 days before the hearing, the planning committee shall publish a notice of the hearing in a newspaper or by electronic media having major circulation or viewership in the planning area. Notice posted in electronic media shall remain posted until the end of the public hearing. The notice shall indicate a location where copies of the proposed MMP are available for public inspection or copying at cost and shall indicate the time and place of the public hearing. The same notice may be used to satisfy the requirements of this subdivision and subdivision (g). The planning committee shall submit to the department proof of publication of notice under this subdivision and subdivision (g).

(j) Submit to the planning committee a summary of the comments received during the public comment period.

(2) The DPA, or the department if the department prepares an MMP, shall use a standard format in preparing the MMP. The department shall prepare the standard format and provide a copy of the standard format to each DPA that the department knows will prepare an MMP. The department shall provide the standard format to any other person upon request.

(3) The planning committee shall consider the comment summary received from the DPA under subsection (1)(j) and may direct the DPA to revise the MMP. The DPA shall revise the MMP as directed by the planning committee. Not more than 30 days after the end of the public comment period, the DPA shall submit the proposed MMP, as revised, if applicable, to the planning committee.

(4) Not more than 30 days after the MMP is submitted to the planning committee under subsection (3), the planning committee shall take formal action on the MMP and, if the planning committee approves the MMP in compliance with section 11572(3), the DPA shall submit the MMP to the CAA.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11575 Approval or rejection of materials management plan; deadline and extension; implementation of final plan.

Sec. 11575. (1) Not more than 60 days after the MMP is submitted to the CAA under section 11574(4), the CAA shall approve or reject the MMP and notify the planning committee. A notice that the CAA rejects the MMP shall state the specific reasons for the rejection.

(2) Not more than 30 days after notice of the rejection of the MMP is sent under subsection (1), the planning committee may revise the MMP and submit the revised MMP to the CAA. After a revised MMP is timely submitted to the CAA under this subsection or the 30-day period expires and a revised MMP is not submitted, the CAA shall approve or reject the revised MMP or original MMP, respectively, and notify the planning committee.

(3) If the CAA rejects the MMP under subsection (2), the CAA shall prepare and approve an MMP, subject to the continued running of the 3-year period under section 11571(8).

(4) Not more than 10 business days after the CAA approves an MMP under subsection (1), (2), or (3), the DPA shall submit a copy of the MMP to the legislative body of each municipality located within the planning area.

(5) Not more than 120 days after the MMP is submitted to the legislative body of a municipality, the legislative body may approve or reject the MMP. The legislative body shall notify the DPA of an approval or rejection.

(6) Within 30 days after the deadline for municipal notification to the DPA under subsection (5), the DPA shall notify the department which municipalities timely approved the MMP, which timely rejected the MMP, and which did not timely notify the DPA of approval or rejection. The notice shall be accompanied by a copy of the MMP. If the MMP is not approved by at least 2/3 of the municipalities that timely notify the DPA of their approval or rejection under subsection (5), then the department shall proceed under subsection (7) or (9). If the MMP is approved by at least 2/3 of the municipalities that timely notify the DPA of their approval or rejection under subsection (5), then subsection (9) applies.

(7) The department may approve an extension of a deadline under subsections (2) to (6) if the extension is requested by the entity subject to the deadline within a reasonable time after the issues giving rise to the need for an extension arise.

(8) If the MMP is neither approved nor rejected by a deadline established in this subpart, subject to any extension under subsection (7), the MMP is considered automatically approved at that step in the approval process, and the approval process shall continue at the next step. This subsection does not apply to failure of

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an individual municipality to approve or disapprove the MMP under subsection (5).

(9) Within 180 days after the MMP is submitted to the department under subsection (6), the department shall approve or reject the MMP. The department shall approve the MMP if the MMP complies with part 115. If the department approves the MMP, the MMP is final. If the department rejects the MMP, subsection (11) applies.

(10) Before approving or rejecting an MMP under subsection (9), the department may return the MMP to the CAA with a written request for modifications necessary for approval under subsection (9) or to clarify the MMP. If the department returns the MMP for modifications, the running of the 180-day period under subsection (9) is tolled for 90 days or until the CAA responds to the department's request, whichever occurs first. If the CAA does not approve the modifications requested by the department, subsection (11) applies.

(11) Subject to subsection (9), if a CAA does not prepare an MMP or the MMP does not timely obtain an approval required by part 115, the department may prepare and approve an MMP for the county. An MMP prepared and approved by the department is final. Once the MMP is final, the county shall implement the MMP.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11576 Amending a materials management plan; procedures; permissible changes without amendment.

Sec. 11576. (1) Amendments to an MMP shall be made only as provided in subsection (2), (3), or (4).

(2) The department shall initiate the adoption of 1 or more amendments to MMPs if the department determines that the guidance provided by legislation, by this state's solid waste policy, or by reports and initiatives of the department has significantly changed the required contents of MMPs. The procedure for adopting an amendment to the MMP under this subsection is the same as the procedure for adoption of an initial MMP.

(3) The CAA may initiate 1 or more amendments to an MMP by filing a notice of intent with the department. Except as provided in subsection (4), the procedure for adopting an amendment to the MMP under this subsection is the same as the procedure for adoption of an initial MMP except as follows:

(a) The county submits a notice of intent on its own initiative rather than in response to a request from the department under section 11571.

(b) If the CAA rejects a revised amendment under section 11575(2), the amendment process terminates.

(c) Section 11575(11) does not apply. Instead, if any required approval is not timely granted, the amendment process terminates and the amendments are not adopted.

(4) If, after a notice of intent is filed under subsection (3), the department determines that the amendment will increase materials utilization or the recovery of managed material and complies with part 115, the department may authorize the CAA to amend the MMP. To amend the MMP, the CAA shall do all of the following:

(a) Submit a copy of the amendment to all of the following with a notice specifying the end of the public comment period under subdivision (c):

(*i*) The department.

(*ii*) The legislative body of each municipality within the planning area.

(*iii*) The legislative body of each county or municipality adjacent to the planning area that requested the opportunity to review the MMP under section 11574(1)(f).

(*iv*) The regional planning agency for each county included in the planning area.

(b) Publish a notice in a newspaper or by electronic media having major circulation or viewership in the planning area. The notice shall indicate a location where copies of the amendment are available for public inspection or copying at cost, specify the end of the public comment period under subdivision (c), and solicit public comment. Notice posted in electronic media shall remain posted until the end of the public comment period.

(c) Receive public comments on the amendment for not less than 30 days after the publication of the notice under subdivision (b).

(d) If timely requested, conduct a public meeting on the amendment during the public comment period under subdivision (c). Not less than 15 days before the public meeting, the planning committee shall publish a notice of the meeting in a newspaper or by electronic media having major circulation or viewership in the planning area. Notice posted in electronic media shall remain posted until the end of the public meeting. The

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notice shall indicate a location where copies of the proposed amendment are available for public inspection or copying at cost and shall indicate the time and place of the public meeting. The same notice may be used to satisfy the requirements of this subdivision and subdivision (b). The planning committee shall submit to the department proof of notice publication under this subdivision and subdivision (b).

(e) Prepare and consider a summary of the comments received during the public comment period. The CAA may revise the amendment in response to the public comments.

(f) Submit the amendment to the department in writing. The department shall provide the CAA with written approval of the submitted amendment.

(5) A county shall keep its MMP current. The following changes do not require an amendment if made in a supplement to the MMP provided for by the department under section 11574(2) for the purpose of changes not requiring an amendment:

(a) Transportation infrastructure.

(b) Population density.

(c) Materials management facility inventory.

(d) Local ordinances, to the extent that the ordinances regulate noise, litter, odor, dust, and other site nuisances at a materials management facility, in addition to landscaping, screening, other ancillary construction details, and hours of operation at a materials utilization facility; do not regulate the development or other operational aspects of a materials management facility or the location of a disposal area; and are not more stringent than the requirements of part 115.

(6) Changes made without amendment under subsection (5) shall be incorporated in the next amendment made under subsection (2) or (3).

(7) By every fifth anniversary date of the approval of the initial MMP, the CAA shall do both of the following:

(a) Obtain from the planning committee an MMP review. The CAA shall timely direct the planning committee to prepare and submit the review. The purpose of the review is to ensure that the MMP complies with part 115 and to evaluate the progress that has been made in meeting the MMP's materials management goals, including the benchmark recycling standards.

(b) After considering the MMP review under subdivision (a), submit to the department 1 of the following, as appropriate:

(*i*) A notice of intent to prepare an MMP amendment.

(*ii*) A statement indicating that an amendment is not needed to advance the materials management goals.

(8) The department may review an MMP periodically and determine if any amendments are necessary to comply with part 115. If the department determines that an amendment to a specific MMP is necessary, all of the following apply:

(a) The department, after notice and opportunity for a public hearing held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may withdraw approval of the MMP or the noncompliant portion of the MMP.

(b) The department shall establish a schedule for compliance with part 115.

(c) If the planning area does not amend its MMP within the schedule established under subdivision (b), the department shall amend the MMP to address the deficiencies.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11577 Materials management plan goals.

Sec. 11577. The goals of an MMP are all of the following:

(a) To prevent adverse effects on the environment, natural resources, or the public health, safety, or welfare resulting from improper collection, processing, recovery, or disposal of managed materials, including protection of surface water and groundwater, air, and land.

(b) To ensure managed materials are sustainably managed to achieve benefits to the economy, communities, and the environment.

(c) To ensure that all managed material generated in the planning area is collected and recovered, processed, or disposed at materials management facilities that comply with state statutes and rules or managed appropriately at out-of-state facilities.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

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Popular name: NREPA

Popular name: Solid Waste Act

324.11578 Materials management plan requirements.

Sec. 11578. (1) An MMP shall meet all of the following requirements:

(a) Include measurable, objective, and specific goals for the planning area for solid waste diversion from disposal areas, including, but not limited to, the municipal solid waste recycling rate goal under section 11507, the benchmark recycling standards, and the material utilization and reduction activities identified by the MMP.

(b) Include an implementation strategy for the county to demonstrate progress toward or meet the materials management goals by the time of the 5-year MMP review under section 11576(7). The implementation strategy shall include, but is not limited to, all of the following:

(*i*) How progress will be made to reduce the amount of organic material being disposed of, through food waste reduction, composting, and anaerobic digestion.

(*ii*) How progress will be made to reduce the amount of recyclable materials being disposed of, through increased recycling, including expanding convenient access and recycling at single and multifamily dwellings, businesses, and institutions.

(*iii*) A process whereby each of a planning area's materials utilization facilities are evaluated based on information contained in reports submitted to the department on an annual basis.

(*iv*) A description of the resources needed for meeting the materials management goals and how the development of necessary materials utilization facilities and activities will be promoted.

(*v*) A description of how the benchmark recycling standards will be met.

(*vi*) A timetable for implementation.

(c) Identify by type and tonnage all managed material generated in the planning area, to determine the planning area's managed material capacity need and all managed material that is included in the planning area's materials management goals. Amounts of material may be estimated using a formula provided by the department.

(d) Require that a proposed materials management facility meet the requirements of part 115 and be consistent with the materials management goals.

(e) To the extent practicable, identify and evaluate current and planned materials management infrastructure and systems that contribute or will contribute to meeting the goal under section 11577(c) and other options to meet that goal.

(f) Include an inventory of the names and addresses of all of the following, subject to subdivision (g):

(*i*) Existing disposal areas.

(*ii*) Materials utilization facilities that meet both of the following requirements:

(A) Are in operation on the effective date of the amendatory act that added this section.

(B) On the effective date of the amendatory act that added this section, comply with part 115 or, within 1 year after that date, are in the process of becoming compliant.

(*iii*) Waste diversion centers for which notification has been given to the department under section 11521b.

(g) Include a materials management facility in the inventory under subdivision (f) only if the owner or operator of the facility has submitted to the county a written acknowledgment indicating that the owner or operator is aware of the proposed inclusion of the facility in the MMP relative to the materials capacity needs identified in subdivision (c) and that the facility has the indicated capacity to manage the materials identified under subdivision (h). The MMP shall include a statement that the owner or operator of each facility listed in the MMP has submitted such an acknowledgment to the county. If the submitted acknowledgments do not document sufficient capacity for disposal or utilization of the identified managed materials to reach the MMP's materials management capacity requirements, including the materials management goals, the MMP shall identify specific strategies, including a schedule and approach to develop and fund capacity.

(h) Describe the facilities inventoried pursuant to subdivision (f), including a summary of the deficiencies, if any, of the facilities in meeting current materials management needs. The description shall, at a minimum, include all of the following information:

(*i*) The facility latitude and longitude.

(*ii*) The estimated facility acreage.

(*iii*) A description of the materials managed.

(*iv*) The processes for handling materials at the facility.

(*v*) The total authorized capacity of the facility.

(i) Ensure that the materials management facilities that are identified as necessary to be sited can be developed in compliance with state law pertaining to protection of the public health and the environment,

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considering the available land in the planning area and the technical feasibility of, and economic costs associated with, the facilities.

(j) Include an enforceable mechanism to meet the goal of section 11577(c) and otherwise implement the MMP, and identify the party responsible to ensure compliance with part 115. The MMP may contain a mechanism for the county and municipalities in the planning area to assist the department and the department of state police in conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing materials management services consistent with the MMP for the planning area.

(k) Calculate the municipal solid waste recycling rate for the planning area.

(*l*) Describe the materials management transportation infrastructure.

(m) Include current and projected population densities and identify population centers and centers of managed material generation in the planning area, using a formula provided by the department, to demonstrate that the capacity required for managed material is met.

(n) Describe the mechanisms by which municipalities in the planning area will ensure convenient recycling access, such as 1 or more of the following:

(*i*) Assignment of the responsibility to the county or an authority.

(*ii*) A franchise agreement.

(*iii*) An intergovernmental agreement.

(*iv*) Municipal service.

(*v*) Licensing under an ordinance.

(*vi*) A public-private partnership.

(o) Specify a recommended minimum level of recycling service that incorporates the access requirements of the benchmark recycling standards. The county or a municipality within the planning area may, through an appropriate enforceable mechanism, require haulers operating in its jurisdiction to provide the recommended level or a different minimum level of recycling service.

(p) Identify the DPA and the entity or entities responsible for each of the following and document the appropriateness of the DPA and other identified entities to carry out their respective responsibilities:

(*i*) Implementing the access requirements of the benchmark recycling standards.

(*ii*) Identifying the materials utilization framework and the achievement of the materials management goals.

(*iii*) Otherwise monitoring, implementing, and enforcing the MMP and providing any required reports to the department.

(*iv*) Administering the funding mechanisms identified in section 11581 that will be used to implement the MMP.

(*v*) Ensuring compliance with part 115.

This state may serve as a responsible party under this subdivision on behalf of a municipality if the municipality is under a financial consent order or in receivership.

(q) With respect to education and outreach for residents and businesses in the planning area, do both of the following:

(*i*) Provide a strategic plan that identifies roles, responsibilities, funding sources, and methods for persons providing the education and outreach services.

(*ii*) Describe the county or regional role in providing continuing recycling education. The recycling education shall include, but is not limited to, providing a recycling guide, in hard copy at select public locations and electronically on a cell phone-friendly website. The recycling guide shall do all of the following:

(A) Identify recycling locations.

(B) Identify recyclable materials.

(C) Explain how to prepare recyclable materials for collection.

(D) Describe other best practices.

(E) Include a listed telephone number for additional information.

(r) Include a siting process under section 11579 and a copy of any ordinance, law, rule, or regulation of a municipality, county, or governmental authority within the planning area that applies to the siting process.

(s) Take into consideration the MMPs of counties adjacent to the planning area as they relate to the planning area's needs.

(t) Document all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector in the preparation of the MMP.

(2) An MMP may include management plans for debris from environmental damage, for debris from disasters, or for other materials, such as construction or demolition waste, not otherwise required to be

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covered by an MMP. A management plan for debris from disasters in an MMP may include recommendations for incorporation of disaster debris management plans into municipal, county, or regional emergency management plans.

(3) If a solid waste landfill is proposed to be developed in the planning area within 2 miles of a municipality that is located adjacent to the planning area, or if a solid waste processing and transfer facility or materials utilization facility is proposed to be developed in the planning area within 1 mile of such a municipality, both of the following apply:

(a) The CAA shall notify the legislative body of the adjacent municipality of the proposed development in writing. The notice shall include a copy of this subsection.

(b) The planning committee shall provide the adjacent municipality an opportunity to comment on the proposed development.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11579 Materials management plan; siting process; exception.

Sec. 11579. (1) An MMP shall include a siting process with a set of minimum criteria for the purposes of section 11585(3).

(2) A materials utilization facility need not be sited if the CAA or DPA demonstrates to the department that the planning area has available capacity sufficient to address the managed materials identified by the MMP as being generated in the planning area.

(3) The siting process shall not include siting criteria that are more restrictive than state law if a materials utilization facility could not be developed anywhere in the planning area under those criteria.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11580 Preparation of materials management plan by the department; requirements.

Sec. 11580. (1) In addition to the other requirements of part 115, if the county board of commissioners, municipalities, and regional planning agency do not timely submit a notice of intent to prepare an MMP and the department prepares an MMP as authorized under section 11571, the MMP prepared by the department shall comply with all of the following:

(a) Automatically find all materials utilization facilities or solid waste processing and transfer facilities that are exempt from permit and license requirements, that comply with local zoning requirements, and that are identified in the MMP to be consistent with the MMP.

(b) Not allow approval of additional solid waste landfill disposal capacity unless the county board of commissioners has made the demonstration required under section 11509(9).

(c) Require all haulers serving the planning area to provide recycling access consistent with the access requirements of the benchmark recycling standards.

(2) If the department prepares an MMP, the MMP need not contain a requirement for a proposed materials management facility to meet additional siting criteria or obtain host community approval under section 11585(3)(c).

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11581 Implementation of materials management plan; funding mechanisms.

Sec. 11581. (1) In addition to the materials management planning grants under section 11587, a municipality or county may fund the implementation of an MMP through any of the following methods, if applicable and to the extent authorized by the mechanism:

(a) A millage under 1917 PA 298, MCL 123.261.

(b) A municipal utility service fee.

(c) Special assessments under 1957 PA 185, MCL 123.731 to 123.786; 1954 PA 188, MCL 41.721 to 41.738; or the township and village public improvement and public service act, 1923 PA 116, MCL 41.411 to

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41.419.

(d) A service provider franchise agreement.

(e) Hauler licensing fees.

(f) A voter-approved millage.

(g) A general fund appropriation.

(h) Supplemental fees for service.

(i) A surcharge under section 8a of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.508a.

(j) A landfill surcharge.

(k) A flow control fee structure.

(*l*) Any other lawful mechanism.

(2) Appropriate uses for funding described in subsection (1) may include, but are not limited to, the following:

(a) Recycling programs.

(b) Organic materials management.

(c) Education and outreach regarding recycling and materials utilization.

(d) Relevant market development.

(e) Materials reduction and reuse initiatives.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11582 County approval agency; certification of materials management goals; eligibility for assistance.

Sec. 11582. (1) The CAA shall certify to the department the CAA's progress toward meeting all components of its materials management goals. The first certification shall be submitted by the first June 30 that is more than 2 years after the department's approval of the initial MMP or MMP amendment. Subsequent certifications shall be submitted by June 30 every 2 years after the first certification.

(2) If a county does not make progress toward meeting its benchmark recycling standards and ultimately the municipal solid waste recycling rate goal under section 11507, the county is ineligible for assistance from the recycling access and voluntary participation program under section 11550(9) until both of the following requirements are met:

(a) The county adopts an ordinance or other enforceable mechanism to ensure that any solid waste hauler providing curbside solid waste hauling service also offers curbside recycling service to dwellings of 4 or fewer units in the planning area.

(b) Any remaining deficiencies in a county's progress toward meeting its materials management goals are addressed.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11583 Enforceability of certain local and state laws.

Sec. 11583. An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute is not enforceable if any of the following apply:

(a) It conflicts with part 115.

(b) It prohibits or regulates the location or development of a materials management facility and is not part of or not consistent with the materials management plan for the county.

(c) It violates section 207 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3207, with respect to a materials management facility.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11584 Flow of solid waste or managed material; control requirements; departmental

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duties; database.

Sec. 11584. (1) A county, municipality, authority, or regional planning agency that owns or operates a materials management facility may adopt requirements controlling the flow of solid waste or managed material to the materials management facility, to the extent allowed by the interstate commerce clause, clause 3 of section 8 of article I of the Constitution of the United States.

(2) The county board of commissioners may ensure that the necessary materials management authorizations or fees or any other regulatory ordinances or agreements needed to achieve the materials management goals are in effect.

(3) The department shall do all of the following:

(a) Maintain a database for materials management facilities to report to the department information, as determined by the department, required under part 115.

(b) Provide materials management facilities with instructions necessary to add information to the database.

(c) Provide CAAs access to information in the database.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11585 Disposal area or materials utilization facility; consistency with materials management plan; captive type III landfill; independent evaluation; coal ash.

Sec. 11585. (1) If a disposal area that does not require a license or permit under part 115 or a materials utilization facility is proposed to be located in a local unit of government that has a zoning ordinance, the disposal area or materials utilization facility is consistent with the MMP if it complies with the zoning ordinance and the owner or operator of the proposed disposal area or materials utilization facility presents documentation to the department and the CAA from the local unit of government exercising zoning authority demonstrating that the disposal area complies with local zoning.

(2) A disposal area or materials utilization facility is automatically consistent with the MMP if the specific facility or type of facility is identified in the MMP as being automatically consistent.

(3) A materials management facility that is not automatically consistent with the MMP is considered consistent if, as determined by the CAA or other entity specified by the MMP and by the department, all of the following requirements are met:

(a) The MMP authorizes that type of materials management facility to be sited by following the siting procedure and meeting the minimum siting criteria included in the MMP under section 11579, or the facility is a captive type III landfill and both of the following apply:

(*i*) The landfill accepts only waste generated by the owner or operator of the landfill.

(*ii*) The landfill met local land use requirements when initially sited.

(b) The materials management facility follows the siting procedure and meets minimum siting criteria in the MMP.

(c) The materials management facility meets either of the following requirements:

(*i*) Has host community approval.

(*ii*) Meets any supplemental siting criteria in the MMP for materials management facilities that do not have host community approval.

(4) The CAA or other entity specified by the MMP shall promptly notify the owner or operator of the materials management facility in writing of its determination under subsection (3) whether the materials management facility is consistent with the MMP.

(5) The department shall determine whether a materials management facility is consistent with the MMP through an independent evaluation as part of the review process for an application for a registration, for approval under a general permit, or for a construction permit or operating license. The applicant for a permit for a materials management facility shall include in the application documentation of the facility's consistency with the MMP.

(6) A landfill, other than a captive type III landfill, or a municipal solid waste incinerator need not be sited if the CAA demonstrates to the department through its materials management plan that the planning area has at least 66 months of available solid waste disposal capacity.

(7) A captive facility that is an existing coal ash landfill or existing coal ash impoundment is considered consistent with and included in the MMP if the disposal area continues to accept waste generated only by the owner of the disposal area and meets either or both of the following requirements:

(a) Was issued a construction permit and licensed for operation under this part.

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(b) Met local land use law requirements when initially sited or constructed.

(8) A coal ash impoundment permitted, licensed, or otherwise in existence on the date of approval of the solid waste management plan for the planning area where the coal ash impoundment is located shall be considered to be consistent with the plan and included in the plan.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11586 State solid waste management plan.

Sec. 11586. (1) The state solid waste management plan consists of the state solid waste plan and all MMPs approved by the department.

(2) The department shall consult and assist in the preparation and implementation of MMPs.

(3) The department may undertake or contract for studies or reports necessary or useful in the preparation of the state solid waste management plan.

(4) The department shall promote policies that encourage resource recovery and establishment of materials utilization facilities.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

324.11587 Materials management planning grant program.

Sec. 11587. (1) Subject to appropriations, a materials management planning grant program is established to provide grants, to be known as materials management planning grants, to county boards of commissioners for the use of CAAs. If a county board of commissioners is not the CAA, the county board of commissioners shall make awarded grant money available to the CAA within 60 days after receipt. The department may promulgate rules for the implementation of the grant program. Grant funds shall be awarded pursuant to a grant agreement. If the department prepares the MMP, grant funds appropriated for local planning may be used by the department for MMP preparation.

(2) Grants shall be used for administrative costs for preparing, implementing, and maintaining an MMP, including, but not limited to, the following:

(a) Development of a work program as described in subsection (4)(b) and R 299.4704 and R 299.4705 of the MAC, including a prior work program.

(b) Developing an initial MMP and amending the MMP.

(c) Ensuring public participation.

(d) Determining whether new materials management facilities are consistent with the MMP.

(e) Collecting and submitting data for the database utilized by the department for materials management facility reporting purposes, and evaluating data in the database for the planning area.

(f) Recycling education and outreach.

(g) Recycling and materials utilization programs.

(h) Preparation of required reports to the department.

(i) MMP implementation.

(j) Efforts to obtain support for the MMP and planning process from local units of government.

(3) Materials management planning grants shall cover 100% of eligible costs up to the authorized maximum amount as specified by rule.

(4) Materials management planning grants shall be awarded annually. To be eligible for grants in the first 3 years of the grant program, the CAA must do both of the following:

(a) Submit a notice of intent to prepare an MMP under section 11571.

(b) Within 180 days after submitting the notice of intent to prepare an MMP, submit to and obtain department approval of a work program for preparing the MMP. The work program shall be prepared by the DPA and reviewed and approved by the planning committee. The work program shall describe the activities for developing and implementing the MMP and associated costs to be covered by the county and the grant.

(5) In each of the first 3 years of the grant program, the amount of a grant shall equal the sum of the following:

(a) $60,000.00 for each county in the planning area.

(b) An additional $10,000.00 for each county in the planning area if the planning area includes more than 1

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county.

(c) Fifty cents for each resident of the planning area, up to 600,000 residents.

(6) To be eligible for grants in the fourth and subsequent years of the grant program, the county must have an approved work program under subsection (4) or an approved MMP. In the fourth and subsequent years of the grant program, the amount of a grant to the CAA shall equal the sum of the following, as applicable:

(a) $60,000.00 for each county in the planning area.

(b) An additional $10,000.00 for each county in the planning area if the planning area includes more than 1 county and the CAAs were responsible for preparing the MMP.

(7) A grantee under this section shall keep records, subject to audit, documenting use of the grant for MMP development and implementation.

(8) For the purpose of determining the number of counties in a planning area under this section, the inclusion or exclusion of a municipality under section 11571(4) shall not be considered.

History: Add. 2022, Act 250, Eff. Mar. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Solid Waste Act

PART 117

SEPTAGE WASTE SERVICERS

324.11701 Definitions.

Sec. 11701. As used in this part:

(a) "Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown, including land used or suitable for use as a range or pasture; a sod farm; or a Christmas tree farm.

(b) "Certified health department" means a city, county, or district department of health certified under section 11716.

(c) "Cesspool" means a cavity in the ground that receives waste to be partially absorbed directly or indirectly by the surrounding soil.

(d) "Department" means the department of environmental quality or its authorized agent.

(e) "Director" means the director of the department of environmental quality or his or her designee.

(f) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar storage or treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar facility that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant waste.

(g) "Domestic sewage" means waste and wastewater from humans or household operations.

(h) "Domestic treatment plant septage" means biosolids generated during the treatment of domestic sewage in a treatment works and transported to a receiving facility or managed in accordance with a residuals management program approved by the department.

(i) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(j) "Food establishment septage" means material pumped from a grease interceptor, grease trap, or other appurtenance used to retain grease or other fatty substances contained in restaurant wastes and that is blended into a uniform mixture, consisting of not more than 1 part of that restaurant-derived material per 3 parts of domestic septage prior to land application or is disposed of at a receiving facility.

(k) "Fund" means the septage waste program fund created in section 11717.

(*l*) "Governmental unit" means a county, township, municipality, or regional authority.

(m) "Incorporation" means the mechanical mixing of surface-applied septage waste with the soil.

(n) "Injection" means the pressurized placement of septage waste below the surface of soil.

(o) "Operating plan" means a plan developed by a receiving facility for receiving septage waste that specifies at least all of the following:

(*i*) Categories of septage waste that the receiving facility will receive.

(*ii*) The receiving facility's service area.

(*iii*) The hours of operation for receiving septage waste.

(*iv*) Any other conditions for receiving septage waste established by the receiving facility.

(p) "Pathogen" means a disease-causing agent. Pathogen includes, but is not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

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(q) "Peace officer" means a sheriff or sheriff's deputy, a village or township marshal, an officer of the police department of any city, village, or township, any officer of the Michigan state police, any peace officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, or any conservation officer appointed by the department or the department of natural resources under section 1606.

(r) "Portable toilet" means a receptacle for human waste temporarily in a location for human use.

(s) "Receiving facility" means a structure that is designed to receive septage waste for treatment at a wastewater treatment plant or at a research, development, and demonstration project authorized under section 11511b to which the structure is directly connected, and that is available for that purpose as provided for in an ordinance of the local unit of government where the structure is located or in an operating plan. Receiving facility does not include either of the following:

(*i*) A septic tank.

(*ii*) A structure or a wastewater treatment plant where the disposal of septage waste is prohibited by order of the department under section 11708 or 11715b.

(t) "Receiving facility service area" or "service area" means the territory for which a receiving facility has the capacity and is available to receive and treat septage waste, except that the geographic service area of a receiving facility shall not extend more than 25 radial miles from the receiving facility.

(u) "Sanitary sewer cleanout septage" means sanitary sewage or cleanout residue removed from a separate sanitary sewer collection system that is not land applied and that is transported by a vehicle licensed under this part elsewhere within the same system or to a receiving facility that is approved by the department.

(v) "Septage waste" means the fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a wastewater system. Septage waste consists only of food establishment septage, domestic septage, domestic treatment plant septage, or sanitary sewer cleanout septage, or any combination of these.

(w) "Septage waste servicing license" means a septage waste servicing license as provided for under sections 11703 and 11706.

(x) "Septage waste vehicle" means a vehicle that is self-propelled or towed and that includes a tank used to transport septage waste. Septage waste vehicle does not include an implement of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(y) "Septage waste vehicle license" means a septage waste vehicle license as provided for under sections 11704 and 11706.

(z) "Septic tank" means a septic toilet, chemical closet, or other enclosure used for the decomposition of domestic sewage.

(aa) "Service" or "servicing" means cleaning, removing, transporting, or disposing, by application to land or otherwise, of septage waste.

(bb) "Site" means a location or locations on a parcel or tract, as those terms are defined in section 102 of the land division act, 1967 PA 288, MCL 560.102, proposed or used for the disposal of septage waste on land.

(cc) "Site permit" means a permit issued under section 11709 authorizing the application of septage waste to a site.

(dd) "Storage facility" means a structure that receives septage waste for storage but not for treatment.

(ee) "Tank" means an enclosed container placed on a septage waste vehicle to carry or transport septage waste.

(ff) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan Administrative Code.

(gg) "Type III marine sanitation device" means that term as defined in 33 CFR 159.3.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005;—Am. 2016, Act 294, Eff. Jan. 2, 2017;—Am. 2018, Act 271, Eff. Sept. 27, 2018.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.11702 Septage waste licensing; requirement.

Sec. 11702. (1) A person shall not engage in servicing or contract to engage in servicing except as authorized by a septage waste servicing license and a septage waste vehicle license issued by the department pursuant to part 13. A person shall not contract for another person to engage in servicing unless the person

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who is to perform the servicing has a septage waste servicing license and a septage waste vehicle license.

(2) The septage waste servicing license and septage waste vehicle license requirements provided in this part are not applicable to a publicly owned receiving facility subject to a permit issued under part 31 or section 11511b.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

Popular name: Act 451

Popular name: NREPA

324.11703 Septage waste servicing license; application; eligibility; records.

Sec. 11703. (1) An application for a septage waste servicing license shall include all of the following:

(a) The applicant's name and mailing address.

(b) The location or locations where the business is operated, if the applicant is engaged in the business of servicing.

(c) Written approval from all receiving facilities where the applicant plans to dispose of septage waste.

(d) The locations of the sites where the applicant plans to apply septage waste to land and, for each proposed site, either proof that the applicant owns the proposed site or written approval from the site owner.

(e) A written plan for disposal of septage waste obtained in the winter, if the disposal will be by a method other than delivery to a receiving facility or, subject to section 11711, application to land.

(f) Written proof of satisfaction of the continuing education requirements of subsection (2), if applicable.

(g) Any additional information pertinent to this part required by the department.

(h) Payment of the septage waste servicing license fee as provided in section 11717b.

(2) Beginning January 1, 2007, a person is not eligible for an initial servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period before applying for the license. Beginning January 1, 2007 and until December 31, 2009, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 10 hours of continuing education during the 2-year period preceding the issuance of the license. Beginning January 1, 2010, a person is not eligible to renew a servicing license unless the person has successfully completed not less than 30 hours of continuing education during the 5-year period preceding the issuance of the license.

(3) Before offering or conducting a course of study represented to meet the educational requirements of subsection (2), a person shall obtain approval from the department. The department may suspend or revoke the approval of a person to offer or conduct a course of study to meet the requirements of subsection (2) for a violation of this part or of the rules promulgated under this part.

(4) If an applicant or licensee is a corporation, partnership, or other legal entity, the applicant or licensee shall designate a responsible agent to fulfill the requirements of subsections (2) and (3). The responsible agent's name shall appear on any license or permit required under this part.

(5) A person engaged in servicing shall maintain at all times at his or her place of business a complete record of the amount of septage waste that the person has transported or disposed of, the location at which septage waste was disposed of, and any complaints received concerning disposal of the septage waste. The person shall also report this information to the department on an annual basis in a manner required by the department.

(6) A person engaged in servicing shall maintain records required under subsection (5) or 40 CFR part 503 for at least 5 years. A person engaged in servicing or an individual who actually applies septage waste to land, as applicable, shall display these records upon the request of the director, a peace officer, or an official of a certified health department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11704 Septage waste vehicle license; application; display; transportation of hazardous waste or liquid industrial by-product.

Sec. 11704. (1) An application for a septage waste vehicle license shall include all of the following:

(a) The model and year of the septage waste vehicle.

(b) The capacity of any tank used to remove or transport septage waste.

(c) The name of the insurance carrier for the septage waste vehicle.

(d) Whether the septage waste vehicle or any other vehicle owned by the person applying for the septage waste vehicle license will be used at any time during the license period for land application of septage waste.

(e) Any additional information pertinent to this part required by the department.

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(f) A septage waste vehicle license fee as provided by section 11717b for each septage waste vehicle.

(2) A person who is issued a septage waste vehicle license shall carry a copy of that license at all times in each vehicle that is described in the license and display the license upon the request of the department, a peace officer, or an official of a certified health department.

(3) A septage waste vehicle shall not be used to transport hazardous waste regulated under part 111 or liquid industrial by-product regulated under part 121, without the express written permission of the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.11705 Septage waste vehicle, tank, and accessory equipment; requirements.

Sec. 11705. A tank upon a septage waste vehicle shall be closed in transit to prevent the release of septage waste and odor. The septage waste vehicle and accessory equipment shall be kept clean and maintained in a manner that prevents environmental damage or harm to the public health.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11706 Review of applications; providing health department with copies of application materials; investigations; issuance of license; license nontransferable; duration of license.

Sec. 11706. (1) Upon receipt of an application for a septage waste servicing license or a septage waste vehicle license, the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, the department shall promptly notify the applicant of the deficiencies. If the department determines that the application is complete, the department shall promptly provide the appropriate certified health department with a copy of all application materials. Upon receipt of the application materials, a certified health department shall conduct investigations necessary to verify that the sites, the servicing methods, and the septage waste vehicles are in compliance with this part. If so, the department shall approve the application and issue the license applied for in that application. If a certified health department does not exist, the department may perform the functions of a certified health department as necessary.

(2) A septage waste servicing license is not transferable and is valid, unless suspended or revoked, for 5 years. A septage waste vehicle license is not transferable and is valid, unless suspended or revoked, for the same 5-year period as the licensee's septage waste servicing license.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11707 Display on both sides of septage waste vehicle.

Sec. 11707. Each septage waste vehicle for which a septage waste vehicle license has been issued shall display on both sides of the septage waste vehicle in letters not less than 2 inches high the words "licensed septage hauler", the vehicle license number issued by the department, and a seal furnished by the department that designates the year the septage waste vehicle license was issued.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11708 Disposal of septage waste at receiving facility; fee; order prohibiting operation of wastewater treatment plant.

Sec. 11708. (1) Subject to subsection (2), if a person is engaged in servicing in a receiving facility service area, that person shall dispose of the septage waste at that receiving facility or any other receiving facility within whose service area the person is engaged in servicing.

(2) Subsection (1) does not apply to a person engaged in servicing who owns a storage facility with a capacity of 50,000 gallons or more if the storage facility was constructed, or authorized by the department to be constructed, before the location where the person is engaged in servicing was included in a receiving facility service area under an operating plan approved under section 11715b.

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(3) A receiving facility may charge a fee for receiving septage waste. The fee shall not exceed the actual costs of operating the receiving facility including the reasonable cost of doing business as defined by common accounting practices.

(4) The department may issue an order prohibiting the operation of a wastewater treatment plant or structure as a receiving facility because of excessive hydraulic or organic loading, odor problems, or other environmental or public health concerns.

(5) A person shall not dispose of septage waste at a wastewater treatment plant or structure if the operation of that wastewater treatment plant or structure as a receiving facility is prohibited by an order issued under subsection (4) or section 11715b.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 546, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: NREPA

324.11709 Disposal of septage waste on land; permit required; additional information; notice; renewal; revocation of permit.

Sec. 11709.

(1) A person shall not dispose of septage waste on land except as authorized by a site permit for that site issued by the department pursuant to part 13. A person shall apply for a site permit using an application form provided by the department. The application shall include all of the following for each site:

(a) A map identifying the site from a county land atlas and plat book.

(b) The site location by latitude and longitude.

(c) The name and address of the land owner.

(d) The name and address of the manager of the land, if different than the owner.

(e) Results of a soil fertility test performed within 1 year before the date of the application for a site permit including analysis of a representative soil sample of each location constituting the site as determined by the bray P1 (bray and kurtz P1), or Mehlich 3 test, for which procedures are described in the publication entitled "Recommended chemical soil test procedures for the north central region". The department shall provide a copy of this publication to any person upon request at no cost. The applicant shall also provide test results from any additional test procedures that were performed on the soil.

(f) Other site specific information necessary to determine whether the septage waste disposal will comply with state and federal law.

(g) Payment of the site permit fee as provided under section 11717b.

(2) Upon receipt of an application under subsection (1), the department shall review the application to ensure that it is complete. If the department determines that the application is incomplete, it shall promptly notify the applicant of the deficiencies.

(3) An applicant for a site permit shall simultaneously send a notice of the application, including all the information required by subsection (1)(a) to (d), to all of the following:

(a) The certified health department having jurisdiction.

(b) The clerk of the city, village, or township where the site is located.

(c) Each person who owns a lot or parcel that is contiguous to the lot, parcel, or tract on which the proposed site is located or that would be contiguous except for the presence of a highway, road, or street.

(d) Each person who owns a lot or parcel that is within 150 feet of a location where septage waste is to be disposed of by injection or 800 feet of a location where septage waste is to be disposed of by surface application.

(4) If the department finds that the applicant is unable to provide notice as required in subsection (3), the department may waive the notice requirement or allow the applicant to use a substitute means of providing notice.

(5) The department shall issue a site permit if all the requirements of this part and federal law are met. Otherwise, the department shall deny the site permit.

(6) A site permit is not transferable and is valid, unless suspended or revoked, until the expiration of the permittee's septage waste servicing license. A site permit may be revoked by the department if the septage waste land application or site management is in violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11710 Requirements to which permit subject.

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Sec. 11710. A site permit is subject to all of the following requirements:

(a) The septage waste disposed of shall be applied uniformly at agronomic rates.

(b) Not more than 1 person licensed under this part may use a site for the disposal of septage waste during any year.

(c) Septage waste may be disposed of by land application only if the horizontal distance from the applied septage waste and the features listed in subparagraphs (*i*) to (*ix*) equals or exceeds the following isolation distances:

		TYPE OF APPLICATION	
		SURFACE	INJECTION
(*i*)	Type I public water supply wells	2,000 feet	2,000 feet
(*ii*)	Type IIa public water supply wells	2,000 feet	2,000 feet
(*iii*)	Type IIb public water supply wells	800 feet	800 feet
(*iv*)	Type III public water supply wells	800 feet	150 feet
(*v*)	Private drinking water wells	800 feet	150 feet
(*vi*)	Other water wells	800 feet	150 feet
(*vii*)	Homes or commercial buildings	800 feet	150 feet
(*viii*)	Surface water	500 feet	150 feet
(*ix*)	Roads or property lines	200 feet	150 feet

(d) Septage waste disposed of by land application shall be disposed of either by surface application, subject to subdivision (g), or injection.

(e) If septage waste is applied to the surface of land, the slope of that land shall not exceed 6%. If septage waste is injected into land, the slope of that land shall not exceed 12%.

(f) Septage waste shall not be applied to land unless the water table is at least 30 inches below any applied septage waste.

(g) If septage waste is applied to the surface of the land, 1 of the following requirements is met:

(*i*) The septage waste shall be mechanically incorporated within 6 hours after application.

(*ii*) The septage waste shall have been treated to reduce pathogens prior to land disposal by aerobic or anaerobic digestion, lime stabilization, composting, air drying, or other process or method approved by the department and, if applied to fallow land, is mechanically incorporated within 48 hours after application, unless public access to the site is restricted for 12 months and no animals whose products are consumed by humans are allowed to graze on the site for at least 1 month following disposal.

(h) Septage waste shall be treated to reduce pathogens by composting, heat drying or treatment, thermophilic aerobic digestion, or other process or method approved by the department prior to disposal on lands where crops for direct human consumption are grown, if contact between the septage waste and the edible portion of the crop is possible.

(i) Vegetation shall be grown on a septage waste disposal site within 1 year after septage waste is disposed of on that site.

(j) Food establishment septage shall not be applied to land unless it has been combined with other septage waste in no greater than a 1 to 3 ratio and blended into a uniform mixture.

(k) The permittee shall not apply septage waste to a location on the site unless the permittee has conducted a soil fertility test of that location as described in section 11709 within 1 year before the date of the land application. The permittee shall not apply food establishment septage to a location on the site unless the permittee has conducted testing of soil in that location within 1 year before the date of application in accordance with requirements in 40 CFR 257.3 to 257.5 or a single test of mixed septage waste contained in a storage facility.

(*l*) Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, before land application, domestic septage shall be screened through a screen of not greater than 1/2-inch mesh or through slats separated by a gap of not greater than 3/8 inch. Screenings shall be handled as solid waste under part 115. Instead of screening, the domestic septage may be processed through a sewage grinder designed to not pass solids larger than 1/2 inch in diameter.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11711 Surface application of septage waste to frozen ground; requirements.

Sec. 11711. Beginning 2 years after the effective date of the 2004 amendatory act that amended this section, a person shall not surface apply septage waste to frozen ground. Before that time, a person shall not

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surface apply septage waste to frozen ground unless all of the following requirements are met:

(a) Melting snow or precipitation does not result in the runoff of septage waste from the site.

(b) The slope of the land is less than 2%.

(c) The pH of septage waste is raised to 12.0 (at 25 degrees Celsius) or higher by alkali addition and, without the addition of more alkali, remains at 12.0 or higher for 30 minutes. Other combinations of pH and temperature may be approved by the department.

(d) The septage waste is mechanically incorporated within 20 days following the end of the frozen ground conditions.

(e) The department approves the surface application and subsequent mechanical incorporation.

(f) Less than 10,000 gallons per acre are applied to the surface during the period that the septage waste cannot be mechanically incorporated due to frozen ground.

(g) The septage waste is applied in a manner that prevents the accumulation and ponding of the septage waste.

(h) Any other applicable requirement under this part or federal law is met.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11712 Applicability of federal regulations.

Sec. 11712. Persons subject to this part shall comply with applicable provisions of subparts A, B, and D of part 503 of title 40 of the code of federal regulations.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11713 Inspection of disposal site.

Sec. 11713. (1) At any reasonable time, a representative of the department may enter in or upon any private or public property for the purpose of inspecting and investigating conditions relating to compliance with this part. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(2) The department shall inspect septage waste vehicles at least annually.

(3) The department shall inspect a site at least annually.

(4) The department shall inspect a receiving facility within 1 year after that receiving facility begins operation and at least annually thereafter.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11714 Prohibited disposition of septage waste into certain bodies of water.

Sec. 11714. A person shall not dispose of septage waste directly or indirectly in a lake, pond, stream, river, or other body of water.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11715 Preemption; duty of governmental unit to make available public septage waste receiving facility; posting of surety.

Sec. 11715. (1) This part does not preempt an ordinance of a governmental unit that does any of the following:

(a) Prohibits the application of septage waste to land within that governmental unit.

(b) Otherwise imposes stricter requirements than this part. This subdivision applies only if all of the following requirements are met:

(*i*) The receiving facility was operating before the date 2 years after the effective date of the amendatory act that added this subdivision.

(*ii*) The receiving facility's effluent is discharged, either directly or through a sewer system, to a wastewater treatment plant that was operating before the effective date of the amendatory act that added this subdivision.

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(*iii*) The receiving facility was constructed, or the receiving facility and a wastewater treatment plant of which the receiving facility is part were improved, at a cost of $6,000,000.00 or more.

(*iv*) There is outstanding indebtedness for the construction or improvement described in subparagraph (*iii*) consisting only of bonds that were also outstanding before the date 2 years after the effective date of the amendatory act that added this subdivision or of loans or bonds that were used to redeem or refund those bonds and that have a maturity or due date not later than 9 years after the maturity date of those bonds.

(2) If a governmental unit requires that all septage waste collected in that governmental unit be disposed of in a receiving facility or prohibits, or effectively prohibits, the application of septage waste to land within that governmental unit, the governmental unit shall make available a receiving facility that meets all of the following requirements:

(a) The receiving facility service area includes the entire governmental unit.

(b) The receiving facility can lawfully accept and has the capacity to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(c) If the receiving facility is not owned by that governmental unit, the receiving facility is required by contract to accept all septage waste generated within that governmental unit that is not lawfully applied to land.

(3) The owner or operator of a receiving facility may require the posting of a surety, including cash in an escrow account or a performance bond, not exceeding $25,000.00 to dispose of septage waste in the receiving facility.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2012, Act 41, Imd. Eff. Mar. 6, 2012;—Am. 2014, Act 546, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: NREPA

324.11715b Rules; requirements for receiving facilities and control of nuisance conditions; notice of operation; penalties for noncompliance.

Sec. 11715b. (1) The department shall promulgate rules establishing design and operating requirements for receiving facilities and the control of nuisance conditions.

(2) A person shall not commence construction of a receiving facility on or after the date on which rules are promulgated under subsection (1) unless the owner has a permit from the department authorizing the construction of the receiving facility. The application for a permit shall include a basis of design for the receiving facility, engineering plans for the receiving facility sealed by an engineer licensed to practice in Michigan, and any other information required by the department. If the proposed receiving facility will be part of a sewerage system whose construction is required to be permitted under part 41 or a research, development, and demonstration project whose construction and operation is required to be permitted under section 11511b, the permit issued under part 41 or part 115, respectively, satisfies the permitting requirement of this subsection.

(3) Subject to subsection (4), a person shall not operate a receiving facility contrary to an operating plan approved by the department.

(4) If the operation of a receiving facility commenced before October 12, 2004, subsection (3) applies to that receiving facility beginning October 12, 2005.

(5) Before submitting a proposed operating plan to the department for approval, a person shall do all of the following:

(a) Publish notice of the proposed operating plan in a newspaper of general circulation in the area where the receiving facility is located.

(b) If the person maintains a website, post notice of the proposed operating plan on its website.

(c) Submit notice of the proposed operating plan by first-class mail to the county health department and the legislative body of each city, village, and township located in whole or in part within the service area of the receiving facility.

(6) Notice of a proposed operating plan under subsection (5) shall contain all of the following:

(a) A statement that the receiving facility proposes to receive or, in the case of a receiving facility described in subsection (4), to continue to receive septage waste for treatment.

(b) A copy of the proposed operating plan or a statement where the operating plan is available for review during normal business hours.

(c) A request for written comments on the proposed operation of the receiving facility and the deadline for receipt of such comments, which shall be not less than 30 days after publication, posting, or mailing of the notice.

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(7) After the deadline for receipt of comments under subsection (6), the person proposing to operate a receiving facility may modify the plan in response to any comments received and shall submit a summary of the comments and the current version of the proposed operating plan to the department for approval.

(8) The operator of a receiving facility may modify an approved operating plan if the modifications are approved by the department. Subsections (5) to (7) do not apply to the modification of the operating plan.

(9) If the owner or operator of a receiving facility violates this section or rules promulgated under this section, after providing an opportunity for a hearing, the department may order that a receiving facility cease operation as a receiving facility.

(10) The department shall post on its website both of the following:

(a) Approved operating plans, including any modifications under subsection (8).

(b) Notice of any orders under subsection (9).

(11) If construction of a receiving facility commenced before the date on which rules are promulgated under subsection (1), all of the following apply:

(a) Within 1 year after the date on which rules are promulgated under subsection (1), the owner of the receiving facility shall submit to the department and obtain department approval of a report prepared by a professional engineer licensed to practice in Michigan describing the receiving facility's state of compliance with the rules and proposing any modifications to the receiving facility necessary to comply with the rules.

(b) If, according to the report approved under subdivision (a), modifications to the receiving facility are necessary to comply with the rules promulgated under subsection (1), within 18 months after the report is approved under subdivision (a), the owner of the receiving facility shall submit to the department engineering plans for modifying the receiving facility and shall obtain a construction permit from the department for modifying the receiving facility.

(c) Within 3 years after the report is approved under subdivision (a), the owner of the receiving facility shall complete construction modifying the receiving facility so that it complies with those rules.

(12) After a hearing, the department may order that a receiving facility whose owner fails to comply with this section cease operating as a receiving facility.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2005, Act 199, Eff. Nov. 22, 2005.

Popular name: Act 451

Popular name: NREPA

324.11715d Advisory committee to make recommendations on septage waste storage facility management practices.

Sec. 11715d. (1) Within 60 days after the effective date of the amendatory act that added this section, the department shall convene an advisory committee to make recommendations on septage waste storage facility management practices, including, but not limited to, storage facility inspections. The advisory committee shall include at least all of the following:

(a) A storage facility operator.

(b) A receiving facility operator.

(c) A generator of septage waste.

(d) A representative of township government.

(e) A representative of an environmental protection organization.

(f) A licensed Michigan septage waste hauler.

(2) Within 18 months after the effective date of this section, the department shall establish generally accepted septage storage facility management practices and post the management practices on the department's website.

(3) A person shall not construct a septage waste storage facility without written approval from the department.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Compiler's note: For abolishment of the advisory committee on septage waste storage facility management practices and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-20, compiled at MCL 324.99912.

Popular name: Act 451

Popular name: NREPA

324.11716 Certification of city, county, and district departments of health to carry out powers and duties.

Sec. 11716. (1) The department may certify a city, county, or district health department to carry out certain powers and duties of the department under this part.

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(2) If a certified health department does not exist in a city, county, or district or does not fulfill its responsibilities under this part, the department may contract with qualified third parties to carry out certain responsibilities of the department under this part in that city, county, or district.

(3) The department and each certified health department or third party that will carry out powers or duties of the department under this part shall enter a memorandum of understanding or contract describing those powers and duties and providing for compensation to be paid by the department from the fund to the certified health department or third party.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11717 Septage waste site contingency fund; creation; authorization of expenditures.

Sec. 11717. (1) There is created in the state treasury a septage waste site contingency fund. Interest earned by the septage waste contingency fund shall remain in the septage waste contingency fund unless expended as provided in subsection (2).

(2) The department shall expend money from the septage waste contingency fund, upon appropriation, only to defray costs of the continuing education courses under section 11703 that would otherwise be paid by persons taking the courses.

(3) The septage waste program fund is created within the state treasury.

(4) Fees and interest on fees collected under this part shall be deposited in the fund. In addition, promptly after the effective date of the 2004 amendatory act that amended this section, the state treasurer shall transfer to the septage waste program fund all the money in the septage waste compliance fund. The state treasurer may receive money or other assets from any other source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(5) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(6) The department shall expend money from the fund, upon appropriation, only for the enforcement and administration of this part, including, but not limited to, compensation to certified health departments or third parties carrying out certain powers and duties of the department under section 11716.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11717b Fees for persons engaged in septage waste servicing.

Sec. 11717b. (1) The cost of administering this part shall be recovered by collecting fees from persons engaged in servicing. Fee categories and, subject to subsection (2), rates are as follows:

(a) The fee for a septage waste servicing license is $200.00 per year.

(b) The fee for a septage waste vehicle license is as follows:

(*i*) If none of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $350.00 per year for each septage waste vehicle.

(*ii*) If any of the vehicles owned by the person applying for the septage waste vehicle license will be used at any time during the license period for disposal of septage waste by land application, $480.00 per year for each septage waste vehicle.

(c) The fee to replace an existing septage waste vehicle under a septage waste vehicle license with a different septage waste vehicle under the same ownership, if the annual fee for that year has been paid under subdivision (b), is as follows:

(*i*) $200.00 if the septage waste vehicle being replaced has been inspected for that year under section 11706.

(*ii*) $150.00 if the vehicle being replaced has not been inspected for that year.

(d) The fee for a site permit is $500.00. However, a person shall not be charged a fee to renew a site permit.

(2) If a fee under subsection (1) is paid for a license, permit, or approval but the application for the license or permit or the request for the approval is denied, the department shall promptly refund the fee.

(3) For each state fiscal year, a person possessing a septage waste servicing license and septage waste vehicle license as of January 1 of that fiscal year shall be assessed a septage waste servicing license fee and

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septage waste vehicle license fee as specified in this section. The department shall notify those persons of their fee assessments by February 1 of that fiscal year. Payment shall be postmarked by March 15 of that fiscal year.

(4) The department shall assess interest on all fee payments received after the due date. The amount of interest shall equal 0.75% of the payment due, for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) If a person fails to pay a fee required under this section in full, plus any interest accrued, by October 1 of the year following the date of notification of the fee assessment, the department may issue an order that revokes the license or permit held by that person for which the fee was to be paid.

(6) Fees and interest collected under this section shall be deposited in the fund.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2008, Act 492, Imd. Eff. Jan. 13, 2009.

Popular name: Act 451

Popular name: NREPA

324.11718 Rules.

Sec. 11718. (1) The department shall promulgate rules that establish both of the following:

(a) Continuing education requirements under section 11703.

(b) Design and operating requirements for receiving facilities, as provided in section 11715b.

(2) The department may, in addition, promulgate rules that do 1 or more of the following:

(a) Add other materials and substances to the definition of septage waste.

(b) Add enclosures to the list of enclosures in the definition of domestic septage under section 11701 the servicing of which requires a septage waste servicing license under this part.

(c) Specify information required on an application for a septage waste servicing license, septage waste vehicle license, or site permit.

(d) Establish standards or procedures for a department order under section 11708 prohibiting the operation of a wastewater treatment plant or structure as a receiving facility.

(3) The department of environmental quality and the department of agriculture and rural development shall jointly promulgate rules establishing field sanitation and food safety standards for the purposes of section 11721.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004;—Am. 2018, Act 271, Eff. Sept. 27, 2018.

Popular name: Act 451

Popular name: NREPA

324.11719 Violation or false statement as misdemeanor; penalties.

Sec. 11719. (1) A person who violates section 11704, 11705, 11708, 11709, 11710, or 11711 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both. A peace officer may issue an appearance ticket to a person for a violation of any of these sections.

(2) A person who knowingly makes or causes to be made a false statement or entry in a license application or a record required in section 11703 is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than $2,500.00 or more than $25,000.00, or both.

(3) A person who violates this part or a license or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $1,000.00 and not more than $2,500.00, or both.

(4) Each day that a violation described in subsection (1), (2), or (3) continues constitutes a separate violation.

(5) Upon receipt of information that the servicing of septage waste regulated by this part presents an imminent or substantial threat to the public health, safety, welfare, or the environment, after consultation with the director or a designated representative of the department of community health, the department, or a peace officer if authorized by law, shall do 1 or more of the following:

(a) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, summarily suspend a license issued under this part and afford the holder of the license an opportunity for a hearing within 7 days.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing that a person is or has removed, transported, or disposed of septage waste in a manner that is or may become injurious to the public health, safety, welfare, or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

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Popular name: NREPA

324.11720 Temporary variance from act.

Sec. 11720. (1) The director may grant a temporary variance from a requirement of this part added by the 2004 amendatory act that amended this part if all of the following requirements are met:

(a) The variance is requested in writing.

(b) The requirements of this part cannot otherwise be met.

(c) The variance will not create or increase the potential for a health hazard, nuisance condition, or pollution of surface water or groundwater.

(d) The activity or condition for which the variance is proposed will not violate any other part of this act.

(2) A variance granted under subsection (1) shall be in writing and shall be posted on the department's website.

History: Add. 2004, Act 381, Imd. Eff. Oct. 12, 2004.

Popular name: Act 451

Popular name: NREPA

324.11721 Farm operation exemption; requirements.

Sec. 11721. (1) A farm operation is exempt from this part as it applies to servicing portable toilets, to associated domestic septage management equipment such as trailers, pumps, and septage waste vehicles, and to associated storage facilities, if all of the following requirements are met:

(a) The portable toilets are used to comply with requirements listed in the publication under subsection (2).

(b) The management, pumping, and temporary storage of the domestic septage from the portable toilets by the farm operation does not result in a release of domestic septage into the environment.

(c) The portable toilets and associated septage management equipment are securely fastened to a vehicle or trailer in a manner that prevents a release while being moved by the farm operation on or across a public street, road, or highway.

(d) The farm operation does not move portable toilets that contain domestic septage on or across a limited access highway as defined in section 26 of the Michigan vehicle code, 1949 PA 300, MCL 257.26.

(e) The farm operation does not store domestic septage for more than 60 days or in a tank larger than 3,000 gallons.

(f) The farm operation utilizes the services of a person with a septage waste servicing license and septage waste vehicle license to dispose of the domestic septage from the portable toilets in a receiving facility.

(g) The farm operation does not move domestic septage on or across a public street, road, or highway in a tank larger than 450 gallons.

(2) The department of agriculture and rural development shall publish both of the following:

(a) A list of field sanitation, worker protection, and food safety requirements applicable to the exemption provided for in this section.

(b) A guide to recommend spill preparedness, spill mitigation, and spill response programs applicable to the exemption provided for in this section.

History: Add. 2018, Act 271, Eff. Sept. 27, 2018.

Popular name: Act 451

Popular name: NREPA

PART 119
WASTE MANAGEMENT AND RESOURCE RECOVERY FINANCE

324.11901 Definitions.

Sec. 11901. As used in this part:

(a) "Costs" means 1 or more of the following costs that may be chargeable to the waste management project as a capital cost under generally acceptable accounting principles:

(*i*) The cost or fair market value of the acquisition or construction of lands, property rights, utility extensions, disposal facilities, buildings, structures, fixtures, machinery, equipment, access roads, easements, and franchises.

(*ii*) Engineering, architectural, accounting, legal, organizational, marketing, financial, and other services.

(*iii*) Permits and licenses.

(*iv*) Interest on the financing of the waste management project during acquisition and construction and before the date of commencement of commercial operation of the waste management project, but for not more than 1 year after that date.

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(*v*) Operating expenses of the waste management project before full earnings are achieved, but for not more than 1 year after that date.

(*vi*) A reasonable reserve for payment of principal and interest on an indebtedness to finance the cost of a waste management project.

(b) "Local authority" means an authority created under Act No. 179 of the Public Acts of 1947, being sections 123.301 to 123.310 of the Michigan Compiled Laws.

(c) "Municipality" means a county, city, township, village, or local authority, or a combination thereof.

(d) "Note" means a note issued by a municipality pursuant to this part.

(e) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof, but excluding a municipality, special district having taxing powers, or other political subdivision of this state.

(f) "Revenue" means money or income received by a municipality as a result of activities authorized by this part, including loan repayments and interest on loan repayments; proceeds from the sale of real or personal property; interest payments on investments; rentals and other payments due and owing on account of an instrument, lease, contract, or agreement to which the municipality is a party; and gifts, grants, bestowals, or other moneys or payments to which a municipality is entitled under this part or other law.

(g) "Waste" means a discarded solid or semisolid material, including garbage, refuse, rubbish, ashes, liquid material, and other discarded materials generated by residential, commercial, agricultural, municipal, or industrial activities, including waste from sewage collected and treated in a municipal sewage system.

(h) "Waste management project" means 1 or more parts of a waste collection, transportation, disposal, or resource recovery system, including plants, works, systems, facility or transfer stations planned, designed, or financed under this part. Waste management project includes the extension or provision of utilities, steam generating and conveyance facilities, appurtenant machinery, equipment, and other capital facilities, other than off-site mobile vehicular equipment, if necessary for the operation of a project or portion of a project. Waste management project also includes necessary property rights, easements, interests, permits, and licenses.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.11902 Powers of municipality generally.

Sec. 11902. A municipality may do any of the following:

(a) Acquire by gift, purchase, or lease, construct, improve, remodel, repair, maintain, and operate, individually or jointly with a municipality or person, a waste management project; acquire private or public property by purchase, lease, gift, or exchange; and acquire private property when necessary by condemnation for public purposes pursuant to Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or other applicable law or charter.

(b) Impose rates, charges, and fees, and enter into contracts relative to the rates, charges, and fees with persons using a waste management project; and assign, convey, encumber, mortgage, pledge, or grant a security interest in the rates, charges, and fees or the right to impose rates, charges, and fees to a person or municipality for the purpose of securing a contract with a person or municipality or for the purpose of providing security or a source of payment for an indebtedness of a person or municipality, including bonds or notes, issued pursuant to the following acts, to finance the cost of a waste management project or in anticipation of revenues from a waste management project:

(*i*) The industrial development revenue bond act of 1963, Act No. 62 of the Public Acts of 1963, being sections 125.1251 to 125.1267 of the Michigan Compiled Laws.

(*ii*) The economic development corporation act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws.

(*iii*) The Derezinski-Geerlings job development authority act, Act No. 301 of the Public Acts of 1975, being sections 125.1701 to 125.1770 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11903 Contracts for acquisition, construction, financing, and operation of waste management project or for use of services of project; bids or proposals; negotiations; validity of contracts; pledge of full faith and credit; methods of paying pledged share of

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costs.

Sec. 11903. (1) A municipality may enter into a contract with a person or municipality, providing for the acquisition, construction, financing, and operation of a waste management project or for the use of the services of a project. Notwithstanding the requirements of its municipal charter or ordinances, the municipality, following the receipt from persons of bids or proposals for a contract referred to in this section, may negotiate with 1 or more persons who have submitted the bids or proposals, permit those persons to modify their bids or proposals, and enter into a contract with 1 or more of those persons on the basis of a bid or proposal as modified. A contract executed pursuant to this section, regardless of whether the bidding on the contract occurred before July 12, 1978, shall be valid and binding on the parties. The municipality is authorized, but is not required, to pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract.

(2) To pay its pledged share of the costs of a waste management project or to secure its contract for the use of project services, a contracting municipality may use or pledge 1 or more, or a combination, of the following methods of raising necessary funds:

(a) If the full faith and credit of the municipality is pledged, the levy of a tax on taxable property by a municipality having the power to tax, which tax may be imposed without limitation as to rate or amount and may be imposed in addition to other taxes that the municipality is authorized to levy, but for not more than a rate or amount that is sufficient to pay its share or secure its contract.

(b) The levy and collection of rates or charges to users and beneficiaries of the service furnished by the waste management project.

(c) From money received or to be received from the imposition of taxes by the state and returned to the municipality, unless the use of the money for that purpose is expressly prohibited by the state constitution of 1963.

(d) From any other funds which may be validly used for that purpose.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11904 Additional powers of municipality.

Sec. 11904. A municipality may do any of the following:

(a) Include in a contract with a municipality or person provisions to the effect that the municipality will require all residential waste subject to its jurisdiction and police power under applicable law or charter and collected within its limits, whether by a municipality or person operating under contract with the municipality, to be disposed of at the waste management project. If so included, the municipality shall enact legislation with appropriate penalties to make the requirement effective. However, a township, by resolution, may disapprove the collection of waste within the township boundaries by a county.

(b) Provide by contract with a municipality or person for the ownership of a waste management project after all indebtedness with respect to the project has been retired.

(c) Provide that rates or charges to users and beneficiaries of the service furnished by the waste management project shall be a lien on the premises for which the services have been provided, and that amounts delinquent for 3 months or more may be certified annually to the proper tax assessing officer or agency of the municipality, to be entered upon the next tax roll against the premises to which the services have been rendered. The charges shall be collected and the lien enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of a lien for unpaid taxes. The time and manner of certification and other details in respect to the collection of the rates and charges and the enforcement of the lien shall be prescribed by the governing body of the municipality. The municipality may authorize a person or municipality to impose, levy, and collect rates or charges against users and beneficiaries of the service furnished by the waste management project. The municipality may agree with a municipality or person that the rates and charges shall be a lien on the premises serviced, and may further agree that the collection of the rates and charges imposed may be collected and the lien enforced in the same manner as provided in this subsection for the collection of rates and charges and the enforcement of a lien by the municipality.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11905 Contracts; provisions; remedies in case of default.

Sec. 11905. A contract by a municipality with a person or municipality may provide for any and all matters

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relating to the acquisition, construction, financing, and operation of the waste management project as are considered necessary. The contract may provide for appropriate remedies in case of default, including the right of the contracting municipality to authorize the state treasurer or other official charged with the disbursement of unrestricted state funds returnable to the municipality under the state constitution of 1963 or other laws of this state to withhold and apply sufficient funds from those disbursements to make up a default or deficiency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11906 Resolution authorizing execution of contract; publication and contents of notice of adoption; effective date of contract; referendum; special election not included in statutory or charter limitation; verification of signatures on petition; rejection of signatures; determining number of registered electors.

Sec. 11906. (1) A municipality desiring to enter into a contract under section 11902 or 11903 shall authorize, by resolution of its governing body, the execution of the contract. After the adoption of the resolution, if the full faith and credit of the municipality is pledged, a notice of the adoption of the resolution shall be published in a newspaper of general circulation in the municipality. The notice shall state all of the following:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose and the expected cost of the contract to the municipality.

(c) The source of payment for the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Other information the governing body determines to be necessary to adequately inform interested electors of the nature of the obligation.

(2) A contract pledging the full faith and credit may be executed and delivered by the municipality upon approval of its governing body without a vote of the electors on the contract, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice required by subsection (1). If, within the 45-day period, a petition requesting a referendum upon the contract, signed by not less than 5% or 15,000 of the registered electors residing within the limits of the municipality, whichever is less, is filed with the clerk of the municipality, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election.

(3) A special election called for pursuant to subsection (2) shall not be included in statutory or charter limitation as to the number of special elections to be called within a specified period of time. Signatures on the petition shall be verified by an elector under oath as the actual signatures of the electors whose names appear on the petition, and the clerk of the municipality shall have the same power to reject signatures as city clerks under section 25 of the home rule city act, Act No. 279 of the Public Acts of 1909, being section 117.25 of the Michigan Compiled Laws. The number of registered electors in a municipality shall be determined from the municipality's registration books.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11907 Exercise of powers conferred on municipality.

Sec. 11907. A municipality may exercise the powers conferred by this part regardless of the requirements, including the competitive bidding requirement, of its municipal charter.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.11908 Provisions inapplicable to certain municipalities.

Sec. 11908. This part shall not apply to municipalities having a population of more than 2,000,000.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 121

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324.12101 Definitions; B to L.

Sec. 12101. As used in this part:

(a) "Biofuel" means any renewable liquid or gas fuel offered for sale as a fuel that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol, ethanol-blended fuel, biodiesel, and biodiesel blends.

(b) "Biogas" means a biofuel that is a gas.

(c) "Brine" means a liquid produced as a by-product of oil or natural gas production or exploration.

(d) "Container" means any portable device in which a liquid industrial by-product is stored, transported, treated, or otherwise handled.

(e) "Department" means the department of environmental quality.

(f) "Designated facility" means a treatment facility, storage facility, disposal facility, or reclamation facility that receives liquid industrial by-product from off-site.

(g) "Director" means the director of the department.

(h) "Discarded" means any of the following:

(*i*) Abandoned by being disposed of, burned, or incinerated; or accumulated, stored, or treated before, or instead of, being abandoned.

(*ii*) Accumulated, stored, or treated before being managed in 1 of the following ways:

(A) By being used or reused in a manner constituting disposal by being applied to or placed on land or by being used to produce products that are applied to or placed on land.

(B) By being burned to recover energy or used to produce a fuel.

(C) By reclamation.

(i) "Discharge" means the accidental or intentional spilling, leaking, pumping, releasing, pouring, emitting, emptying, or dumping of liquid industrial by-product into the land, air, or water.

(j) "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of a liquid industrial by-product into or on land or water in such a manner that the liquid industrial by-product may enter the environment, or be emitted into the air, or discharged into surface water or groundwater.

(k) "Disposal facility" means a facility or a part of a facility at which liquid industrial by-product is disposed.

(*l*) "Facility" means all contiguous land and structures, other appurtenances, and improvements on land for treating, storing, disposing of, or reclamation of liquid industrial by-product.

(m) "Generator" means a person whose act or process produces liquid industrial by-product.

(n) "Liquid industrial by-product" or "by-product" means any material that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise, that is determined to be liquid by method 9095 (paint filter liquids test) as described in "Test methods for evaluating solid wastes, physical/chemical methods," United States Environmental Protection Agency publication no. SW-846, and that is discarded. Liquid industrial by-product does not include any of the following:

(*i*) Hazardous waste regulated and required to be manifested under part 111.

(*ii*) Septage waste regulated under part 117.

(*iii*) Medical waste regulated under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13832.

(*iv*) A discharge to the waters of the state in accordance with a permit, order, or rule under part 31.

(*v*) A liquid generated by a household.

(*vi*) A liquid regulated under 1982 PA 239, MCL 287.651 to 287.683.

(*vii*) Material managed in accordance with section 12102a.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.12102 Definitions; O to V.

Sec. 12102. As used in this part:

(a) "On-site" means on the same geographically contiguous property, which may be divided by a public or private right-of-way if access is by crossing rather than going along the right-of-way. On-site includes

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noncontiguous pieces of property owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access.

(b) "Peace officer" means any law enforcement officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, or an officer appointed by the director of the department of state police under section 6d of 1935 PA 59, MCL 28.6d.

(c) "Publicly owned treatment works" means any entity that treats municipal sewage or industrial waste or liquid industrial by-product that is owned by the state or a municipality, as that term is defined in 33 USC 1362. Publicly owned treatment works include sewers, pipes, or other conveyances only if they convey wastewater to a publicly owned treatment works providing treatment.

(d) "Reclamation" means either processing to recover a usable product or regeneration.

(e) "Reclamation facility" means a facility or part of a facility where liquid industrial by-product reclamation is conducted.

(f) "Shipping document" means a log, an invoice, a bill of lading, or other record, in either written or electronic form, that includes all of the following information:

(*i*) The name and address of the generator.

(*ii*) The name of the transporter.

(*iii*) The type and volume of liquid industrial by-product in the shipment.

(*iv*) The date the by-product was shipped off-site from the generator.

(*v*) The name, address, and site identification number of the designated facility.

(g) "Site identification number" means a number that is assigned by the United States Environmental Protection Agency or the department to a transporter or facility.

(h) "Storage" means the containment of liquid industrial by-product, on a temporary basis, in a manner that does not constitute disposal of the by-product.

(i) "Storage facility" means a facility or part of a facility where liquid industrial by-product is stored.

(j) "Surface impoundment" means a treatment facility, storage facility, or disposal facility or part of a treatment, storage, or disposal facility that is either a natural topographic depression, a human-made excavation, or a diked area formed primarily of earthen materials. A surface impoundment may be lined with human-made materials designed to hold an accumulation of liquid industrial by-product. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons. Surface impoundment does not include an injection well.

(k) "Tank" means a stationary device designed to contain an accumulation of liquid industrial by-product that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic to provide structural support.

(*l*) "Transportation" means the movement of liquid industrial by-product by air, rail, public or private roadway, or water.

(m) "Transporter" means a person engaged in the off-site transportation of liquid industrial by-product by air, rail, public roadway, or water.

(n) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any liquid industrial by-product, to neutralize the by-product, or to render the by-product safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume.

(o) "Treatment facility" means a facility or part of a facility at which liquid industrial by-product undergoes treatment.

(p) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and that, as a result of the use, is contaminated by physical or chemical impurities.

(q) "Vehicle" means a transport vehicle as defined by 49 CFR 171.8.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016;—Am. 2016, Act 294, Eff. Jan. 2, 2017.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.12102a Materials not specified as liquid industrial by-products.

Sec. 12102a. The following materials are not liquid industrial by-products when managed as specified:

(a) A material that is used or reused as an effective substitute for commercial products, used or reused as

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an ingredient to make a product, or returned to the original process, if the material does not require reclamation prior to use or reuse, is not directly burned to recover energy or used to produce a fuel, and is not applied to the land or used in products applied to the land.

(b) A used oil that is directly burned to recover energy or used to produce a fuel if all of the following requirements are met:

(*i*) The material meets the used oil specifications of R 299.9809(1)(f) of the Michigan administrative code.

(*ii*) The material contains no greater than 2 ppm polychlorinated biphenyls.

(*iii*) The material has a minimum energy content of 17,000 BTU/lb.

(*iv*) The material is expressly authorized as a used oil fuel source, regulated under part 55, or, in another state, regulated under a similar air pollution control authority.

(c) A liquid fully contained inside a manufactured article, until the liquid is removed or the manufactured equipment is discarded, at which point it becomes subject to this part.

(d) A liquid by-product sample transported for testing to determine its characteristics or composition. The sample becomes subject to this part when discarded.

(e) A liquid that is not regulated under part 615 that is generated in the drilling, operation, maintenance, or closure of a well, or other drilling operation, including the installation of cathodic protection or directional drilling, if either of the following applies:

(*i*) The liquid is left in place at the point of generation in compliance with part 31, 201, or 213.

(*ii*) The liquid is transported off-site from a location that is not a known facility as defined in section 20101, and all of the following occur:

(A) The disposal complies with applicable provisions of part 31 or 115.

(B) The disposal is not to a surface water.

(C) The landowner of the disposal site has authorized the disposal.

(f) A liquid vegetable or animal fat oil that is transported directly to a producer of biofuels for the purpose of converting the oil to biofuel.

(g) An off-specification fuel, including a gasoline blendstock, that was generated in a pipeline as the interface material from the mixture of 2 adjacent fuel products and that will be processed, by blending or by distillation or other refining, to produce a fuel product or fuel products.

(h) An off-specification fuel, including a gasoline blendstock, that resulted from the commingling of off-specification fuel products or from phase separation in a gasoline and alcohol blend and that will be processed, by distillation or other refining, to produce fuel products.

(i) An off-specification fuel product transported directly to a distillation or refining facility to produce a fuel product or fuel products regulated pursuant to 40 CFR part 80.

(j) A liquid or a sludge and associated liquid authorized to be applied to land under part 31 or 115.

(k) A liquid residue remaining in a container after pouring, pumping, aspirating, or another practice commonly employed to remove liquids has been utilized, if not more than 1 inch of residue remains on the bottom, or, for containers less than or equal to 110 gallons in size, not more than 3% by weight of residue remains in the container, or, for containers greater than 110 gallons in size, not more than 0.3% by weight of residue remains in the container. The liquid residue becomes subject to this part when discarded.

(*l*) A residual amount of liquid remaining in a container and generated as a result of transportation of a solid waste in that container.

(m) A liquid brine authorized for use as dust and ice control regulated under parts 31 and 615.

(n) Food processing residuals as defined in section 11503, or site-separated material or source-separated material approved by the department under part 115, that, to produce biogas, will be decomposed in a controlled manner under anaerobic conditions using a closed system that complies with part 55.

(o) A liquid approved by the director for use as a biofuel in energy production in compliance with part 55 that is not speculatively accumulated and that is transported directly to the burner of the biofuel.

History: Add. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2008, Act 153, Imd. Eff. June 5, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12103 Generator; duties.

Sec. 12103. (1) A generator shall do all of the following:

(a) Characterize the liquid industrial by-product in accordance with this act and maintain records of the characterization.

(b) Maintain labeling or marking on containers and tanks of liquid industrial by-product to identify their contents.

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(c) If transporting liquid industrial by-product, other than the generator's own by-product, by public roadway, engage, employ, or contract for the transportation only with a transporter registered and permitted under the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480.

(d) Except as otherwise provided in this part, utilize and retain a separate shipping document for each shipment of liquid industrial by-product transported to a designated facility. The department may authorize the use of a consolidated shipping document for a single shipment of uniform types of by-product collected from multiple by-product pickups. If a consolidated shipping document is authorized by the department and utilized by a generator, a receipt shall be obtained from the transporter documenting the transporter's company name, the driver's signature, the date of pickup, the type and quantity of by-product accepted from the generator, the consolidated shipping document number, and the designated facility. A generator of brine may complete a single shipping document per transporter of brine, per disposal well, each month.

(e) Certify that, when the transporter picks up liquid industrial by-product, the liquid industrial by-product is fully and accurately described on the shipping document and in proper condition for transport and that the information contained on the shipping document is factual. This certification shall be by the generator or the generator's authorized representative.

(f) Provide to the transporter a copy of the shipping document to accompany the liquid industrial by-product to the designated facility.

(g) If the generator does not receive confirmation of acceptance of the liquid industrial by-product by the designated facility, attempt to obtain confirmation by contacting the designated facility and the transporter. If resolution cannot be achieved after contacting the designated facility and transporter, the generator shall notify the department.

(2) A generator that transports its own liquid industrial by-product or operates an on-site reclamation facility, treatment facility, or disposal facility shall keep records of all by-product produced and transported, reclaimed, treated, or disposed of at the facility.

(3) A generator shall retain all records required pursuant to this part for a period of at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subsection is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as otherwise required by the department. Records required under this part may be retained in electronic format.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 286, Imd. Eff. Sept. 23, 2014;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.12104 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to licensing requirements for transportation of liquid industrial wastes.

Popular name: Act 451

Popular name: NREPA

324.12105 Registered and permitted transporter; requirements.

Sec. 12105. A transporter is subject to the registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480. A transporter registered and permitted under that act and licensed under part 117 shall comply with all of the following:

(a) All registration and permitting requirements of the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and licensing requirements of this part and part 117.

(b) Septage waste or liquid industrial by-product transported in a vehicle managed under part 117 and this part shall not be disposed of on land, unless specifically authorized by the department.

(c) Unless, under subdivision (b), the department specifically authorizes land application, in addition to the requirements of this part and part 117, the words "Land Application Prohibited", in a minimum of 2-inch letters, shall be affixed in a conspicuous location and visible on both sides of the vehicle if both of the following apply:

(*i*) The vehicle is licensed under part 117 to transport septage waste.

(*ii*) The vehicle is authorized under the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, to transport liquid industrial by-product.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12106 Equipment, location, and methods of transporter; inspection by department.

Sec. 12106. The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.12107 Vehicles; copy of registration and permit to be carried; closing or covering of vehicles; cleaning and decontamination; applicability of subsection (3) to vehicle transporting brine.

Sec. 12107. (1) A vehicle used to transport liquid industrial by-product by public roadway shall carry a copy of the registration and permit issued in accordance with the hazardous materials transportation act, 1998 PA 138, MCL 29.471 to 29.480, and shall produce it upon request of the department or a peace officer. The registration and permit may be carried in electronic format.

(2) All vehicles and containers used to transport liquid industrial by-product shall be closed or covered to prevent the escape of by-product. The outside of all vehicles, containers, and accessory equipment shall be kept free of by-product and its residue.

(3) To avoid cross-contamination, all portions of a vehicle or equipment that have been in contact with liquid industrial by-product shall be cleaned and decontaminated before the transport of any products, incompatible by-product, hazardous waste regulated under part 111, or other material. Before the transport of by-product, all portions of a vehicle or equipment shall be cleaned and decontaminated, as necessary, of any hazardous waste regulated under part 111. A transporter who owns or legally controls a vehicle or equipment shall maintain as part of the transporter's records documentation that before its use for the transportation of any products, incompatible by-product, hazardous waste regulated under part 111, or other material, the vehicle or equipment was decontaminated. This subsection does not apply to a vehicle if brine was transported in the vehicle and the next load transported in the vehicle is brine for disposal or well drilling or production purposes, oil or other hydrocarbons produced from an oil or gas well, or water or other fluids to be used in activities regulated under part 615 or the rules, orders, or instructions under that part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12108 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to denial, revocation, or suspension of license.

Popular name: Act 451

Popular name: NREPA

324.12109 Liquid industrial by-product transporter; delivery; retention of records; use of consolidated shipping document; issuance of site identification number.

Sec. 12109. (1) A liquid industrial by-product transporter shall provide the generator confirmation of acceptance of by-product for transportation and shall deliver the liquid industrial by-product only to the designated facility specified by the generator.

(2) The liquid industrial by-product transporter shall retain all records required under this part for at least 3 years, and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required in this subsection is automatically extended during the course of any unresolved enforcement action regarding an activity regulated under this part or as required by the department. Records required under this part may be retained in electronic format.

(3) The department may authorize, for certain liquid industrial by-product streams, the use of a consolidated shipping document as authorized under section 12103(1)(d). If a consolidated shipping document is authorized by the department and utilized by a generator, the transporter shall give to the generator a receipt documenting the transporter's company name, the driver's signature, the date of pickup, the type and quantity of by-product removed, the consolidated shipping document number, and the designated

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facility.

(4) A transporter shall obtain a site identification number assigned by the United States Environmental Protection Agency or the department. Until October 1, 2021, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subsection shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 286, Imd. Eff. Sept. 23, 2014;—Am. 2015, Act 224, Eff. Mar. 16, 2016;—Am. 2017, Act 90, Imd. Eff. July 12, 2017.

Popular name: Act 451

Popular name: NREPA

324.12110 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to proof of financial responsibility.

Popular name: Act 451

Popular name: NREPA

324.12111 Incidents threatening public health, safety, and welfare, or environment; duties of generator, transporter, or owner or operator of facility; exemptions.

Sec. 12111. (1) If a fire, explosion, or discharge of liquid industrial by-product occurs that could threaten the public health, safety, and welfare, or the environment, or when a generator, transporter, or owner or operator of a designated facility first has knowledge that a spill of by-product has reached surface water or groundwater, the generator, transporter, or owner or operator of the designated facility shall take appropriate immediate action to protect the public health, safety, and welfare, and the environment, including notification of local authorities and the pollution emergency alerting system using the telephone number 800-292-4706, unless the incident is reported to this state under another state law.

(2) The generator, transporter, or owner or operator of a designated facility shall, within 30 days, prepare and maintain as part of his or her records a written report documenting the incident described in subsection (1) and the response action taken, including any supporting analytical data and cleanup activities. The report shall be provided to the department upon request. Both the initial notification, as appropriate, and the report shall include all of the following information:

(a) The name and telephone number of the person reporting the incident.

(b) The name, address, and telephone number of the generator, transporter, or designated facility, and the site identification number of the transporter or designated facility.

(c) The date, time, and type of incident.

(d) The name and quantity of liquid industrial by-product involved and discharged.

(e) The extent of injuries, if any.

(f) The estimated quantity and disposition of recovered materials that resulted from the incident, if any.

(g) An assessment of actual or potential hazards to human health or the environment.

(h) The response action taken.

(3) Incidents occurring in connection with activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act are exempt from the requirements of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12112 Facility accepting liquid industrial by-product; duties of owner or operator; report.

Sec. 12112. (1) The owner or operator of a facility that accepts liquid industrial by-product shall accept delivery of by-product at the designated facility only if the facility is the destination indicated on the shipping document. The facility owner or operator shall do all of the following:

(a) Obtain a site identification number assigned by the United States Environmental Protection Agency or the department. Until October 1, 2021, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number

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under this subdivision unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received. Money collected under this subdivision shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130.

(b) Provide the generator or the generator's authorized representative confirmation of the receipt of the liquid industrial by-product.

(c) Maintain records of the characterization of the liquid industrial by-product. Characterization shall be in accordance with the requirements of this act.

(2) All storage, treatment, and reclamation of liquid industrial by-product at the designated facility shall be in either containers or tanks or as otherwise specified in section 12113(5). Storage, treatment, or reclamation regulated under part 615 or the rules, orders, or instructions promulgated under that part, or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that part are exempt from this subsection.

(3) The owner or operator of a designated facility shall not store liquid industrial by-product for longer than 1 year unless the by-product is being stored for purposes of reclamation and not less than 75% of the cumulative amount, by weight or volume, of each type of by-product that is stored on site each calendar year is reclaimed or transferred to a different site for reclamation during that calendar year. The owner or operator of a designated facility shall maintain documentation that demonstrates compliance with this subsection.

(4) The owner or operator of a designated facility shall do all of the following:

(a) Retain all records required pursuant to this part for a period of at least 3 years and shall make those records readily available for review and inspection by the department or a peace officer. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department. Records required under this part may be retained in electronic format.

(b) Maintain a plan designed to respond to and minimize hazards to human health and the environment from unplanned releases of liquid industrial by-product to air, soil, and surface water.

(c) Document that all employees who have a responsibility to manage liquid industrial by-product are trained in the proper handling and emergency procedures appropriate for their job duties.

(5) Except as provided in subsection (6), a designated facility shall submit to the department by April 30 each year a report describing its activities for the previous calendar year. The department shall provide for a method of electronic reporting. The report, at a minimum, shall include the following information:

(a) The name and address of the facility.

(b) The calendar year covered by the report.

(c) The types and quantities of liquid industrial by-product accepted and a description of the manner in which the liquid industrial by-product was processed or managed.

(6) A designated facility is not subject to the reporting requirements of subsection (5) for a calendar year if, during that calendar year, the designated facility received liquid industrial by-products only from 1 generator and was owned, operated, or legally controlled by that generator.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2013, Act 73, Eff. Oct. 1, 2013;—Am. 2014, Act 286, Imd. Eff. Sept. 23, 2014;—Am. 2015, Act 224, Eff. Mar. 16, 2016;—Am. 2017, Act 90, Imd. Eff. July 12, 2017.

Popular name: Act 451

Popular name: NREPA

324.12113 Treatment, storage, or disposal of liquid industrial by-product; requirements.

Sec. 12113. (1) Storage of liquid industrial by-product, whether at the location of generation, under the control of the transporter, or at the designated facility, shall be protected from weather, fire, physical damage, and vandals. All vehicles, containers, and tanks used to hold by-product shall be closed or covered, except when necessary to add or remove by-product, or otherwise managed in accordance with applicable state laws, to prevent the escape of by-product. The exterior of all vehicles, containers, and tanks used to hold by-product shall be kept free of by-product and its residue.

(2) Except as otherwise authorized pursuant to this section or other applicable statutes or rules or orders of the department, liquid industrial by-product shall be managed to prevent by-product from being discharged into the soil, surface water or groundwater, or a drain or sewer, or discharged in violation of part 55.

(3) A person shall treat, store, and dispose of liquid industrial by-product in accordance with all applicable statutes and rules and orders of the department.

(4) This part does not prohibit a publicly owned treatment works from accepting liquid industrial by-product from the premises of a person, and does not prohibit a person from engaging, employing, or

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contracting with a publicly owned treatment works. However, a publicly owned treatment works that receives by-product by means of transportation is a designated facility and shall comply with section 12112.

(5) A person shall not treat, store, or dispose of liquid industrial by-product in a surface impoundment, unless the surface impoundment has a discharge or storage permit authorized under part 31 or, in the case of leachate, is authorized in a permit issued under part 115.

(6) Activities regulated under part 615 or the rules, orders, or instructions under that part or regulated under part C of title XIV of the public health service act, 42 USC 300h to 300h-8, or the regulations promulgated under that act, are exempt from the requirements of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 8, Imd. Eff. Feb. 20, 2008;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12114 Violations; probable cause; powers of department or peace officer; court costs and other expenses; obtaining samples for purposes of enforcing or administering part.

Sec. 12114. (1) If the department or a peace officer has probable cause to believe that a person is violating this part, the department or a peace officer may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a peace officer may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose in violation of this part. A vehicle, equipment, or other property used in violation of this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action under this section.

(3) The department or a peace officer may enter at reasonable times any generator, transporter, or designated facility or other place where liquid industrial by-products are or have been generated, stored, treated, or disposed of, or transported from and may inspect the facility or other place and obtain samples of the by-products and samples of the containers or labeling of the by-products for the purposes of enforcing or administering this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12115 Civil action; damages; court costs and other expenses.

Sec. 12115. (1) The attorney general may commence a civil action against a person in a court of competent jurisdiction for appropriate relief, including injunctive relief for a violation of this part, or a registration or permit issued pursuant to this part. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund.

(2) The attorney general or a person may bring a civil action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources that are damaged or destroyed and the costs of surveillance and enforcement by the state as a result of a violation of this part. The damages and costs collected under this section shall be deposited in the general fund. However, if the damages result from the impairment or destruction of the fish, wildlife, or other natural resources of the state, the damages shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided in section 2010. The attorney general may, in addition, recover expenses incurred by the department to address and remedy a violation of this part that the department reasonably considered an imminent and substantial threat to the public health, safety, or welfare, or to the environment.

(3) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action pursuant to this section or to a person who successfully defends against an action brought under this section that the court determines is frivolous.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.12116 Violations; penalties.

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Sec. 12116. (1) A person that violates section 12105(c), 12107(2) or (3), 12109(4), or 12112(1)(b) is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $200.00 and not more than $500.00, or both. A peace officer may issue an appearance ticket to a person who is in violation of section 12105(c), 12107(2) or (3), 12109(4), or 12112(1)(b).

(2) A person that knowingly makes or causes to be made a false statement or entry in a registration or permit application or a shipping document under this part is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not less than $2,500.00 or more than $10,000.00, or both.

(3) A person that violates this part or a registration or permit issued under this part, except as provided in subsections (1) and (2), is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not less than $1,000.00 or more than $2,500.00, or both.

(4) Each day that a violation continues constitutes a separate violation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 140, Eff. Sept. 1, 1998;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12117 Liquid industrial by-product transporter account.

Sec. 12117. (1) The liquid industrial by-product transporter account is created within the environmental pollution prevention fund, which is created in section 11130.

(2) The state treasurer may receive money or other assets from any source for deposit into the account. The state treasurer shall direct the investment of the account. The state treasurer shall credit to the account interest and earnings from account investments.

(3) Money remaining in the account at the close of the fiscal year shall not lapse to the general fund.

(4) The department shall expend money from the account, upon appropriation, for the implementation of this part. In addition, funds not expended from the account for the implementation of this part may be utilized for emergency response and cleanup activities related to liquid industrial by-product that are initiated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2015, Act 224, Eff. Mar. 16, 2016.

Popular name: Act 451

Popular name: NREPA

324.12118 Repealed. 1998, Act 140, Eff. Sept. 1, 1998.

Compiler's note: The repealed section pertained to persons holding license on effective date of part.

Popular name: Act 451

Popular name: NREPA

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CHAPTER 4
POLLUTION PREVENTION

PART 141
POLLUTION PREVENTION POLICY

PART 143
WASTE MINIMIZATION

324.14301 Definitions.

Sec. 14301. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Environmental wastes" means all environmental pollutants, wastes, discharges, and emissions, regardless of how they are regulated and regardless of whether they are released to the general environment or the workplace environment.

(c) "Pollution prevention" means all of the following:

(*i*) "Source reduction" as defined in the pollution prevention act of 1990, subtitle G of title VI of the omnibus budget reconciliation act of 1990, Public Law 101-508, 42 U.S.C. 13101 to 13109.

(*ii*) "Pollution prevention" as described in the United States environmental protection agency's pollution prevention statement dated June 15, 1993.

(*iii*) Environmentally sound on-site or off-site reuse or recycling.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

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Popular name: NREPA

324.14302 Pollution prevention; incorporation; purpose; personnel and support staff.

Sec. 14302. (1) The department shall incorporate pollution prevention goals within its regulatory and permit programs, including data collection and analysis to advance the concept and implementation of pollution prevention.

(2) The department shall employ personnel and provide support staff as are necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14303 Pollution prevention; duties of department; emphasis on in-plant pollution prevention and reduction of hazardous waste.

Sec. 14303. (1) The department shall do all of the following:

(a) Identify opportunities to encourage pollution prevention through the department's regulatory programs.

(b) Identify opportunities to encourage pollution prevention through the department's permit programs.

(c) Identify how pollution prevention efforts should be documented in environmental impact statements.

(d) Analyze and make recommendations on the value of imposing statewide goals or goals for particular environmental wastes, or both, for pollution prevention, minimum recycling standards, and environmental waste treatment standards.

(e) Publish an annual analysis of pollution prevention efforts and potentials in the state.

(2) In performing its responsibilities under subsection (1), the department shall place a particular emphasis on in-plant pollution prevention.

(3) Consistent with the congressional declaration in section 1003(b) of subtitle A of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6902, that it is the national policy of the United States that, wherever feasible, hazardous waste is to be reduced or eliminated as expeditiously as possible, the department shall place a particular emphasis on the prevention of an environmental waste that is a hazardous waste as defined in section 11103.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.14304 Transmitting certain information.

Sec. 14304. The department shall assure that relevant information received under section 313 of subtitle B of the emergency planning and community right-to-know act of 1986, title III of the superfund amendments and reauthorization act of 1986, Public Law 99-499, 42 U.S.C. 11023, is transmitted to the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14305 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: The repealed section pertained to providing information to waste reduction assistance service and department of commerce liaison.

Popular name: Act 451

Popular name: NREPA

324.14306 Annual report.

Sec. 14306. The department shall prepare and deliver, before January 1 of each year, a report detailing the efforts the department has undertaken during the previous fiscal year to implement this part. The annual report

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shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the department to implement this part. The annual report may include the information generated pursuant to sections 14303 and 14304 and may recommend changes in policies and regulatory approaches that will encourage pollution prevention.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

PART 145
WASTE REDUCTION ASSISTANCE

324.14501 Definitions.

Sec. 14501. As used in this part:

(a) "Agricultural biomass" means residue and waste generated on a farm or by farm co-operative members from the production and processing of agricultural products, animal wastes, food processing wastes, or other materials as approved by the director.

(b) "Department" means the department of environmental quality.

(c) "Director" means the director of the department of environmental quality.

(d) "Eligible farmer or agricultural processor" means a person who processes agricultural products or a person who is engaged as an owner-operator of a farm in the production of agricultural goods as defined by section 35(1)(h) of the former single business tax act, 1975 PA 228, or by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207.

(e) "Environmental wastes" means all environmental pollutants, wastes, discharges, and emissions, regardless of how they are regulated and regardless of whether they are released to the general environment or the workplace environment.

(f) "Pollution prevention" means all of the following:

(*i*) "Source reduction" as defined in 42 USC 13102.

(*ii*) "Pollution prevention" as described in the United States environmental protection agency's pollution prevention statement dated June 15, 1993.

(*iii*) Environmentally sound on-site or off-site reuse or recycling including, but not limited to, the use of agricultural biomass by qualified agricultural energy production systems.

(g) "Qualified agricultural energy production system" means the structures, equipment, and apparatus to be used to produce a gaseous fuel from the noncombustive decomposition of agricultural biomass and the apparatus and equipment used to generate electricity or heat from the gaseous fuel or store the gaseous fuel for future generation of electricity or heat. Qualified agricultural energy production system may include, but is not limited to, a methane digester, biomass gasification technology, or thermal depolymerization technology.

(h) "RETAP" means the retired engineers technical assistance program created in section 14511.

(i) "Retap fund" means the retired engineers technical assistance program fund created in section 14512.

(j) "Small business" means a business that is not dominant in its field as described in 13 CFR part 121 and meets both of the following requirements:

(*i*) Is independently owned or operated, by a person that employs 500 or fewer individuals.

(*ii*) Is a small business concern as defined in 15 USC 632.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998;—Am. 2004, Act 333, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 254, Imd. Eff. July 5, 2006;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007.

Popular name: Act 451

Popular name: NREPA

324.14502 Reduction in amount of generated environmental waste; emphasis on pollution prevention; personnel; staff and services.

Sec. 14502. (1) The department shall inform, assist, educate, and provide funding, as provided in this part, to persons to facilitate a reduction in the amount of environmental waste generated in the state. The department shall place a particular emphasis on in-plant pollution prevention.

(2) The department shall employ personnel and provide staff and services as are necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division

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to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14503 Pollution prevention information clearinghouse; establishment; duties; contracts.

Sec. 14503. (1) The department shall establish a pollution prevention information clearinghouse which shall do all of the following:

(a) Upon request, provide specific pollution prevention information to any person.

(b) Publish information describing pollution prevention technologies.

(c) Distribute available publications pertaining to pollution prevention.

(d) Sponsor pollution prevention workshops targeted at specific industries.

(e) Participate in conferences and meetings of business organizations.

(f) Provide information and application forms as necessary to fulfill the department's responsibilities under sections 14505 and 14506.

(2) The department may contract to have any of the activities provided in subsection (1) performed by persons other than department personnel.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14504 Pollution prevention technical assistance.

Sec. 14504. The department shall provide and support technical assistance regarding pollution prevention to business and industry throughout the state and shall do all of the following:

(a) Provide instruction on self-conducted environmental waste audits pertaining to pollution prevention.

(b) Provide consultant referrals pertaining to pollution prevention.

(c) Provide on-site assistance to business and industry pertaining to pollution prevention.

(d) Provide other information and assistance that is considered appropriate by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.14505 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: The repealed section pertained to establishment of waste reduction grants program.

Popular name: Act 451

Popular name: NREPA

324.14506 Pollution prevention research grants program; establishment; distribution of information and applications for grants; form and contents of application; recipients of grants; considerations.

Sec. 14506. (1) The department shall establish a pollution prevention research grants program.

(2) Information and applications for grants under this section shall be distributed upon request through the department.

(3) An application for a grant under this section shall be on a form provided by the department and shall contain information required by the director.

(4) The director shall make grants to colleges and universities, nonprofit corporations, or industry associations or other persons for industry specific research projects pertaining to pollution prevention.

(5) The director, in making grants pursuant to this section, shall consider all of the following:

(a) The severity of the environmental waste problem being addressed.

(b) The extent that the technological development will reduce the volume or quantity or toxicity of environmental waste generated.

(c) The potential for the application of pollution prevention technology to other persons.

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(d) The ability of the applicant to contribute matching funds.

(e) The percentage reduction of volume or quantity or toxicity of environmental waste that will be achieved.

(f) The likelihood of the applicant's project qualifying for other research grants or subsequent research grants from other sources.

(g) Whether the project is consistent with state law and policy.

(h) Additional criteria as the director considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.14507-324.14509 Repealed. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: The repealed sections pertained to waste reduction advisory committee.

Popular name: Act 451

Popular name: NREPA

324.14510 Annual report.

Sec. 14510. (1) The department shall prepare and deliver, before January 1 of each year, a report detailing the efforts the department, including RETAP, has undertaken during the previous fiscal year to implement this part. The annual report shall be delivered to the legislature, the governor, and the chairpersons of the appropriations committees in the senate and the house of representatives for their use in evaluating future appropriations for the service.

(2) By July 1, 1999, the department shall submit a report to the governor and legislature on the pollution prevention impacts of toxic materials accounting and toxics use reporting programs of other states and the federal government. The report shall evaluate the costs and benefits of such programs and shall recommend whether the state should implement such programs to foster pollution prevention.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 289, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.14511 Retired engineers technical assistance program; establishment; conduct; contract; priorities.

Sec. 14511. (1) The department shall establish a retired engineers technical assistance program. The RETAP shall provide assistance pursuant to section 14504. RETAP assistance shall be conducted by the retired engineers, scientists, and other qualified professionals participating in RETAP.

(2) The department may contract with public or private corporations to conduct 1 or more RETAP activities. Prior to entering into a contract under this subsection, the department shall submit the proposed contract to the legislature.

(3) The director may establish priorities for RETAP assistance based on the demand for RETAP assistance, the funds available for the assistance, and the needs of the applicants, taking into consideration the most effective use of the assistance.

History: Add. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of powers and duties of department of environmental quality under retired engineers technical assistance program from department of environmental quality to Michigan agency for energy, department of licensing and regulatory affairs, see E.R.O. No. 2015-3, compiled at MCL 460.21.

Popular name: Act 451

Popular name: NREPA

324.14512 Retired engineers technical assistance program fund; creation; disposition of funds; limitation; lapse; annual report; expenditure.

Sec. 14512. (1) The retired engineers technical assistance program fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the RETAP fund. The state treasurer shall direct the investment of the RETAP fund. The state treasurer shall credit to the RETAP fund interest and earnings from fund investments.

(3) The total amount of money in the RETAP fund shall not exceed $10,000,000.00.

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(4) To capitalize the RETAP fund, $700,000.00 from fees collected under section 11108 is appropriated and transferred from the general fund to the RETAP fund. If the RETAP fund is capitalized from a different source, $700,000.00 is appropriated and transferred from the RETAP fund back to the waste reduction fee fund.

(5) Money in the RETAP fund at the close of the fiscal year shall remain in the RETAP fund and shall not lapse to the general fund.

(6) The state treasurer shall annually report to the legislature on the amount of money in the RETAP fund.

(7) The department shall expend money from the RETAP fund, upon appropriation, to administer and operate the RETAP.

History: Add. 1998, Act 289, Imd. Eff. July 27, 1998.

Compiler's note: For transfer of powers and duties of department of environmental quality under retired engineers technical assistance program from department of environmental quality to Michigan agency for energy, department of licensing and regulatory affairs, see E.R.O. No. 2015-3, compiled at MCL 460.21.

Popular name: Act 451

Popular name: NREPA

324.14513 Small business pollution prevention assistance revolving loan fund; creation; disposition; lapse; expenditure; loan eligibility requirements; loan limitations; "fund" defined.

Sec. 14513. (1) The small business pollution prevention assistance revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, to provide loans to small businesses to implement pollution prevention projects. For each loan issued under this section, the money shall be disbursed by the department to a lending institution that has entered into a loan participation agreement with the department.

(5) To be eligible for a loan from the fund for a qualified agricultural energy production system, an applicant shall meet all of the following requirements:

(a) The applicant shall be an eligible farmer or agricultural processor, or a for-profit farmer cooperative corporation organized under and operated in accordance with sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109.

(b) The applicant shall be verified under the appropriate system of the Michigan agriculture environmental assurance program administered by the department of agriculture.

(c) Within a 3-year period immediately preceding the date the application was submitted, the applicant shall not have been found guilty of a criminal violation under this act.

(d) Within a 1-year period immediately preceding the date the application was submitted, the applicant shall not have been found responsible for a civil violation under this act that resulted in a civil fine of $10,000.00 or more.

(6) The amount of a loan from the fund shall not exceed $200,000.00. A small business shall not receive more than 1 loan in any 3-year period. Interest rates paid by the small business shall be set by the director, but shall not exceed 5%.

(7) As used in this section, "fund" means the small business pollution prevention assistance revolving loan fund created in subsection (1).

History: Add. 1998, Act 289, Imd. Eff. July 27, 1998;—Am. 2004, Act 334, Imd. Eff. Sept. 23, 2004;—Am. 2006, Act 254, Imd. Eff. July 5, 2006.

Popular name: Act 451

Popular name: NREPA

324.14514 Rules.

Sec. 14514. The department may promulgate rules to implement and administer this part.

History: Add. 2004, Act 333, Imd. Eff. Sept. 23, 2004.

Popular name: Act 451

Popular name: NREPA

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PART 147
CHEMICAL SUBSTANCES

SUBPART 1
PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

324.14701 Definitions.

Sec. 14701. As used in this subpart:

(a) "Department" means the department of environment, Great Lakes, and energy.

(b) "Fire chief" means that term as defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

(c) "Organized fire department" means that term as defined in section 1 of the fire prevention code, 1941 PA 207, MCL 29.1.

(d) "PFAS" means a perfluoroalkyl or polyfluoroalkyl substance.

History: Add. 2020, Act 132, Imd. Eff. July 8, 2020.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Former MCL 324.14701, which pertained to definitions, was repealed by Act 446 of 2012, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.14702 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

The repealed section pertained to duties of department for administration and implementation of subpart.

Popular name: Act 451

Popular name: NREPA

324.14703 Incident report.

Sec. 14703. Immediately after the end of a fire or other incident at which an organized fire department uses firefighting foam containing intentionally added PFAS, the fire chief shall report the incident to the Michigan pollution emergency alert system.

History: Add. 2020, Act 132, Imd. Eff. July 8, 2020.

Compiler's note: Former MCL 324.14703, which pertained to determination by rule that certain compounds constitute sufficient danger to public health, safety, and welfare, was repealed by Act 446 of 2012, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.14704 Repealed. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Compiler's note: The repealed section pertained to disposal of certain solid or liquid wastes.

Popular name: Act 451

Popular name: NREPA

324.14705 Collection program for firefighting foam concentrate; guidelines; subject to appropriations.

Sec. 14705. The department shall establish a collection program for firefighting foam concentrate containing intentionally added PFAS and establish guidelines for the program. Under the program, the department shall accept the foam concentrate free of charge and properly dispose of the foam concentrate. The program is contingent on legislative appropriations to cover program costs.

History: Add. 2020, Act 132, Imd. Eff. July 8, 2020.

Compiler's note: Former MCL 324.14705, which pertained to violation of subpart as misdemeanor, was repealed by Act 446 of 2012, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

SUBPART 2

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324.14721 Definitions; heading of subpart.

Sec. 14721. (1) As used in this subpart:

(a) "Department" means the department of environmental quality.

(b) "Octa-BDE" means octabromodiphenyl ether.

(c) "PBDE" means polybrominated diphenyl ether.

(d) "Penta-BDE" means pentabromodiphenyl ether.

(2) This subpart may be cited as the "Mary Beth Doyle PBDE act".

History: Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.14722 Product or material containing penta-BDE; limitation; exceptions.

Sec. 14722. (1) Beginning June 1, 2006, a person shall not manufacture, process, or distribute a product or material that contains more than 1/10 of 1% of penta-BDE.

(2) This section does not apply to either of the following:

(a) Original equipment manufacturer replacement parts.

(b) The processing of recyclables containing penta-BDE in compliance with applicable federal, state, and local laws.

History: Add. 2004, Act 562, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.14723 Product or material containing octa-BDE; limitation; manufacturing, processing, or distributing; exception.

Sec. 14723. (1) Beginning June 1, 2006, a person shall not manufacture, process, or distribute a product or material that contains more than 1/10 of 1% of octa-BDE.

(2) This section does not apply to original equipment manufacturer replacement service parts or the processing of recyclables containing octa-BDE in compliance with applicable federal, state, and local laws.

History: Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.14724 PBDE advisory committee; recommendations.

Sec. 14724. The department may establish a PBDE advisory committee to assist the department in determining the risk posed by the release of PBDEs, other than penta-BDE or octa-BDE, to human health and the environment. The department may use existing programs to monitor the presence of PBDEs in the state's environment to determine exposure and risk. If new scientific information gathered by the advisory committee indicates a significant risk to human health and the environment in the state, the advisory committee shall inform the department of risk or risks and, if the department concurs, the department shall advise the legislature of the risk. Nothing in this section shall preclude the department from issuing recommendations to the legislature independent of any actions of the advisory committee.

History: Add. 2004, Act 526, Imd. Eff. Jan. 3, 2005.

Compiler's note: For transfer of PBDE advisory committee to department of environmental quality by type III transfer, see E.R.O. No. 2009-11, compiled at MCL 324.99915.

Popular name: Act 451

Popular name: NREPA

324.14725 Violation as misdemeanor; penalty.

Sec. 14725. A person who violates this subpart is guilty of a misdemeanor punishable by a fine of not less than $2,500.00 or more than $25,000.00. Each day that a violation of this subpart continues shall be considered a separate violation.

History: Add. 2004, Act 562, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

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PART 148

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324.14801 Definitions.

Sec. 14801. As used in this part:

(a) "Environmental audit" means a voluntary and internal evaluation conducted on or after the effective date of this part of 1 or more facilities or an activity at 1 or more facilities regulated under state, federal, regional, or local laws or ordinances, or of environmental management systems or processes related to the facilities or activity, or of a previously corrected specific instance of noncompliance, that is designed to identify historical or current noncompliance and prevent noncompliance or improve compliance with 1 or more of those laws, or to identify an environmental hazard, contamination, or other adverse environmental condition, or to improve an environmental management system or process. Once initiated, an audit shall be completed within a reasonable time, not to exceed 6 months, unless a written request for an extension is approved by the director on reasonable grounds.

(b) "Environmental audit report" means a document or a set of documents, each labeled at the time it is created "environmental audit report: privileged document" and created as a result of an environmental audit. An environmental audit report shall include supporting information. Supporting information may include field notes, records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, follow-up reports, drawings, photographs, computer generated or electronically recorded information, maps, charts, graphs, and surveys, if the supporting information or documents are created or prepared for the primary purpose and in the course of or as a result of an environmental audit. An environmental audit report may also include an implementation plan that addresses correcting past noncompliance, improving current compliance, improving an environmental management system, and preventing future noncompliance, as appropriate.

(c) "Privilege" means the privilege provided to an environmental audit report as provided in this part.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14802 Environmental audit and environmental audit report; conduct; creation; privilege and protection from disclosure; exception; testimony; admissibility as evidence.

Sec. 14802. (1) The owner or operator of a facility, or an employee or agent of the owner or operator on behalf of the owner or operator, at any time may conduct an environmental audit and may create an environmental audit report.

(2) Except as provided in subsection (3), an environmental audit report created pursuant to this part is privileged and protected from disclosure under this part.

(3) The privilege described in subsection (2) does not extend to any of the following regardless of whether or not they are included within an environmental audit report:

(a) Documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

(b) Information obtained by observation, sampling, or monitoring by any regulatory agency.

(c) Pretreatment monitoring results which a publicly owned treatment works or control authority requires any industrial user to report to a publicly owned treatment works or control authority, including, but not limited to, results establishing a violation of the industrial user's discharge permit or applicable local ordinance.

(d) Information legally obtained from a source independent of the environmental audit or from a person who did not obtain the information from the environmental audit.

(e) Machinery and equipment maintenance records.

(f) Information in instances where the privilege is asserted for a fraudulent purpose.

(g) Information in instances where the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(4) Except as otherwise provided in this part, a person who conducts an environmental audit and a person to whom the environmental audit results are disclosed shall not be compelled to testify regarding any information obtained solely through the environmental audit which is a privileged portion of the

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environmental audit report. Except as otherwise provided in this part, the privileged portions of an environmental audit report are not subject to discovery and are not admissible as evidence in any civil or administrative proceeding.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14803 Waiver of privilege.

Sec. 14803. (1) The privilege provided for in this part may be expressly waived by the person for whom the environmental audit report was prepared. The waiver applies only to the portion or portions of the environmental audit report that are specifically waived.

(2) Disclosure of an environmental audit report and information generated by the environmental audit by the person for whom the environmental audit report was prepared or by the person's employee or agent to any of the following does not waive the privilege provided for in this part:

(a) An employee of the person.

(b) A legal representative of the person.

(c) An agent of the person retained to address an issue or issues raised by the environmental audit.

(3) Disclosure of the environmental audit report or any information generated by the environmental audit under the following circumstances does not waive the privilege provided for in this part:

(a) A disclosure made under the terms of a confidentiality agreement between the person for whom the environmental audit report was prepared and a partner or potential partner, or a transferee or potential transferee of, or a lender or potential lender for, or a trustee of, the business or facility audited, or a disclosure made between a subsidiary and a parent corporation or between members of a partnership, joint venture, or other similarly related entities.

(b) A disclosure made under the terms of a confidentiality agreement between governmental officials and the person for whom the environmental audit report was prepared.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14804 Request for disclosure by state or local law enforcement authorities; objection; petition; in camera hearing; determination by court; disclosure pending appeal.

Sec. 14804. (1) A request by state or local law enforcement authorities for disclosure of an environmental audit report shall be made by a written request delivered by certified mail or a demand by lawful subpoena. Within 30 business days after receipt of a request for disclosure or subpoena, the person asserting the privilege may make a written objection to the disclosure of the environmental audit report on the basis that the environmental audit report is privileged. Upon receipt of such an objection, the state or local law enforcement authorities may file with the circuit court, and serve upon the person, a petition requesting an in camera hearing on whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The motion shall be brought in camera and under seal. The circuit court has jurisdiction over a petition filed under this subsection requesting a hearing. Failure of the person asserting the privilege to make an objection to disclosure waives the privilege as to that person.

(2) Upon the filing of a petition for an in camera hearing under subsection (1), the person asserting the privilege in response to a request for disclosure or subpoena under this section shall provide a copy of the environmental audit report to the court and shall demonstrate in the in camera hearing all of the following:

(a) The year the environmental audit report was prepared.

(b) The identity of the person conducting the audit.

(c) The name of the audited facility or facilities.

(d) A brief description of the portion or portions of the environmental audit report for which privilege is claimed.

(3) Upon the filing of a petition for an in camera hearing under subsection (1), the court shall issue an order under seal scheduling, within 45 days after the filing of the petition, an in camera hearing to determine whether the environmental audit report or portions of the environmental audit report are privileged or subject to disclosure. The counsel for the state or local law enforcement agency seeking disclosure of the information contained in the environmental audit report and the counsel for the person asserting the privilege shall participate in the in camera hearing but shall not disclose the contents of the environmental audit report for which privilege is claimed unless the court so orders.

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(4) The court, after in camera review, shall require disclosure of material for which privilege is asserted, if the court determines that either of the following exists:

(a) The privilege is asserted for a fraudulent purpose.

(b) Even if subject to the privilege, the material shows evidence of noncompliance with state, federal, regional, or local environmental laws, permits, consent agreements, regulations, ordinances, or orders and the owner or operator failed to either take prompt corrective action or eliminate any violation of law identified during the environmental audit within a reasonable time, but not exceeding 3 years after discovery of the noncompliance or violation unless a longer period of time is set forth in a schedule of compliance in an order issued by the department of environmental quality, after notice in the department's calendar, and following the department's determination that acceptable progress is being made.

(5) The court, after in camera review, shall require disclosure of material for which privilege is asserted if the court determines that the material is not subject to the privilege.

(6) If the court determines under this section that the material is not privileged, but the party asserting the privilege files an application for leave to appeal of this finding, the material, motions, and pleadings shall be disclosed unless the court specifically determines that all or a portion of such information shall be kept under seal during the pendency of the appeal.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14805 Criminal proceeding; applicability of privilege.

Sec. 14805. The privilege created by this part does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this part applicable to administrative or civil proceedings is not waived or eliminated.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14806 Privilege; burden of proof; stipulation; disclosure of relevant portions of report.

Sec. 14806. (1) A person asserting the privilege under this part has the burden of proving a prima facie case as to the privilege. A person seeking disclosure of an environmental audit report has the burden of proving by a preponderance of the evidence that privilege does not exist under this part.

(2) The parties disputing the existence of the privilege may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege.

(3) Upon making a disclosure determination under section 14804 or 14805, the court may compel the disclosure only of those portions of an environmental audit report relevant to issues in dispute in the proceeding.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14807 Fraud as misdemeanor; penalty.

Sec. 14807. A person who uses this part to commit fraud is guilty of a misdemeanor punishable by a fine of not more than $25,000.00.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14808 Other privileges not limited.

Sec. 14808. This part does not limit, waive, or abrogate either of the following:

(a) The scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

(b) Any existing ability or authority to challenge privilege under Michigan law.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 133, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

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324.14809 Immunity from civil and criminal penalties and fines.

Sec. 14809. (1) A person is immune from any administrative or civil penalties and fines under this act and from criminal penalties and fines for negligent acts or omissions under this act related to a violation of article II and chapters 1 and 3 of article III and the rules promulgated under those articles if the person makes a voluntary disclosure to the appropriate state or local agency. However, the immunity provided for in this section does not apply to any criminal penalties and fines for gross negligence or to any criminal penalties and fines for violations of part 301, 303, 315, or 325 or section 3108 or 3115a. At the time that the disclosure is made to the state or local agency, the person making the voluntary disclosure under this section shall provide information showing that the conditions of subdivisions (a) to (d) are met, supporting his or her claim that the disclosure is voluntary. For the purposes of this section, a disclosure of information by a person under this section is voluntary if all of the following occur:

(a) The disclosure is made promptly after knowledge of the information disclosed is obtained by the person.

(b) The person making the disclosure initiates an appropriate and good-faith effort to achieve compliance, pursues compliance with due diligence, and promptly corrects the noncompliance or condition after discovery of the violation. If evidence shows the noncompliance is the failure to obtain a permit, appropriate and good-faith efforts to correct the noncompliance may be demonstrated by the submittal of a complete permit application within a reasonable time.

(c) The disclosure of the information arises out of an environmental audit.

(d) The environmental audit occurs before the person is made aware that he or she is under investigation by a regulatory agency for potential violations of this act.

(2) There is a rebuttable presumption that a disclosure made pursuant to and in full compliance with this section is voluntary. The presumption of voluntary disclosure under this section may be rebutted by presentation of an adequate showing to the administrative hearing officer or appropriate trier of fact that the disclosure did not satisfy the requirements for a voluntary disclosure under subsection (1). In any administrative or judicial proceeding pursuant to this subsection, the person claiming that a disclosure is voluntary shall provide the supporting information required in subsection (1) and a showing of the appropriate and good-faith effort to achieve compliance, shall pursue compliance with due diligence, and shall promptly correct the noncompliance in the period of time since the date of the disclosure. The state or local agency shall bear the burden of rebutting the presumption of voluntariness. Agency action determining that disclosure was not voluntary shall be considered final agency action subject to judicial review.

(3) Unless a final determination shows that a voluntary disclosure has not occurred, a notice of violation or cease and desist order shall not include any administrative or civil penalty or fine or any criminal penalty or fine for violations for which immunity is provided under this section.

(4) The elimination of administrative or civil penalties or fines or criminal penalties or fines under this section does not apply if the trier of fact finds any of the following:

(a) The person has knowingly committed a criminal act.

(b) The person has committed significant violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events giving rise to the violations, within the 3-year period prior to the date of the disclosure. For purposes of this subsection, a pattern of continuous or repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the 3-year period immediately prior to the date of the voluntary disclosure. In determining whether a person has a pattern of continuous or repeated violations under this subsection, the trier of fact shall base the decision on the compliance history of the specific facility at issue.

(c) The violation has resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

(d) The instance of noncompliance resulted in serious harm or in imminent and substantial endangerment to human health or the environment.

(e) The violation is of the terms of an administrative or judicial order.

(5) In those cases where the conditions of a voluntary disclosure are not met but a good-faith effort was made to voluntarily disclose and resolve a violation detected in a voluntary environmental audit, the state and local environmental and law enforcement authorities shall consider the nature and extent of any good-faith effort in deciding the appropriate enforcement response and shall mitigate any civil penalties based on a showing that 1 or more of the conditions for voluntary disclosure have been met.

(6) The immunity provided by this section does not abrogate a person's responsibilities as provided by

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applicable law to correct the violation, conduct necessary remediation, or pay damages.

(7) In order to receive immunity under this section, a facility conducting an environmental audit under this part shall give notice to the department of the fact that it is planning to commence the audit. The notice shall specify the facility or portion of the facility to be audited, the anticipated time the audit will begin, and the general scope of the audit. The notice may provide notification of more than 1 scheduled environmental audit at a time.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996;—Am. 1997, Act 134, Imd. Eff. Nov. 14, 1997.

Popular name: Act 451

Popular name: NREPA

324.14809a Authority of other provisions not limited.

Sec. 14809a. Except for the immunity provided in section 14809, this part does not limit or affect the authority of any other provision of this act or any other provision of law.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

324.14810 Data base.

Sec. 14810. (1) The department of environmental quality shall establish and maintain a data base of the voluntary disclosures made under this part. The data base shall include the number of voluntary disclosures made on an annual basis and shall summarize in general categories the types of violations and the time needed to achieve compliance. The department of environmental quality shall annually publish a report containing the information in this data base.

(2) Within 5 years after the effective date of this part, the department of environmental quality shall prepare and submit to the standing committees of the legislature with jurisdiction over issues pertaining to natural resources and the environment a report evaluating the effectiveness of this part and specifically detailing whether this part has been effective in encouraging the use of environmental audits and in identifying and correcting environmental problems and conditions.

History: Add. 1996, Act 132, Imd. Eff. Mar. 18, 1996.

Popular name: Act 451

Popular name: NREPA

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CHAPTER 5
RECYCLING AND RELATED SUBJECTS

PART 161
PLASTIC PRODUCTS LABELING

324.16101 Definitions.

Sec. 16101. As used in this part:

(a) "Degradable" means capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements.

(b) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic product.

(c) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

(d) "Plastic bottle" means a rigid plastic container with a capacity of 16 ounces or more that has a neck that is smaller than the body of the container.

(e) "Plastic product" means a plastic bottle and any other rigid plastic container.

(f) "Rigid plastic container" means any container composed predominantly of plastic resin and having a relatively inflexible finite shape or form that directly holds a substance or material and has a capacity of 8 ounces or more.

(g) "PETE" means polyethylene terephthalate.

(h) "HDPE" means high density polyethylene.

(i) "V" means vinyl.

(j) "LDPE" means low density polyethylene.

(k) "PP" means polypropylene.

(*l*) "PS" means polystyrene.

(m) "OTHER" means multilayer.

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(n) "D" means degradable.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16102 Plastic products; labeling with code; list of label codes; copies of list.

Sec. 16102. (1) All plastic products sold in this state shall be labeled with a code indicating the plastic resin used to produce the product. The code shall consist of a number placed within a triangle of arrows with letters placed below the triangle of arrows. The triangle shall be equilateral, formed by 3 arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer or arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the 3 arrows curved at their midpoints shall depict a clockwise path around the code number. The triangle of arrows shall be not less than 1/2 inch high or if the plastic product is designed so that a triangle or arrows of not less than 1/2 inch height cannot be added to the product, a smaller label may be used if the label can be easily read. The code shall appear on or near the bottom of the plastic product as follows:

(a) 1 PETE.
(b) 2 HDPE.
(c) 3 V.
(d) 4 LDPE.
(e) 5 PP.
(f) 6 PS.
(g) 7 OTHER.
(h) 8 D.

(2) The department shall maintain a list of the label codes provided in subsection (1) and shall provide a copy of that list to any person upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.16103 Additional staff prohibited.

Sec. 16103. Additional staff shall not be hired by the department for the purposes of enforcing this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16104 Violation; civil fine; default; remedy.

Sec. 16104. (1) A person who violates this part is subject to a civil fine of $500.00 per violation.

(2) A default in the payment of a civil fine ordered under this part may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 163
PLASTIC DEGRADABLE CONTAINERS

324.16301 Definitions.

Sec. 16301. As used in this part:

(a) "Containers" means glass, metal, or plastic bottles, cans, jars, or other receptacles that contain any substance.

(b) "Degradable" means capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements.

History: 1994, Act 451, Eff. Mar. 30, 1995.

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Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16302 Container holding devices constructed of plastic rings; design and registration of symbol; test data; vacuum-packed wrapping.

Sec. 16302. (1) A person shall not sell or offer for sale in this state containers connected to each other by a separate holding device that is constructed of plastic rings unless the device is degradable and bears a distinguishing symbol.

(2) A manufacturer of container holding devices that are constructed of plastic rings who sells or offers for sale or provides for the sale or offer for sale in this state of these devices shall design a distinguishing symbol indicating that the devices are degradable and shall register the distinguishing symbol with the department and provide the department with a sample of the device. The department may require test data that show that the device is degradable as required in this part.

(3) As used in this part, a separate holding device does not include a vacuum-packed wrapping that completely encases the containers that it connects.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16303 Violation as misdemeanor; penalty.

Sec. 16303. A person who violates this part is guilty of a misdemeanor punishable by a fine of $500.00 for each day this part is violated.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 165
OFFICE PAPER RECOVERY

324.16501 Definitions.

Sec. 16501. As used in this part:

(a) "Accessible and available market" means that opportunities exist to sell wastepaper products that are collected pursuant to this part at rates and at locations that make it fiscally reasonable to collect that paper.

(b) "Recycled paper" means a paper product that contains not less than 50% wastepaper.

(c) "Wastepaper" means any discarded paper or corrugated paper board that is generated after the completion of the paper manufacturing process, and includes, but is not limited to, trimmings, printed paper, cutting and converting paper, newsprint, telephone books, catalogs, or other mixed postconsumer paper. Wastepaper does not include mill broke or other in-plant residual wastes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16502 Paper recycling system; establishment; purpose; scope; schedule; functions.

Sec. 16502. (1) The department shall establish and implement a paper recycling system to recycle wastepaper products that are recyclable and for which there is an accessible and available market. The recycling system shall include the recyclable wastepaper products generated in the offices and other facilities of state departments and state agencies, the offices and other facilities of the legislature, and the judicial offices and other facilities within this state. The department may work with other state departments and hire private contractors to establish or implement all or a portion of the recycling system under this part. The paper recycling system established by the department shall provide for the recycling of wastepaper in the offices and facilities that participate in that system, in accord with the following schedule:

(a) January 1, 1989	20% or more.
(b) January 1, 1990	25% or more.

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(c) January 1, 1992	50% or more.
(d) January 1, 2000	85% or more.

(2) The paper recycling system established by the department shall provide for the expansion and improvement of any wastepaper recycling system that exists on March 30, 1989 and shall provide for all of the following:

(a) An aggressive program to locate and develop, if necessary, markets for recyclable wastepaper products.

(b) An education program to assure that employees who participate in the recycling system are knowledgeable about both of the following:

(*i*) The importance of recycling paper.

(*ii*) The components of the paper recycling system and how the system will impact each employee.

(c) The recovery of all wastepaper for which a market is available and accessible.

(d) The separation of the recyclable wastepaper by the generator in close proximity to the point at which the paper product enters the waste stream.

(e) A central collection system within each building or office of facility that is participating in the recycling system.

(f) The compiling of information and the preparation of an annual written report to be sent to the governor, the senate majority leader, the speaker of the house, and the chief justice of the supreme court, detailing the implementation and operation of the paper recycling system; the level of participation in the paper recycling system of offices, facilities, and agencies within each branch of government; the availability of markets for the wastepaper collected; recommendations on how the market for recycled paper can be stimulated; and recommendations regarding whether the system can be and should be expanded.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99903 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16503 Proceeds of paper recycling system; disposition; use.

Sec. 16503. The proceeds of the paper recycling system shall be forwarded to the state treasurer and credited to the office services revolving fund created in section 269 of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1269 of the Michigan Compiled Laws, to be utilized by the department of management and budget to implement this part and to reimburse other state departments that incur expenses under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 167
USED OIL RECYCLING

324.16701 Definitions.

Sec. 16701. As used in this part:

(a) "Motor oil" means oil used as a lubricant in a motor vehicle.

(b) "Oil" means petroleum based oil.

(c) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing, or other means to utilize used oil in a manner that substitutes for a petroleum product made from new oil, if the preparation or use is operationally safe, environmentally sound, and complies with the law, rules, and regulations of this state and the United States.

(d) "Used oil" means oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.16702 Plan to promote recycling of motor oil; public education program.

Sec. 16702. The department shall implement a plan to promote the recycling of motor oil by the public and private sectors. The department shall conduct a public education program to inform the public and private sectors of the need for, and benefit of, collecting and recycling used oil in order to conserve resources and protect the natural resources of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16703 Plan to recycle motor oil; demonstration used oil recycling project; project plan; funding.

Sec. 16703. (1) The director of the department of management and budget shall formulate and implement a plan to recycle the motor oil used by the departments and agencies of this state.

(2) The department shall conduct a demonstration used oil recycling project that does all of the following:

(a) Provides for a system of used oil recycling tanks or barrels for use by the general public. The recycling tanks or barrels shall be located in designated state owned vehicle maintenance garages or other publicly owned structures that the department determines meet both of the following criteria:

(*i*) Are locations where used oil is generated from oil changes for state owned vehicles or vehicles operated under contracts with this state.

(*ii*) Are locations where oil recycling services are not otherwise available to the general public.

(b) Promotes public awareness of the availability to the general public of recycling tanks or barrels for used oil.

(3) The department shall establish a project plan for conducting the demonstration project provided for in subsection (2). The project plan shall include the number of locations, proposed sites, methods of public notice, security procedures, and model language for cooperative agreements with other state agencies for use of their facilities in the demonstration project.

(4) Funding necessary to implement this part may come from any lawful source, including appropriations, funds from private sources, and funds generated from the sale of general obligation bonds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.16704 Disposal of used oil; designation of land as collection facility; placement in receptacle or container; applicability of subsection (1); disposal of used oil in municipal solid waste incinerator; violation as misdemeanor; penalty; enforcement actions; criteria used in designating collection facilities.

Sec. 16704. (1) A person shall not dispose of or cause the disposal of used oil by dumping used oil onto the ground; discharging, dumping, or depositing used oil into sewers, drainage systems, surface waters, groundwaters, or other waters of this state; except as provided in subsection (2), by incineration; as refuse; or onto any public or private land unless the land is designated by the state or an agency or political subdivision of the state as a collection facility for the disposal, dumping, or deposit of used oil and if the used oil is placed in a receptacle or container installed or located at the collection facility.

(2) Subsection (1) does not apply to the use of used oil in an incinerator or other heater that is operated for purposes of providing heat or energy, or as a rust preventive coating on farm or construction equipment.

(3) Notwithstanding subsection (2), beginning March 28, 1994, used oil shall not be disposed of in a municipal solid waste incinerator as defined in part 115.

(4) Beginning on July 1, 1991, a person who violates this section is guilty of a misdemeanor punishable by imprisonment for 90 days or a fine of not more than $1,000.00, or both. In place of a sentence provided in this subsection, the court may order that the defendant engage in court supervised recycling-related labor for a number of hours determined by the court, including, but not limited to, oil recycling. A violation of this section by a person, other than an individual, is punishable by a fine of not more than $2,500.00.

(5) This section does not prohibit enforcement actions under other state or federal laws applicable to an

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activity described in this section.

(6) The department shall establish criteria to be used in designating collection facilities under subsection (1). In developing the criteria, the department shall encourage private and local collection facilities as an integral part of the department's efforts to establish a statewide network of collection facilities as required in section 16705(a).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16705 Comprehensive plan.

Sec. 16705. In addition to the other powers and duties of the department under this part, by January 1, 1991, the department shall develop and submit to the legislature a comprehensive plan that does all of the following:

(a) Provides for a network of private, state, and local collection facilities on a statewide basis by July 1, 1991 to facilitate compliance with section 16704.

(b) Provides for a publicity program to assure that the public is aware of the requirements of section 16704, the location of collection facilities, and the penalties for violating section 16704.

(c) Provides 1 or more proposed funding mechanisms that the department considers feasible to assure that an operational collection facility network is available statewide by July 1, 1991.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 169
SCRAP TIRES

324.16901 Definitions.

Sec. 16901. (1) As used in this part:

(a) "Abandoned scrap tires" means an accumulation of scrap tires on property where the property owner is not responsible in whole or in part for the accumulation of the scrap tires. For the purposes of this subdivision, an owner who purchased or willingly took possession of an existing scrap tire collection site shall be considered by the department to be responsible in whole or in part for the accumulation of the scrap tires.

(b) "Automotive recycler" means that term as defined in section 2a of the Michigan vehicle code, 1949 PA 300, MCL 257.2a.

(c) "Bond" means a performance bond from a surety company authorized to transact business in this state, a certificate of deposit, a cash bond, or an irrevocable letter of credit, in favor of the department.

(d) "Collection site" means, subject to subdivision (e), a site consisting of a parcel or adjacent parcels of real property where any of the following are accumulated:

(*i*) 500 or more scrap tires. This subparagraph does not apply if that property is owned or leased by and associated with the operations of a retailer or automotive recycler or a commercial contractor as described in subparagraph (*iv*).

(*ii*) 1,500 or more scrap tires if that property is owned or leased by and associated with the operations of a retailer that is not also an automotive recycler.

(*iii*) 2,500 or more scrap tires if that property is owned or leased by and associated with the operations of an automotive recycler.

(*iv*) More than 150 cubic yards of tire chips if that property is owned or leased by and associated with the operations of a commercial contractor that is authorized to use the tire chips as an aggregate replacement in a manner approved by a designation of inertness for scrap tires or is otherwise authorized for such use by the department under part 115.

(e) "Collection site" does not include a disposal area licensed under part 115, a community cleanup site, a racecourse, or a feed storage location.

(f) "Commodity" means crumb rubber, tire chips, a ring or slab cut from a tire for use as a weight, or a product die-cut or punched from a tire, or any other product that, as determined by the department based on the product's production cost and value, is not likely to result in an accumulation, at the site of production or use, that poses a threat to public health or the environment. A product is not a commodity unless it meets published national standards or specifications that the department determines are relevant to accomplishing the purposes of this part.

(g) "Commodity storage area" means 1 or more locations within a collection site where a commodity is

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stored.

(h) "Community cleanup site" means a site owned by a local unit of government or nonprofit organization that has received a scrap tire cleanup grant under section 16908(2)(c) and uses this site for the purpose of collecting scrap tires from residents as part of a community cleanup day or resident drop off.

(i) "Crumb rubber" means rubber material derived from tires that is less than 1/8 inch by 1/8 inch in size and is free of steel and fiber.

(j) "Department" means the department of environmental quality.

(k) "End-user" means any of the following:

(*i*) A person who possesses a permit to burn tires under part 55.

(*ii*) The owner or operator of a landfill that is authorized under the landfill's operating license to use scrap tires.

(*iii*) A person who uses a commodity to make a product that is sold in the market.

(*iv*) A person who is authorized by this part to accumulate scrap tires, who acquires scrap tires, and who converts scrap tires into a product that is sold in the market or reused in a manner authorized by this part.

(*l*) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(m) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(n) "Feed storage location" means a location on a parcel or adjacent parcels of real property containing a farm operation where not more than 3,000 scrap tires are used to secure stored feed.

(o) "Fund" means the scrap tire regulatory fund created in section 16908.

(p) "Landfill" means a landfill as defined in section 11504 that is licensed under part 115.

(q) "Law enforcement officer" means any law enforcement officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, or an officer appointed by the director of the department of state police under section 6d of 1935 PA 59, MCL 28.6d.

(r) "Outdoor" or "outdoors" means in a place other than a building or covered vehicle.

(s) "Portable shredding operation" means a person who operates scrap tire shredding equipment that produces a commodity or tire shreds and that can be moved from site to site.

(t) "Racecourse" means a commercially operated track for go-carts, off-road recreational vehicles, motorcycles, or other vehicles that uses scrap tires as bumpers along the track for safety purposes and that meets 1 or more of the following requirements:

(*i*) Uses not more than 3,000 scrap tires for bumpers.

(*ii*) Is operated on a temporary basis and, between races, stores the scrap tires at a collection site bonded under section 16903 and registered under section 16904.

(u) "Retailer" means a person who sells or offers for sale new, retreaded, or remanufactured tires to consumers in this state.

(v) "Retreader" means a person who retreads, recases, or recaps tire casings for reuse.

(w) "Scrap tire" means a tire that is no longer being used for its original intended purpose including, but not limited to, a used tire, a reusable tire casing, or portions of a tire. Scrap tire does not include a vehicle support stand.

(x) "Scrap tire hauler" means a person who transports more than 10 scrap tires at once in a vehicle on a public road or street. Scrap tire hauler does not include any of the following:

(*i*) A person, other than a commercial business, who transports that person's own tires to a location authorized in section 16902(1).

(*ii*) A member of a nonprofit service organization who is participating in a community service project and is transporting scrap tires to a location authorized in section 16902(1).

(*iii*) The owner of a farm who is transporting only scrap tires that originated from his or her farm operation, to a location authorized in section 16902(1), or that are intended for use in a feed storage location.

(*iv*) A solid waste hauler that is transporting solid waste to a disposal area licensed under part 115.

(*v*) A person who is transporting only a commodity.

(*vi*) A retreader who is transporting scrap tires for the purpose of retreading, recasing, or recapping and who has the documentation required in section 16906(5).

(y) "Scrap tire processor" means either of the following:

(*i*) A person who is authorized by this part to accumulate scrap tires and is engaged in the business of buying or otherwise acquiring scrap tires and reducing their volume by shredding or otherwise facilitating recycling or resource recovery techniques for scrap tires.

(*ii*) A portable shredding operation.

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(z) "Solid waste hauler" means a solid waste hauler as defined in section 11506 who transports less than 25% by weight or volume of scrap tires along with other solid waste in any truckload to a disposal area licensed under part 115.

(aa) "Storage requirements" means the requirements of section 16903(1) and, if applicable, (2).

(bb) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a tractor or other farm machinery or of a vehicle.

(cc) "Tire chip" means a portion of a tire that is any of the following:

(*i*) Not more than 2 inches by 2 inches in size and meets requirements for size, metal content, and cleanliness as specified in an executed contract for delivery of the material by the scrap tire processor.

(*ii*) Not more than 3/8 inch by 3/8 inch in size and sufficiently free from steel to be used in the construction and modification of sports surfaces such as golf course turf, athletic field turf, athletic tracks, hiking surfaces, livestock show arena surfaces, and playgrounds.

(*iii*) To be used in a drain field approved under a district or county sanitary code.

(*iv*) To be used as ground cover or mulch, if, in aggregate, 95% of the material is equal to or less than 3/4 inch in size in any dimension and the material contains less than 1% by weight or volume of steel and fiber.

(*v*) Approved by the department for use at a landfill as daily cover or a leachate collection system protective layer or for access road construction within a lined cell.

(dd) "Tire shred" means a portion of a tire that is not a commodity.

(ee) "Tire storage area" means a location within a collection site where tires are accumulated.

(ff) "Vehicle" means a device in, upon, or by which a person or property is or may be transported or drawn upon a highway. Vehicle does not include a device that is exclusively moved by human power or used exclusively upon stationary rails or tracks or a mobile home as defined in section 2 of the mobile home commission act, 1987 PA 96, MCL 125.2302.

(gg) "Vehicle support stand" means equipment used to support a stationary vehicle consisting of an inflated tire and wheel that is attached to another wheel.

(2) A reference in this part to a number of scrap tires means either of the following, or an equivalent combination thereof:

(a) That number of whole tires or reusable tire casings.

(b) A quantity of a commodity or tire shreds equivalent in weight to that number of whole tires.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 268, Imd. Eff. Jan. 8, 1996;—Am. 1997, Act 17, Imd. Eff. June 11, 1997;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 520, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015;—Am. 2016, Act 294, Eff. Jan. 2, 2017.

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Popular name: Act 451

Popular name: NREPA

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324.16902 Delivery of scrap tire; limitations; removal; scope of subsection (2); presumptions.

Sec. 16902. (1) A person shall deliver a scrap tire only to, and only with the consent of the owner or operator of, 1 of the following that is in compliance with this part:

(a) A collection site registered under section 16904.

(b) A location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site as specified in section 16901(d).

(c) A disposal area licensed under part 115.

(d) An end-user.

(e) A scrap tire processor.

(f) A retailer.

(2) A person shall not by contract, agreement, or otherwise arrange for the removal of scrap tires except with 1 of the following:

(a) A scrap tire hauler that is registered pursuant to section 16905 and that by contract, agreement, or otherwise is obligated to deliver the scrap tires to the destination as identified under section 16905(3)(c).

(b) If the scrap tires are a commodity, a person hauling only a commodity.

(c) If the scrap tires are tire casings, a retreader hauling only tire casings.

(d) A solid waste hauler.

(3) Subsection (2) does not do any of the following:

(a) Prohibit a person from transporting his or her scrap tires to a site authorized by subsection (1).

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(b) Prohibit a member of a nonprofit service organization who is participating in a community service project from transporting scrap tires to a site authorized by subsection (1).

(c) Prohibit the owner of a farm from transporting scrap tires that originated from his or her farm operation to a site authorized by subsection (1).

(d) Prohibit a solid waste hauler from transporting solid waste to a disposal area licensed under part 115.

(4) The driver of a vehicle used to transport scrap tires is presumed to be responsible for any scrap tires transported, discarded, or disposed of from the vehicle in violation of this section.

(5) In a proceeding for a violation of this section committed using a vehicle, it is presumed that the registered owner of the vehicle at the time of the violation or, if the registered owner is not an individual, the registered owner's agent was the driver of the vehicle at the time of the violation. However, if the vehicle was leased at the time of the violation, it is presumed that the lessee or, if the lessee is not an individual, the lessee's agent was the driver of the vehicle at the time of the violation.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 521, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16902a Repealed. 2002, Act 496, Imd. Eff. July 3, 2002.

Compiler's note: The repealed section pertained to retailer disposal of scrap tires and maintenance of records.

Popular name: Act 451

Popular name: NREPA

324.16903 Accumulation of scrap tires outdoors by owner or operator of collection site; compliance; bond required; exception; drawing on bond; notice; order.

Sec. 16903. (1) A person who owns or operates a collection site where fewer than 2,500 scrap tires are accumulated outdoors shall comply with all of the following:

(a) Scrap tires shall be stored in the tire storage area identified on the scrap tire collection site registration application map and approved by the department.

(b) Only scrap tires shall be accumulated in the tire storage area.

(c) Subject to subdivision (f), the scrap tires shall be accumulated in piles no greater than 15 feet in height with horizontal dimensions no greater than 200 by 40 feet.

(d) Subject to subdivision (f), the scrap tires shall not be within 20 feet of the property line or within 60 feet of a building or structure.

(e) Subject to subdivision (f), there shall be a minimum separation of 30 feet between scrap tire piles. The open space between the piles shall at all times be free of rubbish, equipment, and other materials.

(f) Scrap tire piles shall be accessible to fire fighting equipment. If the requirement of this subdivision is met, the local fire department that serves the jurisdiction in which the collection site is located may grant a variance from the requirements of subdivision (c), (d), or (e). A variance under this subsection shall be in writing.

(g) Scrap tires shall be isolated from other stored materials that may create hazardous products if there is a fire, including, but not limited to, lead acid batteries, fuel tanks, solvent barrels, and pesticide containers.

(h) Except for scrap tires that are a commodity used to create a storage pad for, or a roadway for access to, other scrap tires that are also a commodity, scrap tires shall not be placed in the open spaces between tire piles or used to construct on-site roads.

(i) The owner or operator of the collection site shall allow the local fire department that serves the jurisdiction in which the collection site is located to inspect the collection site at any reasonable time.

(j) All persons employed to work at the collection site shall be trained in emergency response operations. The owner or operator of the collection site shall maintain training records and shall make these records available to the local fire department that serves the jurisdiction in which the collection site is located.

(2) A person who owns or operates a collection site where at least 2,500 but fewer than 100,000 scrap tires are accumulated outdoors shall comply with all of the following:

(a) All of the requirements of subsection (1).

(b) The tire storage area shall be completely enclosed with a fence that is at least 6 feet tall with lockable gates and that is designed to prevent easy access.

(c) An earthen berm not less than 5 feet in height shall completely enclose the tire storage area except to allow for necessary ingress and egress from roadways and buildings.

(d) The collection site shall contain sufficient drainage so that water does not pool or collect on the

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property.

(e) The approach road to the tire storage area and on-site access roads to the tire storage area shall be of all-weather construction and maintained in good condition and free of debris and equipment so that it is passable at all times for fire fighting and other emergency vehicles. If the local fire department for the jurisdiction where the collection site is located submits to the department a written determination that the on-site access roads do not ensure that the site is accessible to emergency vehicles at all times during the year, the department of environmental quality shall consider the on-site access roads to be in violation of this requirement.

(f) Tire storage areas shall be mowed regularly or otherwise kept free of weeds, vegetation, and other growth at all times.

(g) An emergency procedures plan shall be prepared and displayed at the collection site. The plan shall include telephone numbers of the local fire and police departments. The plan shall be reviewed by the local fire department prior to being posted.

(h) Scrap tires shall not be accumulated in excess of 10,000 cubic yards of scrap tires per acre.

(3) A person who owns or operates a collection site where 100,000 or more scrap tires are accumulated outdoors shall comply with all of the requirements of subsections (1) and (2) and shall operate as a scrap tire processor.

(4) Except as otherwise provided in this subsection, subsection (6), and section 16903b, a person who owns a collection site shall maintain a bond in favor of the department. If the collection site registration application under section 16904 includes a written agreement between the owner and the operator of the collection site that requires the operator to maintain the bond and the department approves that requirement, then the operator shall maintain the bond. The bond shall be on a form approved by the department. If the operator is required to maintain the bond under this subsection but fails to do so, both the owner and operator are responsible for a violation of this subsection. The amount of the bond shall be not less than the sum of $25,000.00 per quarter acre, or fraction thereof, of outdoor tire storage area, and $2.00 per square foot of tire storage area in a building. However, for collection sites with fewer than 2,500 tires, the bond shall not exceed $2,500.00.

(5) A person who elects to use a certificate of deposit as a bond under subsection (4) shall receive any accrued interest on that certificate of deposit upon release of the bond by the department. If a person elects to post cash as a bond, interest shall accrue on that bond quarterly at the annual rate of 6%, except that the interest rate payable to the person who maintained the bond shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the person who maintained the bond upon release of the bond by the department. Any interest greater than 6% shall be deposited into the fund.

(6) A bond is not required under subsection (4) for a commodity storage area that meets all of the following requirements:

(a) The commodity is stored in accordance with the requirements of subsection (1).

(b) Not less than 75% of the commodity, by weight or volume, that is stored at the collection site each calendar year is removed from the collection site to a market during that year, and the collection site owner or operator certifies compliance with this subdivision on a form approved by the department.

(c) The areas of the collection site that are used for storage of the commodity are not larger than a total of 1 acre and those areas are indicated on a survey by a registered professional engineer submitted to the department as part of the collection site registration.

(7) Subject to subsections (8) and (9), the department may utilize a bond required under subsection (4) for the costs of any of the following:

(a) Removing scrap tires from the collection site.

(b) Bringing the collection site into compliance with this part.

(c) Cleanup at the collection site.

(d) Fire suppression or other costs associated with responding to a fire or other emergency at a collection site, including reimbursement to any local unit of government that incurred those costs.

(8) The department may draw on the bond required under subsection (4) if any of the following apply:

(a) There is a fire or other emergency at the collection site.

(b) The collection site owner becomes insolvent.

(c) The owner or operator of the collection site violates this part and does not cause the removal of the scrap tires as ordered by the department or a court of competent jurisdiction.

(d) The owner or operator of the collection site fails to extend or renew the bond under its terms or establish alternate financial assurance under subsection (4) at least 30 days before the expiration date or cancellation date of the bond, unless the owner or operator is exempt from the requirement to obtain a bond

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under section 16903b.

(9) At least 7 days before the department draws on the bond under subsection (8)(b) or (c), the department shall issue a notice or order alleging that the owner or operator of the collection site is insolvent or violated this part and shall provide an opportunity for an informal hearing. This subsection does not apply if the bond is drawn upon under subsection (8)(c) as a result of failure to cause the removal of scrap tires as ordered by a court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1997, Act 17, Imd. Eff. June 11, 1997;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 522, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16903a Fires at collection sites; statewide response plan.

Sec. 16903a. The department of environmental quality shall prepare and implement a statewide response plan for responding to fires at collection sites.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997.

Popular name: Act 451

Popular name: NREPA

324.16903b Bond; exemptions; noncompliance; notice; compliance with subsection (1).

Sec. 16903b. (1) Subject to subsection (2), the owner and operator of a collection site are exempt from the requirement to obtain a bond under section 16903(4) if all of the following requirements are met:

(a) The owner or operator of the collection site is a scrap tire processor.

(b) Not less than 75% of the scrap tires, by weight or volume, that are stored at the collection site each calendar year are recycled or used for resource recovery during that year.

(c) The collection site has been in compliance with storage requirements for at least 1 year.

(d) The owner or operator annually certifies compliance with the requirements of this subsection on a form approved by the department.

(2) If the department determines that the owner or operator of a collection site is not in compliance with subsection (1), the department shall deliver to the collection site owner or operator, or both, a notice of noncompliance. If, within 60 days after receipt of that notice, the owner or operator who received the notice does not bring the collection site into compliance with subsection (1), the owner or operator shall comply with section 16903(4). Once an owner or operator is required to obtain a bond under section 16903(4), the bond shall be maintained unless the owner or operator brings the collection site into compliance with subsection (1).

(3) If a scrap tire processor has maintained its collection site in compliance with subsection (1) for 5 years, the scrap tire processor may move its operation to a new collection site location and remains exempt from the requirement to maintain a bond under section 16903(4) as long as the scrap tire processor continues to comply with subsection (1).

History: Add. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 523, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16903c Maintenance limiting mosquito breeding; requirements; violation; penalty; payment default.

Sec. 16903c. (1) The owner or operator of a collection site shall ensure that tires at a collection site are maintained in a manner that limits the potential of mosquito breeding by complying with 1 or more of the following:

(a) The tires shall be covered by plastic sheets or other impermeable barriers to prevent the accumulation of precipitation.

(b) The tires shall be chemically treated to eliminate mosquito breeding.

(c) The tires shall be baled, shredded, or chipped into pieces no larger than 4 inches by 6 inches and stored in piles that allow complete water drainage.

(2) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $400.00, plus costs.

(3) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

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History: Add. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16904 Owner or operator of collection site or portable shredding operation; application for registration; form; documentation of bonding; compliance with storage requirements; fee.

Sec. 16904. (1) By January 31 of each year, the owner or operator of a collection site or portable shredding operation shall submit an application for registration to the department. If a person who owns or operates a collection site is also a portable shredding operation, the person may submit a single application covering both. The application shall be on a form provided by the department and shall contain the information required by the department. The application for registration of a collection site shall include all of the following:

(a) Documentation that the collection site is bonded for the registration period as required by section 16903(4), if applicable.

(b) The signature of the applicant and, if the applicant is not the owner of the real property, the signature of the owner.

(2) The department shall not register a collection site unless the collection site is in compliance with the storage requirements.

(3) A $200.00 registration fee shall accompany each annual application for registration under this section. The department shall deposit money collected under this subsection into the state treasury to be credited to the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 527, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16904a End user; exemption.

Sec. 16904a. (1) Except as provided in subsection (2), an end-user is exempt from this part for scrap tires stored on the site of the end-user if not less than 75% of the scrap tires, by weight or volume, that are stored on site each calendar year are recycled or used for resource recovery during that year, and the end-user annually certifies his or her compliance with this section on a form approved by the department.

(2) All end-users shall comply with the requirements of section 16906.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997;—Am. 2002, Act 496, Imd. Eff. July 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.16904b Regulation of scrap tires as solid waste.

Sec. 16904b. Scrap tires that are managed in compliance with this part are exempt from regulation as solid waste under part 115. Scrap tires that are not managed in compliance with this part are regulated as solid waste under part 115 in addition to being regulated under this part.

History: Add. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16905 Scrap tire hauler; registration; form; contents; presentment; display of number; maintenance, availability, and contents of record; disposal at other location prohibited; original record; copy; bond; use; conditions for drawing on; notice; order.

Sec. 16905. (1) By January 31 of each year, a scrap tire hauler shall submit an application for registration to the department. The application shall be on a form provided by the department and shall contain the information required by the department. The application shall include documentation that the scrap tire hauler is bonded as required by subsection (6) for the registration period.

(2) A scrap tire hauler when transporting scrap tires shall have in his or her possession a copy of the current unexpired scrap tire hauler registration and shall present it upon demand of the department or a law enforcement officer. The scrap tire hauler registration number issued by the department shall be visibly displayed on a motor vehicle transporting scrap tires, whether the scrap tires are transported in or on the motor vehicle or a trailer. The number shall be in block style numerals at least 2 inches high and located on the driver's side of the vehicle but not on a window. The color of the numerals shall contrast with the background

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vehicle color.

(3) A scrap tire hauler shall maintain a record of each load or consolidated load of scrap tires he or she transports on forms approved by the department. The record shall be maintained for 3 years and shall be made available, upon request, to the department or to a law enforcement officer at reasonable hours. The record shall contain all of the following information:

(a) The name, address, telephone number, authorized signature, and registration number of the scrap tire hauler.

(b) The name, address, telephone number, and authorized signature of the person who contracts for the removal of the scrap tires.

(c) The name, address, telephone number, and, upon delivery, the authorized signature, as required under section 16906(3), of the owner or operator of the location described in section 16902(1) where the tires are to be delivered.

(d) The date of removal and the number of scrap tires being transported.

(4) A scrap tire hauler shall not dispose of scrap tires at a location other than the location identified under subsection (3)(c).

(5) The original record as required by subsection (3) shall be in the possession of the scrap tire hauler during the actual transportation of the scrap tires. A copy of the record provided for in subsection (3) shall be provided to the person who contracts for the removal of scrap tires at the time of removal of the tires from the originating location. A copy shall also be provided to the owner or operator of the location described in section 16902(1) to which the scrap tires are delivered at the time of delivery.

(6) A scrap tire hauler shall maintain a bond in favor of the department, unless the scrap tire hauler is owned and operated by a scrap tire processor in compliance with this part. The bond shall be on a form approved by the department. The amount of the bond shall be $10,000.00.

(7) A person who elects to use a certificate of deposit as a bond under subsection (6) shall receive any accrued interest on that certificate of deposit. If cash is posted as a bond, interest shall accrue on the bond quarterly, at the annual rate of 6%, except that the interest rate payable to the scrap tire hauler shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the scrap tire hauler upon release of the bond by the department. Any interest greater than 6% shall be deposited into the fund.

(8) Subject to subsections (9) and (10), the department may utilize a bond required under subsection (6) for the costs of any of the following:

(a) Removing scrap tires accumulated by the scrap tire hauler.

(b) Removing scrap tires deposited at an illegal location by the scrap tire hauler.

(c) Bringing scrap tires accumulated or deposited by the scrap tire hauler into compliance with this part.

(d) Cleanup of scrap tires accumulated or deposited by the scrap tire hauler.

(e) Fire suppression or other costs associated with responding to a fire or other emergency involving the scrap tire hauler or a site where scrap tires have been accumulated or deposited by the scrap tire hauler, including reimbursement to any local unit of government that incurred those costs.

(9) The department may draw on the bond required under subsection (6) if any of the following apply:

(a) There is a fire or other emergency involving the scrap tire hauler or a site where scrap tires have been accumulated or deposited by the scrap tire hauler.

(b) The scrap tire hauler becomes insolvent.

(c) The scrap tire hauler violates this part and does not cause the removal of the tires as ordered by the department or a court of competent jurisdiction.

(d) The scrap tire hauler fails to extend or renew the bond under its terms or establish alternate financial assurance under subsection (6) at least 30 days before the expiration date or cancellation date of the bond.

(10) At least 7 days before the department draws on the bond under subsection (9)(b) or (c), the department shall issue a notice or order alleging that the scrap tire hauler is insolvent or violated this part and shall provide an opportunity for an informal hearing. This subsection does not apply if the bond is drawn upon under subsection (9)(c) as a result of failure to cause the removal of scrap tires as ordered by a court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 527, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16906 Record.

Sec. 16906. (1) A person who by contract, agreement, or otherwise arranges for the removal of scrap tires from a property under his or her control, including an end-user, shall do all of the following:

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(a) If a complete record is not obtained from the registered scrap tire hauler pursuant to section 16905(5) or from an owner, operator, or authorized agent of a location pursuant to subsection (3), promptly notify the department of the missing record or information.

(b) Maintain the records described in subdivision (a) at the site of removal for 3 years.

(c) Make the records available to the department or a law enforcement officer upon request during reasonable hours.

(2) A person who receives scrap tires, including an end-user, shall maintain a record of all scrap tires received. The record shall be maintained for 3 years and shall be made available upon request to the department or a law enforcement officer at reasonable hours. The record shall contain all of the information required of a scrap tire hauler in section 16905(3).

(3) Upon acceptance of scrap tires at a location authorized by section 16902(1), the owner, operator, or authorized agent of that location shall sign the record, indicating acceptance of the scrap tires, and provide a copy of the signed record to the person delivering the scrap tires. Within 30 days, the owner or operator of the location receiving the scrap tires shall forward a copy of the signed record to the person who by contract, agreement, or otherwise arranged for the removal of the scrap tires being delivered. If the number of scrap tires received by a location authorized by section 16902(1) differs from the number of scrap tires indicated on the record provided for in section 16905(3) by the person who by contract, agreement, or otherwise arranged for the removal of the scrap tires being delivered or by the scrap tire hauler, the owner or operator of the location receiving the scrap tires shall contact the person who arranged for removal of the scrap tires or the scrap tire hauler, or both, as necessary, and determine where any additional tires received by that location originated or where any missing tires not received by that location were taken.

(4) If a consumer purchases replacement tires at a retailer and retains the tires being replaced, the retailer shall obtain the signature of the consumer on an invoice, receipt, or other record acknowledging retention of the scrap tires unless the consumer refuses.

(5) A retreader shall maintain for 3 years, and make available upon request to the department or a law enforcement officer at reasonable hours, all records required to be carried or maintained with the retreader's tire casings including all of the following:

(a) A retread work order that includes the customer's name, date of transaction, retreader DOT identification number pursuant to 49 CFR part 574, order number, and details of casing information for the casing intended for processing. Work orders shall reflect the number of tires that are being transported and retreaded.

(b) A work order sales report that specifies the work process detail for the customer work order. This report shall be returned to the customer with the work order number and invoice.

(c) An invoice stating the sales transaction of the retread process that was completed for the customer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 529, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16907 Report to legislature.

Sec. 16907. By January 1, 1996, the department shall report to the legislature on all of the following:

(a) The effectiveness of this part and whether the department recommends any changes in this part.

(b) The volume of tires that are being disposed of in landfills and whether the department recommends banning tires from landfills in the future.

(c) Whether a manifest system to track scrap tires would be useful in the enforcement of this part.

(d) Whether, under certain circumstances, the fund should be used for the cleanup of abandoned scrap tires on land owned by persons other than the state or a municipality or county.

(e) Whether sufficient collection sites are available for the disposal of scrap tires from private individuals.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.16908 Scrap tire regulatory fund; creation; investment; interest and earnings; department as administrator for auditing purposes; no reversion to general fund; use of money in fund; grants.

Sec. 16908. (1) The scrap tire regulatory fund is created in the state treasury. The fund shall receive money as provided by law and any gifts or contributions to the fund. The state treasurer shall direct the investment of

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the fund. Interest and earnings of the fund shall be credited to the fund. The department shall be the administrator of the fund for auditing purposes. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Subject to subsection (4), money in the fund shall be used, upon appropriation, for all of the following purposes:

(a) For administrative costs of the department associated with this part including the implementation and enforcement of this part. However, money shall not be expended under this subdivision for the employment of more than 11 full-time equated positions.

(b) For the administrative costs of the secretary of state associated with the collection of the tire disposal surcharge pursuant to section 806 of the Michigan vehicle code, 1949 PA 300, MCL 257.806.

(c) For the cleanup or collection of abandoned scrap tires and scrap tires at collection sites. The department shall give priority to funding activities under this subdivision at collection sites in which the scrap tires were accumulated before January 1, 1991 and to collection sites that pose an imminent threat to public health, safety, welfare, or the environment. For collection sites that have accumulated tires after January 1, 1991, a lien in favor of this state, up to the value of the cleanup grant amount and any increase in the value of the property as a result of the cleanup of the property with grant funds, shall be placed on the property that is affected by the removal of the tires as provided in section 16908b. Before making a grant under this subdivision, the department shall consider the extent to which the making of the grant would contribute to the achievement of a balanced distribution of grants under this subdivision throughout this state. If a grant is awarded under this subdivision for collecting scrap tires at a community cleanup site, the tires shall be removed from the community cleanup site by the time specified in the grant contract.

(d) For grants to reimburse the cost of purchasing scrap tires to support the development of increased markets for scrap tires. Only the cost of purchasing scrap tires from scrap tire processors in this state or other generators of scrap tires in this state is eligible for reimbursement under this subdivision.

(e) For grants of up to 50% of the cost of purchasing equipment, or research and development, to provide for a new or increased use for scrap tires.

(f) For costs associated with enforcement of this part, including grants to local law enforcement agencies.

(3) Applications for grants under subsection (2) shall be submitted on a form approved by the department and shall contain the information required by the department. The department shall publish criteria upon which the grants will be issued and shall make that information available to grant applicants.

(4) For the fiscal year ending September 30, 2020, only, $4,000,000.00 of the money in the scrap tire regulatory fund is transferred to and must be deposited into the general fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 268, Imd. Eff. Jan. 8, 1996;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 524, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015;—Am. 2020, Act 201, Imd. Eff. Oct. 15, 2020.

Popular name: Act 451

Popular name: NREPA

324.16908a Development of markets for scrap tires.

Sec. 16908a. The department of environmental quality shall assist owners and operators of collection sites and scrap tire processors in this state in developing markets for scrap tires.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997.

Popular name: Act 451

Popular name: NREPA

324.16908b Unpaid cleanup costs; lien; filing of petition by attorney general; type of lien; duration; release.

Sec. 16908b. (1) All unpaid cleanup costs for scrap tires accumulated after January 1, 1991 that are incurred under section 16908(2)(c), including any staff costs, costs of surveillance and enforcement, and attorney costs or fees constitute a lien in favor of this state upon a collection site that has been the subject of cleanup activity by this state. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when this state first incurs such cleanup costs at the collection site.

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of this state in recovering the cleanup costs at a collection site, the attorney general may file a petition in the circuit court for the county in which the property is located seeking either or both of the following:

(a) A lien upon the collection site subject to the scrap tire cleanup activity that takes priority over all other liens and encumbrances that are or have been recorded on the collection site.

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(b) A lien upon real or personal property or rights to real or personal property other than the collection site, owned by the person who owns the collection site, having priority over all other liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subdivision:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (2), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the real property subject to the cleanup activity.

(4) In addition to the lien provided in subsections (1) and (2), if this state incurs costs for cleanup activity under section 16908(2)(c) that increase the market value of the real property that is the location of the cleanup activity, the increase in value caused by the state-funded cleanup activity, to the extent this state incurred unpaid cleanup costs, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(5) A lien provided in subsection (1), (2), or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(6) A lien under this section continues until the liability for the cleanup costs is satisfied.

(7) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (5).

History: Add. 2006, Act 528, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.16908c Intentional open burning of scrap tire prohibited.

Sec. 16908c. A person shall not intentionally engage in the open burning of a scrap tire.

History: Add. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

324.16909 Violation as misdemeanor; penalties; separate violations; issuance of appearance ticket; section inapplicable to violation of MCL 324.16903c; false statement.

Sec. 16909. (1) A person who violates this part, if fewer than 50 scrap tires are involved, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $200.00 or more than $500.00, or both, for each violation.

(2) A person who violates this part, if 50 or more scrap tires are involved, is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than $500.00 or more than $10,000.00, or both, for each violation.

(3) A person convicted of a second or subsequent violation of this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than $1,000.00 or more than $25,000.00, or both, for each violation.

(4) In addition to any other penalty provided for in this section, the court may order a person who violates this part to perform not more than 100 hours of community service.

(5) For any violation of this part, each day that a violation continues constitutes a separate violation.

(6) A law enforcement officer may issue an appearance ticket as described and authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates this part.

(7) This section does not apply to a violation of section 16903c.

(8) A person who knowingly makes or causes to be made a false statement or entry in a registration application, scrap tire transportation record, or grant application under this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than $2,500.00 or more than $10,000.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 496, Imd. Eff. July 3, 2002;—Am. 2006, Act 520, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

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Popular name: Act 451

Popular name: NREPA

324.16909a Investigation or inspection; warrantless search; seizure of vehicle or equipment; costs.

Sec. 16909a. (1) The department may enter at reasonable hours a tire retail establishment, vehicle owned or operated by a scrap tire hauler for the transport of scrap tires, or collection site or other place where scrap tires are or have been present, and may inspect the location or other place for the purposes of enforcing or administering this part. An investigation or inspection under this part shall comply with the United States constitution and the state constitution of 1963.

(2) If the department or a law enforcement officer has probable cause to believe that a person is violating this part, the department or a law enforcement officer may search without a warrant a vehicle or other transportation-related equipment that is possessed, used, or operated by that person.

(3) A vehicle, or other transportation-related equipment used in a criminal violation of this part is subject to seizure by a law enforcement officer and forfeiture in the same manner as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

(4) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action for a violation of this section.

History: Add. 2006, Act 530, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.16910 Response to fire or violation of part; action for recovery of incurred costs.

Sec. 16910. A person who incurs costs as a result of a response to a fire or a violation of this part at a collection site may bring an action against the owner or operator of the collection site, in the circuit court in which the collection site is located, to recover the incurred costs.

History: Add. 1997, Act 17, Imd. Eff. June 11, 1997.

Popular name: Act 451

Popular name: NREPA

324.16911 Reports; appointment of scrap tire advisory committee.

Sec. 16911. (1) The department shall annually report to the standing committees of the senate and house of representatives with primary responsibility for issues pertaining to natural resources and the environment on the utilization of revenues of the fund.

(2) In 2006 and every third year thereafter, the department shall prepare a report on the effectiveness of this part in encouraging the reuse of scrap tires and ensuring the safe storage of scrap tires. The report shall include recommendations for such changes to this part, including any further description of the uses of money described in section 16908(2)(c), (d), and (e) as the department finds necessary and appropriate. The department shall submit the report to the standing committees of the senate and house of representatives with primary responsibility for issues pertaining to natural resources and the environment.

(3) The director of the department shall appoint a scrap tire advisory committee of individuals interested in the management of scrap tires to advise the department on the implementation of this part. In addition to such other issues as the department may request the committee to consider, the committee shall advise the department on the report required by subsection (2) and the relevance of a national standard or specification under section 16901(1)(f).

History: Add. 2006, Act 525, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 543, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: NREPA

PART 171
BATTERY DISPOSAL

324.17101 Definitions.

Sec. 17101. As used in this part:

(a) "Alkaline manganese battery" means a dry cell battery containing manganese dioxide and zinc electrodes and an alkaline electrolyte.

(b) "Distributor" means a person who sells batteries to retailers in this state.

(c) "Lead acid battery" means a storage battery, that is used to start an internal combustion engine or as the

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principal electrical power source for a vehicle, in which the electrodes are grids of lead containing lead oxides that change in composition during charging and discharging, and the electrolyte is dilute sulfuric acid.

(d) "Manufacturer" means a person who produces batteries for sale in this state.

(e) "Mercuric oxide battery" means a dry cell battery that delivers an essentially constant output voltage throughout its useful life by means of a chemical reaction between zinc and mercuric oxide.

(f) "Nickel cadmium battery" means a sealed storage battery that has a nickel anode, a cadmium cathode, and an alkaline electrolyte, that is widely used in cordless appliances.

(g) "Retailer" means a person who sells or offers to sell batteries to consumers within this state.

(h) "Solid waste disposal area" means a disposal area as defined in part 115.

(i) "Zinc carbon battery" means a dry cell battery containing manganese dioxide and zinc electrodes and an electrolyte consisting of ammonium chloride or a zinc chloride solution, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 124, Imd. Eff. June 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.17102 Disposal of lead acid battery.

Sec. 17102. (1) A person other than a retailer, distributor, or manufacturer shall not dispose of a lead acid battery except by delivery to 1 of the following:

(a) A retailer.

(b) A distributor.

(c) A manufacturer.

(d) A collection, recycling, or smelting facility approved by the department.

(2) A retailer shall not dispose of used lead acid batteries except by delivery to 1 of the following:

(a) A distributor or his or her authorized agent.

(b) A collection, recycling, or smelting facility approved by the department.

(c) A manufacturer.

(3) A distributor shall dispose of lead acid batteries by delivery to a manufacturer or to a collection, recycling, or smelting facility approved by the department.

(4) A manufacturer shall dispose of lead acid batteries by delivery to a recycling or smelting facility approved by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17103 Retailer of lead acid batteries; duties.

Sec. 17103. A retailer of lead acid batteries shall do all of the following:

(a) Accept, at or near the point at which lead acid batteries are offered for sale, in a quantity at least equal to the number of new lead acid batteries sold by the retailer, used lead acid batteries from customers, if offered by the customers.

(b) Post a written notice in a location that is readily visible to customers within the retail establishment that is at least 8-1/2 inches by 11 inches in size and contains the universal recycling symbol and contains essentially all of the following:

(*i*) Recycle your used lead acid batteries.

(*ii*) It is illegal to discard a lead acid battery except by delivery to a retailer, a distributor, a manufacturer, or a collection, recycling, or smelting facility approved by the department.

(*iii*) State law requires retailers to accept used lead acid batteries upon the purchase or within 30 calendar days of the purchase of a lead acid battery.

(c) The format, design, and wording of the notice described in this section shall be provided to retailers of lead acid batteries by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17104 Notices; failure to post; default in payment of civil fine.

Sec. 17104. (1) The department shall produce, print, and make available to retailers notices required by

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section 17103.

(2) A retailer who fails to post a notice required by this part following warning by the department is subject to a civil fine of $25.00 per day of violation.

(3) A default in the payment of a civil fine ordered under this part may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105 Acceptance of lead acid batteries by distributor; quantity; removal from point of collection.

Sec. 17105. (1) A distributor shall accept used lead acid batteries from retailers in a quantity at least equal to the number of new lead acid batteries sold by the distributor.

(2) A distributor accepting lead acid batteries from a retailer as required under this section shall remove the lead acid batteries from the point of collection within 90 days of receiving the batteries.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105a Batteries containing intentionally introduced mercury; sales or offers prohibited.

Sec. 17105a. (1) Except for alkaline manganese button cell batteries that have a mercury content of 25 milligrams or less, a person shall not sell, offer for sale, or offer for promotional purposes an alkaline manganese battery manufactured on or after January 1, 1996 that contains intentionally introduced mercury.

(2) A person shall not sell, offer for sale, or offer for promotional purposes a zinc carbon battery manufactured on or after January 1, 1996 that contains intentionally introduced mercury.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105b Button cell mercuric oxide battery or mercuric oxide battery; sales or offers.

Sec. 17105b. (1) Beginning on January 1, 1996, a person shall not sell, offer for sale, or offer for promotional purposes a button cell mercuric oxide battery for use in this state.

(2) Beginning on January 1, 1996, a person shall not sell, offer for sale, or offer for promotional purposes a mercuric oxide battery for use in this state unless the manufacturer does all of the following:

(a) Identifies a collection site that has all required government approvals, to which a person may send used mercuric oxide batteries for recycling or proper disposal after mercury is recovered from the battery.

(b) Informs each of its purchasers of mercuric oxide batteries of the collection site identified under subdivision (a).

(c) Informs each of its purchasers of mercuric oxide batteries of a telephone number that the purchaser may call to get information about returning mercuric oxide batteries for recycling or proper disposal.

(3) Subsection (2) does not apply to mercuric oxide button cell batteries.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17105c Nickel cadmium batteries; voluntary collection program.

Sec. 17105c. A manufacturer that participates in a voluntary collection program for nickel cadmium batteries in this state shall provide to retailers of nickel cadmium batteries that participate in the voluntary collection program a written notice to be displayed on a voluntary basis informing consumers that nickel cadmium batteries, whether sold separately or in rechargeable products, must be recycled or disposed of properly.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.17106, 324.17106a Repealed. 1995, Act 124, Imd. Eff. June 30, 1995.

Compiler's note: The repealed sections pertained to exchange or purchase of lead acid, nickel cadmium, or mercury batteries.

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Popular name: NREPA

324.17107 Enforcement; violation as misdemeanor; penalties.

Sec. 17107. (1) The department shall enforce this part.

(2) A person other than a retailer, distributor, or manufacturer who knowingly disposes of lead acid batteries or mercuric oxide batteries in violation of this part is guilty of a misdemeanor punishable by a fine of not more than $25.00, plus the costs of prosecution. Each battery that is unlawfully disposed of is a separate violation.

(3) Except as otherwise provided in this part, a retailer, manufacturer, or distributor who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 60 days or a fine of not more than $1,000.00, or both, plus the costs of prosecution.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 124, Imd. Eff. June 30, 1995.

Popular name: Act 451

Popular name: NREPA

PART 172.
MERCURY-ADDED PRODUCTS

324.17201 Definitions.

Sec. 17201. As used in this part:

(a) "Appliance" means a refrigerator, dehumidifier, freezer, oven, range, microwave oven, washer, dryer, dishwasher, trash compactor, window room air conditioner, television, or computer. Appliance does not include a home heating or central air-conditioning system.

(b) "Manufacturer" means a person that produces, imports, or distributes mercury thermometers in this state.

(c) "Mercury fever thermometer" means a mercury thermometer used for measuring body temperature.

(d) "Mercury thermometer" means a product or component, other than a dry cell battery, of a product used for measuring temperature that contains mercury or a mercury compound intentionally added to the product or component. Mercury thermometer does not include a product or component of a product that is used as a replacement for an existing thermometer that measures temperature as part of a manufacturing process.

(e) "Thermostat" means a consumer product that uses a switch that contains mercury or a mercury compound to sense and control room temperature, including room temperature in residential, commercial, industrial, and other buildings, by communicating with heating, ventilating, or air-conditioning equipment. Thermostat does not include a product used to control temperature as part of a manufacturing device.

History: Add. 2002, Act 578, Imd. Eff. Oct. 3, 2002;—Am. 2006, Act 494, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.17202 Mercury thermometer; sale, offer for sale, or offer for promotional purposes.

Sec. 17202. (1) Except as provided in subsection (2), beginning on January 1, 2003, a person shall not sell, offer for sale, or offer for promotional purposes a mercury thermometer in this state or for use in this state. This subsection does not apply if the mercury thermometer is sold or offered for either of the following:

(a) A use for which a mercury thermometer is required by state or federal statute, regulation, or administrative rule.

(b) Pharmaceutical research purposes.

(2) Beginning on January 1, 2003, a person shall not sell, offer for sale, or offer for promotional purposes a mercury fever thermometer in this state or for use in this state, except by prescription. A manufacturer of mercury fever thermometers shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur with each mercury fever thermometer sold by prescription.

History: Add. 2002, Act 578, Imd. Eff. Oct. 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.17203 Enforcement; violation as misdemeanor; penalty.

Sec. 17203. (1) The department of environmental quality shall enforce this part.

(2) A person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more

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than 60 days or a fine of not more than $1,000.00, or both, plus the costs of prosecution.

History: Add. 2002, Act 578, Imd. Eff. Oct. 3, 2002.

Popular name: Act 451

Popular name: NREPA

324.17204 Sale of blood pressure device containing mercury; prohibitions; exceptions.

Sec. 17204. (1) Beginning January 1, 2008, a person shall not sell, offer for sale, or offer for promotional purposes in this state or for use in this state a blood pressure recording, measuring, or monitoring device that contains mercury or a mercury compound intentionally added to the device.

(2) Except as provided in subsection (3), beginning January 1, 2009, a person shall not use a device described in subsection (1) in this state.

(3) Subsection (2) does not apply to a blood pressure recording, measuring, or monitoring device that contains mercury or a mercury-added compound if all of the following requirements are met:

(a) The blood pressure recording, measuring, or monitoring device was purchased prior to the date of enactment of the amendatory act that added this section.

(b) The blood pressure recording, measuring, or monitoring device is used exclusively in a private residence or is used exclusively in a health care facility for the purpose of calibrating blood pressure recording, measuring, or monitoring devices that do not contain mercury or a mercury-added compound and is kept in a locked area within that health care facility that is inaccessible to the general public.

History: Add. 2006, Act 493, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.17205 Thermostat containing mercury or mercury compound; sale or distribution prohibited; exception.

Sec. 17205. (1) Beginning January 1, 2009, a person shall not sell, offer for sale, or distribute in this state or for use in this state a thermostat for use in regulating room temperature and that contains mercury or a mercury compound.

(2) This section does not apply to a thermostat if the thermostat is a replacement for an existing thermostat containing mercury or a mercury compound that is a component of an appliance.

History: Add. 2006, Act 492, Imd. Eff. Dec. 29, 2006.

Compiler's note: Act 451

Popular name: NREPA

324.17206 Esophageal dilator, bougie tube, or gastrointestinal tube with mercury or mercury compound added; sale, offer for sale, or distribution prohibited; exceptions.

Sec. 17206. (1) Except as provided in subsection (2), beginning January 1, 2009, a person shall not sell, offer for sale, or distribute in this state an esophageal dilator, bougie tube, or gastrointestinal tube if mercury or a mercury compound was added to the product during its manufacture.

(2) This section does not apply to either of the following:

(a) A product the use of which is required by a federal statute or regulation.

(b) A product whose only mercury-containing component is a button cell battery.

History: Add. 2006, Act 494, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

PART 173
ELECTRONICS

324.17301 Definitions.

Sec. 17301. As used in this part:

(a) "Collector" means a person who receives covered electronic devices from consumers and arranges for the delivery of the covered electronic devices to a recycler.

(b) "Computer" means a desktop personal computer or laptop computer, a computer monitor, or beginning April 1, 2011, a printer. Computer does not include any of the following:

(*i*) A personal digital assistant device or mobile telephone.

(*ii*) A computer peripheral device, including a mouse or other similar pointing device, or a detachable or wireless keyboard.

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(c) "Computer takeback program" means a program required under section 17305(c).

(d) "Consumer" means a person who used a covered electronic device primarily for personal or small business purposes in this state.

(e) "Covered computer" means a computer that was or will be used primarily for personal or small business purposes in this state. Covered computer does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(f) "Covered electronic device" means a covered computer or covered video display device.

(g) "Covered video display device" means a video display device that was or will be used primarily for personal or small business purposes in this state. Covered video display device does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for transportation or use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(h) "Department" means the department of environmental quality.

(i) "Electronic device takeback program" or "takeback program" means a computer takeback program or a video display device takeback program.

(j) "Manufacturer", subject to subdivision (k), means any of the following:

(*i*) The person who owns the brand with which a covered computer is labeled.

(*ii*) The person who owns or is licensed to use the brand with which a covered video display device is labeled.

(*iii*) If the brand owner does not do business in the United States, the person on whose account a covered electronic device was imported into the United States.

(*iv*) A person who contractually assumes the responsibilities and obligations of a person described under subparagraph (*i*), (*ii*), or (*iii*).

(k) Manufacturer does not include a person unless the person manufactured, sold, or imported more than 50 covered computers in 2000 or any subsequent calendar year or more than 50 covered video display devices in the previous calendar year.

(*l*) "Printer" means a printer or a multifunction or "all-in-one" device that in addition to printing performs 1 or more other operations such as copying, scanning, or faxing, that is designed to be placed on a desk or other work surface, and that may use any of various print technologies, such as laser and LED (electrographic), ink jet, dot matrix, thermal, or digital sublimation. Printer does not include a floor-standing printer, a printer with an optional floor stand, a point of sale (POS) receipt printer, a household printer such as a calculator with printing capabilities or a label maker, or a non-stand-alone printer that is embedded into a product other than a covered computer.

(m) "Recycler" means a person who as a principal component of business operations acquires covered electronic devices and sorts and processes the covered electronic devices to facilitate recycling or resource recovery techniques. Recycler does not include a collector, hauler, or electronics shop.

(n) "Retailer" means a person that sells a covered electronic device to a consumer by any means, including transactions conducted through sales outlets, catalogs, mail order, or the internet, whether or not the person has a physical presence in this state.

(o) "Small business" means a business with 10 or fewer employees.

(p) "Video display device" means an electronic device with a viewable screen of 4 inches or larger that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite. Video display device includes, but is not limited to, a direct view or projection television whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology.

(q) "Video display device takeback program" means a program required under section 17305(d).

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

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324.17303 Sale or offer of sale of new covered electronic device; registration by manufacturer; expiration; contents; effectiveness; failure to comply with requirements or rules; notice of deficiency; denial or revocation of registration; hearing; validity; fee; deposit of revenues; list of registered manufacturers; maintenance of website; report.

Sec. 17303. (1) Within 30 days after the end of each state fiscal year, a manufacturer that sells or offers for sale to any person in this state a new covered electronic device shall register with the department on a form provided by the department. A registration expires 30 days after the end of the state fiscal year in which the registration is required to be filed. A manufacturer that has not already filed a registration under this part shall submit a registration within 10 business days after the manufacturer begins to sell or offer for sale new covered electronic devices in this state.

(2) A registration under subsection (1) must include all of the following:

(a) The manufacturer's name, address, and telephone number.

(b) Each brand name under which the manufacturer sells or offers for sale covered electronic devices in this state.

(c) Information about the manufacturer's electronic device takeback program, including all of the following:

(*i*) Information provided to consumers on how and where to return covered electronic devices labeled with the manufacturer's name or brand label.

(*ii*) The means by which information described in subparagraph (*i*) is disseminated to consumers, including the relevant website address if the internet is used.

(*iii*) Beginning with the first registration submitted after the implementation of the takeback program, a report on the implementation of the takeback program during the prior state fiscal year, including all of the following:

(A) The total weight of the covered electronic devices received by the takeback program from consumers during the prior state fiscal year.

(B) The processes and methods used to recycle or reuse the covered electronic devices received from consumers.

(C) The identity of any collector or recycler with whom the manufacturer contracts for the collection or recycling of covered electronic devices received from consumers. The identity of a recycler shall include the addresses of that recycler's recycling facilities in this state, if any. The identity of a collector or recycler reported under this subparagraph is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must not be disclosed by the department unless required by court order.

(3) A registration is effective on receipt by the department if the registration is administratively complete.

(4) If a manufacturer's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the manufacturer of the deficiency. If the manufacturer fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the manufacturer's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A manufacturer of covered electronic devices shall update its registration within 10 business days after a change in the brands of covered electronic devices from that manufacturer sold or offered for sale in this state.

(6) Until October 1, 2027, a manufacturer's registration must be accompanied by an annual fee of $3,000.00. However, if the amount of money in the fund on December 31 of any year is greater than $600,000.00, the department shall not collect manufacturers' registration fees for the following state fiscal year.

(7) Revenue from manufacturers' registration fees collected under this section must be deposited in the electronic waste recycling fund created in section 17327.

(8) The department shall maintain on its website a list of registered manufacturers of computers and a list of registered manufacturers of video display devices and the website addresses at which they provide information on recycling covered electronic devices.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2019, Act 85, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

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324.17305 Sale or offer of sale of new covered electronic device; manufacturer; requirements.

Sec. 17305. Beginning April 1, 2010, a manufacturer shall not sell or offer for sale to any person in this state a new covered electronic device, whether through sales outlets, catalogs, mail order, the internet, or any other means, unless all of the following requirements are met:

(a) The covered electronic device is labeled with the manufacturer's name or brand label, owned by or, in the case of a video display device, licensed for use by the manufacturer.

(b) The manufacturer's name appears on the applicable registration list maintained by the department under section 17303.

(c) If the covered electronic device is a covered computer, the manufacturer has a computer takeback program as described in section 17309.

(d) If the covered electronic device is a covered video display device, the manufacturer has a video display device takeback program as described in section 17311.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17307 Sale or offer of sale of new covered electronic device; retailer; appearance of manufacturer on registration list.

Sec. 17307. A retailer shall not sell or offer for sale to any person in this state a new covered electronic device from a manufacturer, purchased by the retailer on or after April 1, 2010 unless the manufacturer appears on the applicable registration list under section 17303.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17309 Computer takeback program.

Sec. 17309. (1) Beginning April 1, 2010, each manufacturer of covered computers shall implement a computer takeback program that meets all of the following criteria:

(a) The manufacturer of a covered computer that has reached the end of its useful life for the consumer or the manufacturer's designee accepts from the consumer the covered computer. This part shall not be construed to impair the obligation of a contract under which a person agrees to conduct a computer takeback program on behalf of a manufacturer.

(b) A consumer is not required to pay a separate fee when the consumer returns the covered computer to the manufacturer of that covered computer or the manufacturer's designee.

(c) The collection of covered computers is reasonably convenient and available to and otherwise designed to meet the needs of consumers in this state. Examples of collection methods that alone or combined meet the convenience requirements of this subdivision include systems for a consumer to return a covered computer by 1 or more of the following means:

(*i*) Mail or common carrier shipper.

(*ii*) Deposit at a local physical collection site that is kept open and staffed on a continuing basis.

(*iii*) Deposit during periodic local collection events.

(*iv*) Deposit with a retailer.

(d) The manufacturer of a covered computer provides a consumer information on how and where to return the covered computer, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered computers when the covered computers are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered computers collected under subdivision (a).

(2) A manufacturer's computer takeback program is not required to accept more than 7 covered computers from a single consumer on a single day.

(3) A manufacturer may conduct a computer takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered computers by another person to fulfill the manufacturer's obligations under this section.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

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Popular name: Act 451

Popular name: NREPA

324.17311 Video display device takeback program.

Sec. 17311. (1) Beginning April 1, 2010, each manufacturer of covered video display devices shall implement a video display device takeback program that meets all of the following criteria:

(a) A manufacturer or the manufacturer's designee accepts from a consumer any covered video display device that has reached the end of its useful life for the consumer, regardless of the type or brand of covered video display device.

(b) A consumer is not required to pay a separate fee when the consumer returns a covered video display device through the takeback program of any manufacturer of any covered video display device.

(c) The requirements of section 17309(1)(c), as applied to covered video display devices.

(d) The manufacturer provides a consumer information on how and where to return a covered video display device, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered video display devices when the covered video display devices are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered video display device collected under subdivision (a). As a nonbinding target, each manufacturer required to conduct a video display device takeback program should annually recycle 60% of the total weight of covered video display devices sold by the manufacturer in this state during the prior state fiscal year. Sales data under this subdivision are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(2) A manufacturer's video display device takeback program is not required to accept more than 7 covered video display devices from a single consumer on a single day.

(3) A manufacturer may conduct a video display device takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered video display devices by another person to fulfill the manufacturer's obligations under this section.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17313 Electronic waste advisory council; creation; members; appointments; term; vacancy; removal; co-chairs; meeting; quorum; business conducted at public meeting; writings; compensation prohibited; report; dissolution.

Sec. 17313. (1) The electronic waste advisory council is created within the legislative branch of state government. The council shall consist of the following members:

(a) Four individuals appointed by the senate majority leader as follows:

(*i*) One individual representing covered video display device manufacturers.

(*ii*) One individual representing recyclers of covered computers or covered video display devices.

(*iii*) One individual representing a trade association of computer manufacturers and video display device manufacturers.

(*iv*) One individual who is a member of the senate.

(b) Four individuals appointed by the speaker of the house of representatives as follows:

(*i*) One individual representing covered computer manufacturers.

(*ii*) One individual representing retailers of covered computers or covered video display devices.

(*iii*) One individual representing an agency responsible for a countywide recycling program.

(*iv*) One individual who is a member of the house of representatives.

(c) Two individuals appointed by the governor as follows:

(*i*) One individual representing a statewide conservation organization.

(*ii*) One individual representing the department.

(2) The appointments to the council under subsection (1) shall be made not later than 30 days after the effective date of the amendatory act that added this section.

(3) A member of the council shall serve for the life of the council. If a vacancy occurs on the council, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. The appointing official may remove a member of the council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

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(4) The council member who is a member of the senate and the council member who is a member of the house of representatives shall serve as co-chairs of the council. The first meeting of the council shall be called by the co-chairs. At the first meeting, the council shall elect from among its members any other officers that it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of a co-chair or if requested by 2 or more members.

(5) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(6) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, the member of the council representing the department shall serve without additional compensation.

(8) By April 1, 2012, the council shall submit a report to the governor, the department, and the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment. The report shall evaluate the program under this part and make recommendations to improve the recycling of covered electronic devices. The report shall evaluate all of the following in light of the policies and objectives set forth in section 11514:

(a) Whether a manufacturer's market share should be used to determine the amount of video display devices required to be recycled annually by the manufacturer.

(b) Whether a manufacturer with a takeback program that recycles electronic waste at a higher rate than provided for in this part should be granted credits and, if so, the life of the credits, whether the credits would be transferable, and how the credit system should otherwise operate.

(c) Whether the nonbinding target for manufacturers recycling covered video display devices under section 17311 should be increased or decreased and whether the target should be made mandatory.

(d) What items should be included in a mandatory takeback program and, if new items are recommended, what the recycling rates should be for those new items.

(e) Whether and how a manufacturer should be sanctioned for failing to meet the requirements of this part.

(f) Whether funding for the administration of this part is appropriate or needs to be increased or decreased.

(g) Whether a program should be developed to recognize manufacturers that implement an expanded recycling program for additional products such as printers or recycles electronic waste at a higher rate than provided for in this part.

(h) Whether a system should be developed to collect covered electronic devices that are otherwise not collected by a manufacturer.

(i) Whether additional recycling data, such as the amount of covered electronic devices collected by collectors, should be collected and, if so, how.

(j) Whether a program should be developed and funding should be obtained for grants to expand recycling and recovery programs for covered electronic devices and to provide consumer education related to the programs.

(k) Whether a disposal ban for covered electronic devices is appropriate.

(9) The council is dissolved effective July 1, 2012.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17315 Recycling of covered electronic devices; manner; rules.

Sec. 17315. (1) Covered electronic devices collected under this part shall be recycled in a manner that complies with federal and state laws, including rules promulgated by the department, and local ordinances.

(2) Any rules promulgated by the department under section 17321 regulating the recycling of covered electronic devices collected under this part shall be consistent with both of the following:

(a) The United States environmental protection agency's "Plug-in to eCycling Guidelines for Materials Management", as in effect on the effective date of the amendatory act that added this section.

(b) The institute of scrap recycling industries, inc. publication "Electronics Recycling Operating Practices", dated April 25, 2006.

History: Add. 2008, Act 392, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

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Popular name: NREPA

324.17317 Recycling of covered electronic devices; registration form; contents; report of total weight recycled previous state fiscal year; effectiveness of registration; notice of deficiency; fee; deposit of revenues; submission of false registration as violation; report.

Sec. 17317. (1) Within 30 days after the end of each state fiscal year, a person that engages in the business of recycling covered electronic devices shall register with the department on a form provided by the department. A registration expires 30 days after the end of the state fiscal year in which the registration is required to be filed. A recycler that has not already filed a registration under this part shall submit a registration within 10 business days after the recycler begins to recycle covered electronic devices.

(2) A registration under subsection (1) must include all of the following:

(a) The name, address, telephone number, and location of all recycling facilities that are under the direct control of the recycler, are located in this state, and may receive covered electronic devices.

(b) A certification by the recycler that the recycler substantially meets the requirements of section 17315.

(3) A recycler of covered electronic devices shall report the total weight of covered electronic devices recycled during the previous state fiscal year. The recycler shall keep a written log that records the weight of covered video display devices and the total weight of covered computers delivered to the recycler and identified as such on receipt. The total weight reported in the registration must be based on this log.

(4) A recycler's registration is effective on receipt by the department if the registration is administratively complete.

(5) If a recycler's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the recycler of the deficiency. If the recycler fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the recycler's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(6) Until October 1, 2027, a recycler's registration under subsection (1) must be accompanied by an annual fee of $2,000.00.

(7) Revenue from recyclers' registration fees collected under this section must be deposited in the electronic waste recycling fund created in section 17327.

(8) Submitting a false registration under subsection (1) is a violation of this part.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2019, Act 85, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.17319 Requirements.

Sec. 17319. A recycler shall comply with all of the following:

(a) Employ industry-accepted procedures substantially equivalent to those specified by the United States department of defense for the destruction or sanitization of data on hard drives and other data storage devices.

(b) Maintain a documented environmental, health, and safety management system that may be audited and is compliant with or equivalent to ISO 14001.

(c) Maintain records identifying all persons to whom the recycler provided electronic devices or materials derived from electronic devices for the purpose of conducting additional recycling and the weight and volume of material provided to each of those persons.

(d) Not use state or federal prison labor to process covered electronic devices or transact with a third party that uses or subcontracts for the use of prison labor.

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17321 Rules for purposes of MCL 324.17303 and 324.17315.

Sec. 17321. After April 1, 2012, the department, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, may promulgate rules for the purposes of sections 17303 and 17315.

History: Add. 2008, Act 392, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

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324.17323 Management of covered electronic devices not considered disposal.

Sec. 17323. Management of covered electronic devices consistent with this part is not considered disposal for purposes of section 11538(6).

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17325 Recycler of covered electronic devices; inspection of operations.

Sec. 17325. (1) The department shall administer and enforce this part to the extent that funds are appropriated for that purpose.

(2) The department may inspect the operations of a recycler of covered electronic devices to assess compliance with requirements of this part.

History: Add. 2008, Act 393, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17327 Electronic waste recycling fund; creation; deposit of money or assets; investment; money at close of fiscal year; administrator of fund; expenditures.

Sec. 17327. (1) The electronic waste recycling fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of environmental quality shall be the administrator of the fund for auditing purposes.

(5) Money from the fund shall be expended, upon appropriation, for the administrative expenses of the department in implementing this part.

History: Add. 2008, Act 394, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

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324.17329 Violation; penalty; suspension or revocation of registration; deposit of fine in electronic waste recycling fund.

Sec. 17329. (1) A person who violates this part may be ordered to pay a civil fine of not more than $500.00 for the first violation or not more than $2,500.00 for a second or subsequent violation.

(2) A person who knowingly violates this part or who knowingly submits false information to the department under this part is guilty of a misdemeanor punishable by a fine of not more than $5,000.00. Each day on which a violation described in this subsection occurs represents a separate violation.

(3) After a contested case hearing, the department may suspend or revoke the registration of a recycler that violates this part a third or subsequent time. The department shall provide notice of the suspension or revocation on its website.

(4) A civil fine collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

History: Add. 2008, Act 393, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

324.17331 Loss or use of data; liability.

Sec. 17331. (1) Except to the extent otherwise provided by contract, a manufacturer, retailer, collector, or, subject to subsection (2), recycler is not liable for the loss or use of data or other information from an information storage device of a covered electronic device collected or recycled under this part.

(2) The exemption from liability for the use of data or other information under subsection (1) applies to a recycler only if the recycler complies with section 17319(a).

History: Add. 2008, Act 395, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

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324.17333 Report.

Sec. 17333. If federal law establishes a national program for the collection and recycling of computer equipment, the department shall, within 90 days, submit a report to the standing committees of the senate and house of representatives with primary responsibility for recycling and solid waste issues. The report shall describe the federal program, discuss whether provisions of this part have been preempted, and recommend whether this part should be amended or repealed.

History: Add. 2008, Act 392, Imd. Eff. Dec. 29, 2008.

Popular name: Act 451

Popular name: NREPA

PART 175
RECYCLING REPORTING

324.17501 Definitions.

Sec. 17501. As used in this part:

(a) "Commercial waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, but does not include household waste from single residences, hazardous waste, or industrial waste. Commercial waste includes solid waste from any of the following:

(*i*) Multiple residences.

(*ii*) Hotels and motels.

(*iii*) Bunkhouses.

(*iv*) Ranger stations.

(*v*) Campgrounds.

(*vi*) Picnic grounds.

(*vii*) Day-use recreation areas.

(b) "Department" means the department of environmental quality.

(c) "Household waste" means any solid waste that is derived from single residences, but does not include any of the following:

(*i*) Commercial waste.

(*ii*) Industrial waste.

(*iii*) Construction and demolition waste.

(d) "Recyclable materials" means that term as it is defined in section 11505.

(e) "Recycling" means an action or process, such as separation, sorting, baling, or shipping, applied to reportable recyclable materials for the purposes of reuse or conversion into raw materials or new products.

(f) "Recycling establishment" means an establishment engaged in recycling of, or brokering of, reportable recyclable materials. Recycling establishment does not include any of the following:

(*i*) An establishment that recycles fewer than 100 tons per year.

(*ii*) A retail establishment that bales cardboard packaging for off-site shipment.

(*iii*) A retail establishment that collects returnable beverage containers under 1976 IL 1, MCL 445.571 to 445.576, for transfer to a recycling establishment.

(*iv*) An end user of reportable recyclable materials such as a paper mill, steel mill, foundry, or die caster that converts the reportable recyclable materials into new products or raw materials for conversion into new products.

(*v*) A drop-off recycling location that sends all reportable recyclable materials to a recycling establishment registered under section 17502.

(*vi*) An establishment that ships reportable recyclable material to recycling establishments registered under section 17502 but that does not engage in any other recycling.

(g) "Reportable recyclable materials", subject to subdivision (h), means any of the following categories of recyclable materials that are separated from household waste or commercial waste, or from a combination of household waste and commercial waste, and that are delivered to a recycling establishment for recycling:

(*i*) Glass.

(*ii*) Paper and paper products.

(*iii*) Plastic and plastic products.

(*iv*) Ferrous metal, including white goods.

(*v*) Nonferrous metal.

(*vi*) Textiles.

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(*vii*) Single stream recyclable materials that include any combination of the materials listed in subparagraphs (*i*) to (*vi*).

(h) "Reportable recyclable materials" does not include any of the following:

(*i*) Materials or products that contain iron, steel, or nonferrous metals and that are directed to or received by a person subject to the scrap metal regulatory act, 2008 PA 429, MCL 445.421 to 445.443, or by a reuser of these metals.

(*ii*) Materials generated from the shredding or dismantling of motor vehicles or parts of motor vehicles.

(*iii*) A beneficial use by-product, as defined in section 11502.

(*iv*) A covered electronic device reported under part 173.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17502 Recycling establishment; registration; requirements.

Sec. 17502. A recycling establishment shall annually register with the department on a form provided by the department and containing the recycling establishment's name, location, postal mailing address, electronic mail address, and telephone number and the name of the recycling establishment's contact person. The recycling establishment shall register each year by July 1. However, a recycling establishment established after the effective date of this section and after June 1 but not after December 1 shall first register not later than 30 days after it is established.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17503 Recycling establishment; report.

Sec. 17503. (1) A recycling establishment in this state shall report to the department the amount of each category of reportable recyclable material received by and the amount shipped from the recycling establishment. For each state fiscal year, the recycling establishment shall, at its option, submit either an annual report or 4 quarterly reports. All of the following apply:

(a) If the recycling establishment opts to submit an annual report covering the October 1 to September 30 state fiscal year, the report shall be submitted by the following November 15.

(b) If the recycling establishment opts to submit quarterly reports, the reports shall be submitted by the following dates:

(*i*) For the October 1 to December 31 quarter, by the following February 15.

(*ii*) For the January 1 to March 31 quarter, by the following May 15.

(*iii*) For the April 1 to June 30 quarter, by the following August 15.

(*iv*) For the July 1 to September 30 quarter, by the following November 15.

(c) A report shall specify quantities of reportable recyclable materials in tons. Quantities may be determined using a volume-to-weight conversion formula provided by the department.

(d) A report may provide only aggregate quantities for multiple recycling establishments if the report identifies each recycling establishment covered by the report.

(e) A report shall be submitted in the manner provided by the department.

(f) A report shall comply with any reporting guidelines established by the department to ensure that reportable recyclable materials are not counted more than once.

(g) A report is not required to cover recycling establishment activities occurring before October 1, 2016.

(2) A person that is not a recycling establishment may voluntarily submit reports under this section.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17504 Information; confidentiality; exemption from disclosure.

Sec. 17504. (1) Except as provided in subsection (2), information contained in a report from a recycling establishment under this part is confidential, shall not be disclosed by the department, and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The department may aggregate data contained within reports submitted from recycling establishments under this part for the purpose of determining statewide quantities of reportable recyclable materials that were recycled. Subsection (1) does not apply to this aggregated data but does apply to information identifying a recycling establishment.

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History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

324.17505 Website; posting; report to legislature.

Sec. 17505. (1) The department shall annually post on its website all of the following:

(a) The aggregated amount of reportable recyclable materials by category listed in section 17501(g) that were recycled during the preceding state fiscal year.

(b) The total aggregated amount of reportable recyclable materials that were recycled during the preceding state fiscal year.

(2) By January 31, 2018 and each year thereafter, the department, after consultation with interested parties, shall submit to the legislature a report on this part, including information posted under subsection (1) and any recommendations for amendments to this part.

History: Add. 2016, Act 55, Eff. June 27, 2016.

Popular name: Act 451

Popular name: NREPA

CHAPTER 6
ENVIRONMENTAL FUNDING

PART 191
CLEAN MICHIGAN FUND

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324.19101 Meanings of words and phrases.

Sec. 19101. For purposes of this part, the words and phrases defined in sections 19102 and 19103 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19102 Definitions; A to N.

Sec. 19102. (1) "Approved solid waste management plan" means a solid waste management plan submitted and approved under part 115.

(2) "Capital costs" means those allowable costs, as determined by the department, of constructing or equipping, or both, a solid waste transfer facility, a recycling project, or a composting project.

(3) "Composting project" means a project in which yard wastes, including leaves and grass clippings, are converted into humus through natural biological processes.

(4) "Disposal area" means disposal area as defined in part 115.

(5) "Fund" means the clean Michigan fund created in section 19104.

(6) "Municipality" means a county, city, village, township, or an agency of a county, city, village, or township; an authority or any other public body created by or pursuant to state law; or this state or an agency or department of this state.

(7) "Nonprofit private entity" means a private entity that carries out any lawful purpose or purposes not involving pecuniary profit or gain for its directors, officers, shareholders, or members.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19103 Definitions; P to W.

Sec. 19103. (1) "Private entity" means an individual, trust, firm, joint stock company, corporation, or association that is not a local unit of government.

(2) "Recycling project" means a project in which materials that otherwise would become solid waste are collected, separated, or processed and returned for conversion into raw materials or products.

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(3) "Resource recovery" means the processing or collecting of solid wastes so as to produce materials or energy that may be used in manufacturing, agriculture, heat production, or other productive processes or purposes designed to reuse materials or products or to conserve natural resources.

(4) "Site separated material" means glass, metals, wood, paper products, plastics, rubber, textiles, or any other material approved by the department that is separated from solid waste for conversion into raw materials or new products.

(5) "Solid waste" means solid waste as defined in part 115.

(6) "Solid waste transfer facility" means a solid waste transfer facility as defined in part 115.

(7) "Source separated material" means glass, metals, wood, paper products, plastics, rubber, textiles, or any other material approved by the department that is separated at the source of generation for conversion into raw material or new products.

(8) "Waste-to-energy" means a process that is specifically designed to recover energy through the combustion or volume reduction of solid waste.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19104 Clean Michigan fund; creation; appropriations, gifts, and donations; expenditures.

Sec. 19104. The clean Michigan fund is created in the state treasury. The fund shall consist of appropriations from the general fund or any other fund, as provided by law, and any gifts and donations to the fund. The fund shall be expended only for the programs described in this part and for the staffing and administrative costs to the department of administering those programs.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.19105 Grants to counties for establishment of revolving loan fund; use of initial grant; percentage of grant utilized for administration of loan program; use of loans; establishment, duties, and membership of county loan board; conditions to making loan; annual audit; liability of county; maximum grant.

Sec. 19105. (1) The department may make a grant to a county having a population of less than 12,000 enabling the county to establish a revolving loan fund with money received from the department. The initial grant shall be used by the county to establish a revolving loan fund that shall be allocated and reallocated as provided in this section. Not more than 1% of a grant made pursuant to this section may be utilized by a county for the administration of the loan program.

(2) Grant money loaned by a county under this section shall be loaned to a private entity or nonprofit private entity only for purposes and programs that would be eligible to receive a grant under this part and may not be used for any other purpose, except administration costs.

(3) A county that receives a grant under this section shall establish a county loan board to review applications for loans submitted to the county and the board shall make recommendations to the county board of commissioners. The county loan board shall consist of a member to represent each of the following:

(a) The county.

(b) Nonprofit private entities and private entities engaged in resource recovery alternatives.

(c) Conservation or environmental organizations.

(d) The department.

(e) A member of the general public.

(4) Upon receipt of the recommendations of the county loan board, the county board of commissioners of a county that receives a grant under this section shall determine when a loan shall be made. The board of commissioners shall not make a loan unless both of the following conditions are met:

(a) The loan applicant is seeking a loan for a purpose or program that would be eligible to receive a grant under this part.

(b) The amount of the proposed loan is not more than $300,000.00.

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(5) The county shall provide the department with an annual audit of the revolving loan fund using generally accepted accounting procedures.

(6) A county may be liable to the department for the full amount of a grant made pursuant to this section if at any time the county makes a loan in a manner or to an entity that is substantially out of compliance with this part.

(7) A grant to a county made under this section shall not exceed $300,000.00.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19106 Waste stream assessments.

Sec. 19106. (1) The department shall cause to be conducted a series of waste stream assessments in representative areas of the state. The assessments shall determine the characteristics of the waste stream and document seasonal fluctuations in the volume of waste.

(2) The department shall select a site for a waste stream assessment subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The approved solid waste management plan for the county proposes some type of resource recovery.

(c) The site has not been the subject of an adequate waste stream assessment within the 5 years before the assessment authorized by this part is performed.

(3) The department shall consider the following in determining appropriate sites for inclusion in the waste stream assessment:

(a) The extent to which the owners of the disposal areas in the proposed study site will do the following:

(*i*) Provide an area on the site for scales and for composition studies.

(*ii*) Provide temporary shelter for work during inclement weather.

(*iii*) Enlist the cooperation of solid waste haulers.

(b) The likelihood that a resource recovery project or projects will be undertaken at the proposed site.

(c) The likelihood that the data resulting from the assessment of the proposed site will be usable or useful in evaluating the waste stream in other similar areas of the state.

(d) The extent to which selection of the site contributes to the achievement of a balanced distribution of assessments throughout the state.

(e) The availability of a scale at the proposed site.

(4) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year on the assessments described in this section. The department shall not expend more than $50,000.00 for any single assessment conducted under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19107 Recycling and composting feasibility studies.

Sec. 19107. (1) The department shall cause to be conducted a series of recycling and composting feasibility studies. A study shall establish a basis upon which a decision to commit financial resources to a proposed recycling or composting project can be made. The department shall prescribe the elements to be included within a study.

(2) The department shall select a site for a recycling and composting feasibility study subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The recycling or composting project proposed by the municipality is consistent with the approved solid waste management plan.

(3) The department shall consider the following factors in selecting a site for a recycling and composting feasibility study:

(a) The extent to which a municipality commits to proceeding with the project if the study determines that the project is feasible.

(b) The degree of demonstrated municipality, community group, or volunteer interest in undertaking a recycling or composting project.

(c) A demonstration that a recycling or composting project undertaken on the basis of the study would provide a necessary solid waste management alternative, given the status of existing disposal areas serving the location.

(d) The extent to which selection of the site contributes to the achievement of a balanced distribution of

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studies throughout the state.

(e) The demonstrated capability of the municipality in which the site is located to work with adjacent municipalities on alternative resource recovery projects.

(4) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year on the studies described in this section. The department shall not expend more than $30,000.00 for any single study conducted under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19108 Waste-to-energy feasibility studies.

Sec. 19108. (1) The department shall cause to be conducted a series of waste-to-energy feasibility studies. A study shall establish a basis upon which a decision to commit financial resources to a proposed waste-to-energy project can be made. The department shall prescribe the elements to be included in the study.

(2) The department shall select a site for a waste-to-energy feasibility study subject to the following prerequisites:

(a) The site is located in a county that has an approved solid waste management plan.

(b) The waste-to-energy project proposed is consistent with the approved solid waste management plan.

(3) The department shall consider the following factors in selecting a site for a waste-to-energy feasibility study:

(a) The extent to which the municipality proposing the project has done the following:

(*i*) Held meetings to discuss a waste-to-energy project.

(*ii*) Sought funding for studies of a waste-to-energy project.

(*iii*) Sought feasibility data on its own.

(b) The availability of letters of interest from potential energy markets.

(c) Whether a recycling feasibility study for the area to be served by the proposed waste-to-energy facility is available.

(d) Whether a waste-to-energy facility undertaken on the basis of the study would provide a necessary solid waste management alternative, given the status of existing disposal areas serving the location.

(e) The extent to which selection of the site contributes to the achievement of a balanced distribution of studies throughout the state.

(f) The demonstrated efforts of the municipality in which the site is located in working towards alternative resource recovery solutions to solid waste management problems, such as implementing recycling or composting programs in the area to be served.

(g) The demonstrated capability of the municipality in which the site is located to work with adjacent municipalities on alternative resource recovery projects.

(4) The department shall not expend more than 15% of the total amount in the fund in any state fiscal year for the studies described in this section. The department shall not expend more than $400,000.00 for any single study conducted under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19109 Educational program with respect to resource recovery; resource recovery education grant program; authorized grants; factors in selecting recipients; limitations on expenditures.

Sec. 19109. (1) The department shall establish an educational program with respect to resource recovery to accomplish the following:

(a) To promote on a statewide basis the purchase of recycled products and materials.

(b) To develop promotional materials for distribution by municipalities in support of their resource recovery initiatives.

(2) The department shall establish a resource recovery education grant program. The program shall provide funding for the direct promotion of local resource recovery initiatives by municipalities, nonprofit private entities, and private entities. The department shall make the grants described in this subsection.

(3) The department shall not make a resource recovery education grant unless both of the following conditions are met:

(a) The proposed education project is conducted in a county that has an approved solid waste management

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plan.

(b) A local resource recovery project is planned or under way and the proposed education project directly promotes the use of that project.

(4) The department shall consider the following factors in selecting recipients of resource recovery education grants:

(a) Whether the education program has measurable objectives.

(b) The extent of background research completed.

(c) The type and extent of follow-up or evaluation, or both, to be conducted.

(d) The level of commitment by local officials.

(e) The extent to which the recipient commits its own financial resources to the education project.

(f) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(5) The department shall not expend more than 25% of the total amount in the trust fund in any state fiscal year on the educational program and the education grant program described in this section. The department shall not expend more than $50,000.00 for any single education grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19110 Solid waste transfer station grant program.

Sec. 19110. (1) The department shall establish a solid waste transfer station grant program. The program shall provide funding to municipalities, nonprofit private entities, and private entities for the cost of transfer station construction. The department shall make the grants described in this section.

(2) The department shall not make a solid waste transfer station grant unless both of the following conditions are met:

(a) The proposed transfer station is located in a county that has an approved solid waste management plan.

(b) The proposed solid waste transfer station is consistent with the approved solid waste management plans of all of the affected counties.

(3) The department shall consider the following factors in selecting recipients for solid waste transfer station grants:

(a) The potential for providing to the municipality resource recovery alternatives otherwise not available to the municipality without the proposed transfer station.

(b) The willingness of the municipality to form or participate in a joint solid waste management system with adjacent municipalities.

(c) The applicant demonstrates that the proposed transfer station replaces a sanitary landfill or open dump closed according to the standards contained in part 115.

(4) The department shall not dispense a solid waste transfer station grant unless all permits that are required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year on the solid waste transfer station grant program. The department shall not expend more than $300,000.00 for any single transfer station grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19111 Recycling and composting capital grant program.

Sec. 19111. (1) The department shall establish a recycling and composting capital grant program. The program shall provide funding for the capital costs of recycling and composting programs undertaken by municipalities, nonprofit private entities, or private entities. The department shall make the grants described in this section.

(2) The department shall not make a recycling or composting capital grant unless all of the following conditions are met:

(a) The proposed recycling or composting project is located in a county that has an approved solid waste management plan.

(b) The proposed recycling or composting project is consistent with the approved solid waste management plan.

(c) The applicant provides either a feasibility study with positive results supportive of project initiation or

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sufficient data justifying project expansion.

(d) The equipment obtained with the grant is used for source separated materials or site separated materials, or both.

(3) The department shall consider the following factors in selecting recipients for recycling and composting capital grants:

(a) The likelihood of project success as indicated by the feasibility study results.

(b) The availability of an appropriate site.

(c) A demonstration by the applicant that the materials to be collected or processed, or both, are not being recovered presently and would not be recovered without the proposed recycling or composting project.

(d) A demonstration by the applicant that the materials to be collected or processed, or both, will be absorbed in an existing market without displacing existing resource recovery operations or that the materials, by being collected or processed, or both, will create a new market.

(e) The business and accounting plans for the proposed recycling or composting project.

(f) The need for a new or expanded recycling or composting program in the area to be served, relative to the needs of other areas.

(g) The extent to which selection of the recycling or composting program contributes to the achievement of a balanced distribution of grants throughout the state.

(h) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the recycling or composting project.

(i) The portion of the waste stream that is projected to be diverted from landfills, compared to the projected costs of the recycling or composting project.

(j) The immediacy of the reduction in waste resulting from the recycling or composting program.

(k) The potential of the recycling or composting project to be replicated in similar areas of the state.

(*l*) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed recycling or composting program.

(m) The demonstrated municipality, community group, or volunteer interest in undertaking a recycling or composting project.

(n) The demonstrated capability of the applicant in working with adjacent municipalities on alternative resource recovery projects, such as development of a regional resource recovery organization, jointly sponsored resource recovery initiatives, or regional materials marketing strategies.

(4) The department shall not dispense a recycling or composting capital grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 20% of the total amount in the fund in any state fiscal year on the recycling and composting capital grant program. The department shall not expend more than $500,000.00 for any single recycling or composting capital grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19112 Waste-to-energy capital grant program.

Sec. 19112. (1) The department shall establish a waste-to-energy capital grant program. The program shall provide funding for the capital costs of waste-to-energy programs undertaken by municipalities, nonprofit private entities, or private entities. The department shall make the grants described in this section.

(2) The department shall not make a waste-to-energy capital grant unless all of the following conditions are met:

(a) The proposed waste-to-energy project is located in a county that has an approved solid waste management plan.

(b) The proposed waste-to-energy project is consistent with the approved solid waste management plan.

(c) The applicant provides either a feasibility study with positive results supportive of project initiation or sufficient data justifying project expansion.

(3) The department shall consider the following factors in selecting recipients for waste-to-energy capital grants:

(a) The likelihood of project success as indicated by the feasibility study results.

(b) The availability of an appropriate site.

(c) A demonstration by the applicant that the materials to be collected or processed, or both, are not being recovered presently.

(d) The business and accounting plans for the proposed waste-to-energy project.

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(e) The need for a new or expanded waste-to-energy program in the area to be served, relative to the needs of other areas.

(f) The extent to which selection of the waste-to-energy program contributes to the achievement of a balanced distribution of grants throughout the state.

(g) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the waste-to-energy project.

(h) The portion of the waste stream that is projected to be diverted from landfills, compared to the projected costs of the waste-to-energy project.

(i) The potential of the waste-to-energy project to be replicated in similar areas of the state.

(4) The department shall not dispense a waste-to-energy capital grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 30% of the total amount in the fund in any state fiscal year on the waste-to-energy capital grant program. The department shall not expend more than $2,000,000.00 for any single waste-to-energy grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19113 Recycling operational grant program.

Sec. 19113. (1) The department shall establish a recycling operational grant program. The program shall provide temporary operating subsidies to assist municipalities, nonprofit private entities, and private entities in recapturing the difference between the cost of collection, processing, and transportation and the revenues generated from the sale of the recovered materials. The department shall make the grants described in this section.

(2) The department shall not make a recycling operational grant unless all of the following conditions are met:

(a) The proposed recycling project is located in a county with an approved solid waste management plan.

(b) The proposed recycling project is consistent with the approved solid waste management plan.

(c) A positive feasibility study of the proposed recycling project, or sufficient data justifying project expansion, is available.

(d) The applicant agrees to match the grant on a dollar for dollar basis.

(e) The applicant agrees to continue support for the recycling project if the project is within 10% of previous disposal costs.

(f) The applicant agrees to provide the department with an annual operation report.

(g) The need for an operating subsidy is demonstrated.

(h) The grant is used for a project handling source separated material or site separated material, or both.

(3) The department shall consider the following factors in determining whether to make a recycling operational grant:

(a) The portion of the waste stream projected to be diverted from a landfill, compared to projected costs.

(b) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the recycling project.

(c) The applicant's willingness to show others the program.

(d) The potential of the recycling project to be replicated in similar areas of the state.

(e) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(f) The demonstrated municipality, community group, or volunteer interest in undertaking a recycling project.

(g) The demonstrated capability of the applicant in working with adjacent municipalities on alternative resource recovery projects, such as development of a regional resource recovery organization, jointly sponsored resource recovery initiatives, or regional materials marketing strategies.

(h) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed recycling project.

(i) The existence of a plan for transferring financial responsibility for the program to another funding source.

(j) The existence of sources of capital funding for the project.

(4) The department shall not dispense a recycling operational grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the

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proposed project have been obtained.

(5) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year for the recycling operational grant program. The department shall not expend more than $150,000.00 for any single recycling operational grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19114 Composting operational grant program.

Sec. 19114. (1) The department shall establish a composting operational grant program. The program shall provide temporary operating subsidies to assist municipalities, nonprofit private entities, and private entities in undertaking composting projects. The department shall make the grants described in this section.

(2) The department shall not make a composting operational grant unless all of the following conditions are met:

(a) The proposed composting project is located in a county with an approved solid waste management plan.

(b) The proposed composting project is consistent with the approved solid waste management plan.

(c) A positive feasibility study of the proposed composting project, or sufficient data justifying project expansion, is available.

(d) The applicant agrees to match the grant on a dollar for dollar basis.

(e) The applicant agrees to provide the department with an annual operation report.

(3) The department shall consider the following factors in determining whether to make a composting operational grant:

(a) The portion of the waste stream projected to be diverted from a landfill, compared to projected costs.

(b) A demonstration by the applicant that land, buildings, personnel, support services, or funds have been committed to the composting project.

(c) The applicant's willingness to show others the program.

(d) The potential of the composting project to be replicated in similar areas of the state.

(e) The extent to which selection of the project contributes to the achievement of a balanced distribution of grants throughout the state.

(f) The demonstrated municipality, community group, or volunteer interest in undertaking a composting project.

(g) The demonstrated capability in working with adjacent municipalities on alternative resource recovery projects, such as development of a regional resource recovery organization, jointly sponsored resource recovery initiatives, or regional materials marketing strategies.

(h) The availability of capacity at existing licensed landfills that serve the area to be served by the proposed composting project.

(i) A plan for transferring financial responsibility for the program to another funding source has been developed.

(j) The sources of capital funding for the project.

(4) The department shall not dispense a composting operational grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(5) The department shall not expend more than 5% of the total amount in the fund in any state fiscal year for the composting operational grant program. The department shall not expend more than $150,000.00 for any single composting operational grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19115 Household hazardous waste disposal grant program.

Sec. 19115. (1) The department shall establish a household hazardous waste disposal grant program. The program shall assist municipalities in projects that educate citizens as to methods of household hazardous waste reduction and disposal option, promote the safe handling of household hazardous waste, or dispose of household hazardous waste at a state or federally permitted or licensed hazardous waste treatment, storage, or disposal facility. The department shall make the grants described in this section.

(2) The department shall not make a household hazardous waste disposal grant unless all of the following conditions are met:

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(a) The project is not funded under a federal program.

(b) The municipality commits to contributing 20% of the total project cost in cash or in-kind services, or both.

(c) The project is completed within 1 year after receipt of the grant.

(d) The project is consistent with this part and other state law and policy.

(3) The department shall not dispense a household hazardous waste disposal grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(4) The department shall not expend more than 2% of the total amount in the fund in any state fiscal year for the household hazardous waste disposal grant program. The department shall not expend more than $15,000.00 for any single household hazardous waste disposal grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19116 Statewide market development research study; market development plan; market development grant program; selection of development projects; selecting recipients of market development grants; permits as condition to dispensing market development grant; limitation on expenditures.

Sec. 19116. (1) The department shall cause to be conducted a statewide market development research study to assess the current markets and the potential for and the means for expansion of markets for recycled materials in this state. The department shall not expend more than 2.5% of the total amount in the fund in any state fiscal year for the market development research study. In addition, the department shall establish a market development plan based on the market development research study. The plan shall identify the barriers in attracting or expanding industries that use recycled materials and determine the appropriate methods for eliminating those barriers. The department of commerce shall serve as project coordinator for the market development study funded and administered by the department pursuant to this section.

(2) The department shall establish a market development grant program. The program shall encourage expansion of the use of recycled materials and the development of innovative technologies to use recycled materials. The department shall make a grant under the program described in this section.

(3) The department shall select development projects subject to the following prerequisites:

(a) The project is beyond the research stage and a demonstration has indicated that it is technically feasible.

(b) The recipient of the grant is a municipality, nonprofit private entity, or private entity in this state.

(c) The project shall be performed in this state.

(4) The department shall consider the following factors in selecting recipients of market development grants:

(a) The contribution that would be made by the project toward the goal of increasing the use of recycled materials.

(b) The market's need for the development of the technology or equipment.

(c) The potential impact of the technology or equipment on the cost effectiveness of using recycled materials.

(d) The potential for development of new resource recovery markets and for the generation of positive economic impacts.

(e) The potential of the project for commercial application.

(f) The stage of the development of the technology or equipment proposed to be used in the project.

(g) The environmental, economic, and social benefits to the state of the development of the technology or equipment.

(h) The future sources of capital funding for the project.

(i) The extent to which the applicant has committed land, buildings, personnel, support services, or funds to the project.

(j) The potential of the project for developing multiple markets.

(5) The department shall not dispense a market development grant unless all the permits that are required by this part and otherwise required by state law and that are specifically applicable to the nature of the proposed project have been obtained.

(6) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year for the market development grant program. The department shall not expend more than $500,000.00 for any single grant made under this program.

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History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19117 Program to perform hydrogeological monitoring studies on open and closed sanitary landfills and open dumps owned by municipalities.

Sec. 19117. (1) The department shall establish a program to perform hydrogeological monitoring studies on open and closed sanitary landfills and open dumps owned by municipalities. The program shall determine the extent of groundwater contamination associated with the sanitary landfills and open dumps and the need for remedial actions on those sites. The department shall determine which landfills and dumps owned by municipalities are to be monitored. In determining the order in which the landfills and dumps owned by municipalities are to be monitored, the department shall consider the potential threat of human exposure to environmental contamination originating from the sanitary landfill or open dump and the likelihood that hazardous waste was accepted at the landfill or dump.

(2) The department shall not expend more than 10% of the total amount in the fund in any state fiscal year for the program to perform hydrogeological monitoring studies. The department shall not expend more than $50,000.00 for any single hydrogeological monitoring study performed under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19118 Sanitary landfill and open dump closure or reclosure matching grant program.

Sec. 19118. (1) The department shall establish a sanitary landfill and open dump closure or reclosure matching grant program. The program shall provide up to 75% of the funding for the closure or reclosure of sanitary landfills and open dumps owned or operated by municipalities. In addition, the program shall provide up to 75% reimbursement for the closure of municipally owned sanitary landfills and open dumps or the reclosure of municipally owned sanitary landfills and open dumps that were closed after January 11, 1979, the effective date of former Act No. 641 of the Public Acts of 1978, according to the standards prescribed by that former act, which is currently part 115, but before December 4, 1986. The department shall make the grants described in this section.

(2) The department shall not make a closure or reclosure grant unless all of the following requirements are met:

(a) The sanitary landfill or open dump proposed for closure or reclosure is located in a county that has an approved solid waste management plan.

(b) The grant is for the closure of an operating sanitary landfill or open dump that is not operated according to the standards contained in part 115 and the rules promulgated under that part or the grant is for the reclosure of a closed sanitary landfill or dump that was not closed according to the standards contained in part 115 and the rules promulgated under that part.

(c) If the grant is reimbursement for the closure or reclosure of a landfill or dump, the closure or reclosure was made according to the standards of part 115 and the rules promulgated under that part.

(d) The grant shall be used only for a closure or reclosure that is a complete closure of an entire landfill or dump.

(e) The closure or reclosure will be accomplished completely within 1 year after receipt of the grant.

(3) The department shall consider the following factors in selecting recipients of closure or reclosure grants:

(a) The degree of effort demonstrated by the municipality in working toward alternative solutions to solid waste management problems.

(b) The degree of the potential threat of groundwater contamination.

(c) The likelihood that hazardous waste was accepted.

(d) The municipality's willingness to work with adjacent municipalities on alternative solutions.

(e) The municipality's commitment to refrain from operating unlicensed disposal areas in the future.

(4) The department shall not expend more than 25% of the total amount in the fund in any state fiscal year for the sanitary landfill and open dump closure or reclosure matching grant program. The department shall not expend more than $600,000.00 for any single grant made under this section.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.19119 Project producing site separated materials; eligibility for grant.

Sec. 19119. Any project of the type for which a grant may be available under section 19111, which produces site separated materials, and for which the licenses or permits required by this part and otherwise required by law have been obtained, is eligible to receive a grant under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19120 Administration of studies, assessments, and programs; application for inclusion in study or assessment or for grant; project summary.

Sec. 19120. (1) The department shall administer the studies, assessments, and programs described in this part according to the following:

(a) Within 60 days after enactment of the general appropriations bill for the department of natural resources for a state fiscal year, the department shall issue a request for applications for inclusion in any study or assessment to be conducted that year and for receipt of any grant available during that year.

(b) The department shall not accept any applications after 60 days from the issuance of a request for applications.

(c) Within 135 days after the advisory panel recommendations are made, the department shall complete its review of the application and recommendations and make its determinations.

(2) An application for inclusion in any study or assessment described in this part or for any grant available under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make the determinations required by this part.

(3) Each recipient of a grant and each participant in a study or assessment under this part shall complete and return a project summary on a form developed by the department by a date specified by the advisory panel. A recipient or participant who fails to submit a project summary as required by this section is not eligible to be a recipient or participant under this part for 5 years after the year for which the failure occurs.

(4) The project summary form developed by the department shall not exceed 1 page and shall include the following information:

(a) The name, address, and telephone number of the recipient or participant.

(b) The name of the project.

(c) The amount of money received.

(d) The county in which the project is located.

(e) A brief summary of the activities and accomplishments of the project.

(5) A completed project summary is available to the public under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.19121 Reports.

Sec. 19121. (1) Not later than March 31 of each year, the department shall report the following information regarding the projects financed under this part for that fiscal year to the governor, the standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations for the department:

(a) The name, address, and telephone number of the recipient or participant.

(b) The nature of the project.

(c) The amount of money received.

(d) The county in which the project is located.

(2) Not later than September 30 of each year, the department shall submit to the governor and the legislature a report on the projects financed under this act during the previous fiscal year. The report shall consist of the project summaries described in section 19120, along with an introduction and conclusion.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 193
ENVIRONMENTAL PROTECTION BOND AUTHORIZATION

324.19301 Bonds; authorization; limitation; purpose.

Sec. 19301. The state shall borrow a sum not to exceed $660,000,000.00 and issue the general obligation bonds of this state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance environmental protection programs that would clean up sites of toxic and other environmental contamination and contribute to a regional Great Lakes protection fund, address solid waste problems, treat sewage and other water quality problems, and reuse industrial sites and preserve open space.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19302 Conditions, methods, and procedures.

Sec. 19302. Bonds shall be issued in accordance with conditions, methods, and procedures to be established by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19303 Disposition of proceeds and interest.

Sec. 19303. The proceeds of the sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be deposited in the state treasury and credited to the environmental protection bond fund created in part 195 and shall be disbursed from that fund only for the purposes for which the bonds have been authorized, including the expense of issuing the bonds. The proceeds of sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be expended for the purposes set forth in this part in a manner as provided by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19304 Submission of question to electors.

Sec. 19304. The question of borrowing a sum not to exceed $660,000,000.00 and the issuance of the general obligation bonds of the state for the purposes set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963, at the general election following September 9, 1988, the effective date of former Act No. 326 of the Public Acts of 1988. The question submitted to the electors shall be substantially as follows:

"Shall the state of Michigan borrow a sum not to exceed $660,000,000.00 and issue general obligation bonds of the state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance environmental protection programs that would clean up sites of toxic and other environmental contamination and contribute to a regional Great Lakes protection fund, address solid waste problems, treat sewage and other water quality problems, and reuse industrial sites and preserve open space, the method of repayment of the bonds to be from the general fund of this state?

Yes.....

No..... .".

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19305 Duties of secretary of state.

Sec. 19305. The secretary of state shall perform all acts necessary to properly submit the question prescribed by section 19304 to the electors of this state qualified to vote on the question at the general November election following September 9, 1988, the effective date of former Act No. 326 of the Public Acts of 1988.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.19306 Appropriation; purpose.

Sec. 19306. (1) After the issuance of the bonds authorized by this part or former Act No. 326 of the Public Acts of 1988, there shall be appropriated from the general fund of the state each fiscal year a sufficient amount to pay promptly, when due, the principal of and interest on all outstanding bonds authorized by this part or former Act No. 326 of the Public Acts of 1988 and the costs incidental to the payment of the bonds.

(2) The governor shall include the appropriation provided in subsection (1) in his or her annual executive budget recommendations to the legislature.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 195
ENVIRONMENTAL PROTECTION BOND IMPLEMENTATION

324.19501 Definitions.

Sec. 19501. As used in this part:

(a) "Bonds" means the bonds issued under part 193 or former Act No. 326 of the Public Acts of 1988.

(b) "Fund" means the environmental protection bond fund created in section 19506.

(c) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; an authority or any other public body created by or pursuant to state law; or this state or an agency or department of this state.

(d) "Private entity" means an individual, trust, firm, partnership, corporation, or association, whether profit or nonprofit, that is not a local unit of government.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19502 Legislative finding and declaration.

Sec. 19502. The legislature finds and declares that the environmental protection programs implemented under former Act No. 328 of the Public Acts of 1988 or this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19503 Bonds; requirements generally.

Sec. 19503. (1) The bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or term and serial, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to insure the marketability, insurability, or tax exempt status. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount imposed by the vote of the people on November 8, 1988. Further, refunding bonds issued pursuant to this section shall not be subject to the restrictions of section 19507.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

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(4) The state administrative board may authorize the state treasurer, but only within limitations that are contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy bonds so issued at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds shall be approved by the department of treasury before their issuance but are not otherwise subject to the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws.

(6) The bonds or any series of the bonds shall be sold at such price and at a publicly advertised sale or a competitively negotiated sale as determined by the state administrative board. If bonds are issued at a competitively negotiated sale, the state administrative board shall use its best efforts to include firms based in this state in the sale of the bonds.

(7) Except as provided in subsection (8), the bonds shall be sold in accordance with the following schedule, beginning during the first year after December 1, 1988:

(a) Not more than 34% shall be sold during the first year.

(b) Not more than 33% shall be sold during the second year.

(c) Not more than 33% shall be sold during the third year.

(d) After the third year, any remaining bonds may be sold at the discretion of the state administrative board.

(8) The state administrative board may alter the schedule for issuance of the bonds provided in subsection (7) if either or both of the following occur:

(a) Amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

(b) The legislature concurs in the declaration of a toxic substance emergency made by the governor pursuant to law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1995, Act 73, Imd. Eff. June 6, 1995.

Popular name: Act 451

Popular name: NREPA

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324.19504 Bonds negotiable; tax exemption.

Sec. 19504. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivisions of the state.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19505 Bonds as securities.

Sec. 19505. Bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 are made securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19506 Environmental protection bond fund; creation; composition; restricted subaccounts.

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Sec. 19506. (1) The environmental protection bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of general obligation bonds issued pursuant to former Act No. 326 of the Public Acts of 1988 or part 193 and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayment of principal and interest made under a loan program authorized in this part.

(d) Any federal funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.19507 Disposition and allocation of bond proceeds; investment of fund; allocation and disposition of interest and earnings; transfer of repayments of principal and interest; disposition of unencumbered balance.

Sec. 19507. (1) The total proceeds of all bonds issued under former Act No. 326 of the Public Acts of 1988 or part 193 shall be deposited into the fund and allocated as follows:

(a) Except as provided in section 19508(1)(a)(*ii*) and as otherwise provided in this act, not more than $425,000,000.00 shall be used to clean up sites of toxic and other environmental contamination.

(b) Not more than $150,000,000.00 shall be used for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste. Money that is available under this subdivision but not appropriated and money that is appropriated under this subdivision that reverts to the fund shall be transferred to the cleanup and redevelopment fund created in section 20108.

(c) Not more than $60,000,000.00 shall be used to capitalize the state water pollution control revolving fund established pursuant to section 16a of the shared credit rating act, Act No. 227 of the Public Acts of 1985, being section 141.1066a of the Michigan Compiled Laws.

(d) Not more than $25,000,000.00 shall be used to fund this state's participation in a regional Great Lakes protection fund.

(2) The state treasurer shall direct the investment of the fund. Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be transferred to the cleanup and redevelopment fund created in section 20108, except for the fiscal years 1992-93 and 1993-94, when any such interest and earnings accrued in those, or prior fiscal years, shall be deposited in the state water pollution control revolving fund established pursuant to section 16a of Act No. 227 of the Public Acts of 1985.

(3) Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, all repayments of principal and interest earned under a loan program created with money under subsection (1)(b) shall be transferred to the cleanup and redevelopment fund created in section 20108.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: NREPA

324.19508 Use of money in fund allocated under MCL 324.19507; expenditures; recovery and retention of funds by eligible community; contents and submission of list of projects; appropriations; prioritizing and approving projects; "eligible community" defined.

Sec. 19508. (1) Except as provided in subsection (3), money in the fund that is allocated under section 19507 shall be used for the following purposes:

(a) Money in the fund that is allocated under section 19507(1)(a) shall be used for sites identified through parts 201 and 213, to be expended and recovered by the state in the same manner as provided in that part. Of the funds allocated under section 19507(1)(a), the following apply:

(*i*) Not more than $35,000,000.00 shall be used to clean up sites of environmental contamination that have been identified under former 1982 PA 307, part 201, or part 213; that meet either of the following:

(A) Until the effective date of the 2016 amendatory act that amended this section, will not be funded in the

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next fiscal year and have been approved by the department as having measurable economic benefit.

(B) Beginning on the effective date of the 2016 amendatory act that amended this section, for projects meeting the criteria of sections 19608 to 19615.

(*ii*) Not more than $10,000,000.00 may be used to provide grants to eligible communities to investigate and determine whether property within an eligible community is a site of environmental contamination and, if so, to characterize the nature and extent of the contamination. A grant shall be issued under this subparagraph only if all of the following conditions are met:

(A) The characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based upon current environmental conditions.

(B) The property has demonstrable economic development potential. This provision does not require a specific development proposal to be identified.

(C) The property is located within an eligible community that has received less than $1,000,000.00 in total grants under this subparagraph. However, a grant that has resulted in measurable economic benefits shall not be included in the calculation of the $1,000,000.00.

(b) Money in the fund that is allocated for solid waste projects including, but not limited to, reducing, recycling, and properly disposing of solid waste shall be used to fund state projects, to provide grants and loans to local units of government, and to provide grants and loans to private entities for any of the programs identified in part 191, in the amounts appropriated pursuant to subsection (5). Not less than $17,500,000.00 of the money for solid waste projects shall be used to fund the following:

(*i*) To promote and expand markets for recycled materials.

(*ii*) To assist in the recycling of solid wastes, including, but not limited to, plastics, metals, tires, wood, and paper.

(*iii*) To promote research on resource recovery.

(*iv*) To study marketing options for products that use recycled materials.

(c) Money in the fund that is allocated to capitalize the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, shall be used as provided in part 53.

(d) Money in the fund that is allocated to fund this state's participation in a regional Great Lakes protection fund pursuant to part 331.

(2) If, by June 28, 1995, the department determines that money allocated under subsection (1)(a)(*ii*) is unlikely to be expended pursuant to that subparagraph, $5,000,000.00 of the money allocated pursuant to that subparagraph shall be expended pursuant to subsection (1)(a)(*i*).

(3) If money that is expended pursuant to subsection (1)(a)(*ii*) is recovered by an eligible community from a person who may be liable under part 201, through proceeds from the sale of the property, or through any other mechanism, and additional funds for environmental response activities on the property are not necessary, the eligible community may retain those funds for expenditure on projects that the department determines are eligible to receive funding under subsection (1)(a)(*ii*). An accounting of the recovered funds must be provided to the department within 30 days of receipt, and approval and expenditure of the recovered funds shall be in the same manner as funds awarded pursuant to subsection (1)(a)(*ii*). If funds are recovered and not spent on other projects pursuant to this subparagraph within 2 years after they are recovered by the eligible community, the eligible community shall forward the money collected to the state treasurer for deposit into the fund to be used pursuant to subsection (1)(a)(*ii*). When accounting for the use of recovered funds, eligible communities may itemize deductions for site preparation and other costs directly related to the reuse of a site funded under this section.

(4) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds under former 1988 PA 326 or part 193 and by the department to pay department costs as provided in this subsection. Not more than 6% of the total amount specified in section 19507(1)(a), (b), and (d) shall be available for appropriation to the department to pay department costs directly associated with the completion of a project described in section 19507(1)(a), (b), or (d), for which bonds are issued as provided under this part. Any department costs associated with a project described in section 19507(1)(c) for which bonds are issued under this part shall be paid as provided in the state statute implementing the state water pollution control revolving fund. Bond proceeds shall not be available to pay indirect, administrative overhead costs incurred by any organizational unit of the department not directly responsible for the completion of a project. It is the intent of the legislature that general fund appropriations to the department shall not be reduced as a result of department costs funded pursuant to this subsection.

(5) Except as provided in subsection (3), the department shall annually submit a list of all projects that are recommended to be funded under this part to the governor, the standing committees of the house of

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representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. This list shall be submitted to the legislature not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. The list shall include the name, address, and telephone number of the eligible recipient or participant; the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the department.

(6) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed. Environmental cleanup projects that are eligible for funding under subsection (1)(a), but not including subsection (1)(a)(*i*) and (*ii*), shall be prioritized and approved pursuant to the procedures outlined in part 201. Projects to which loans are provided from the state water pollution control revolving fund shall be approved pursuant to state law implementing that fund. The capitalization of the regional Great Lakes protection fund shall be a 1-time appropriation.

(7) Not later than December 31 of each year, the department shall submit a list of the projects financed under this part to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the committees of the house of representatives and the senate on appropriations for the department. The list shall include the name, address, and telephone number of the recipient or participant; the nature of the project; the amount of money received; the county in which the project is located; and other information considered pertinent by the department.

(8) As used in this section, "eligible community" means any of the following:

(a) A city, village, or township, or a county on behalf of a city, village, or township, that on May 1, 1993 meets the applicable criteria of a local government unit under section 2(f) of the neighborhood enterprise zone act, 1992 PA 147, MCL 207.772.

(b) A city that meets any of the following descriptions:

(*i*) Has a population of greater than 10,000 and is located within a county that has a population density of less than 39 residents per square mile.

(*ii*) Has a population of greater than 2,500 and is located within a county that has a population density of less than 39 residents per square mile.

(*iii*) Had an average unemployment rate of 11.5% or more during the most recent calendar year for which data is available from the Michigan employment security commission.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2016, Act 474, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19509 Grant and loan programs; rules; maximum participation; considerations in making grant or loan; interest; grant projects under MCL 324.19508(1)(a); applicability.

Sec. 19509. (1) The department shall promulgate rules necessary to implement grant and loan programs provided in this part.

(2) The department shall assure maximum participation by local units of government and by private entities by promulgating rules that provide for a grant or loan program, where appropriate. In determining whether a grant or a loan program is appropriate, the department shall consider whether the project is likely to be undertaken without state assistance; the availability of state funds from other sources; the degree of private sector participation in the type of project under consideration; the extent of the need for the project as a demonstration project; and such other factors considered important by the department.

(3) Prior to making a grant or loan authorized by this part, the department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

(4) The department shall provide in rules promulgated under this part that loans that are issued by the department to private entities shall include an interest charge of not less than 5% per year.

(5) Notwithstanding any other provision of this section, for grant projects considered for funding under section 19508(1)(a) on or after the effective date of the 2016 amendatory act that amended this section, subsections (1) to (4) do not apply and the department shall apply the criteria used for projects funded under section 19611.

(6) Neither this section nor section 19510 apply to loans from the state water pollution control revolving fund.

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History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2016, Act 474, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19510 Application for grant or loan; form; requirements.

Sec. 19510. (1) An application for a grant or a loan authorized under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make a determination required by this part.

(2) Beginning on the effective date of the 2016 amendatory act that amended this section, an application for a grant under section 19508(1)(a) is subject to the same requirements listed in section 19610 for a loan under section 19608(1)(a)(*iv*).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2016, Act 474, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19511 Conditions to making grant or loan.

Sec. 19511. The department shall not make a grant or a loan under section 19508(1)(a) or (b) unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with or will result in compliance with all applicable state laws and rules.

(b) The applicant demonstrates to the department the capability to carry out the proposed project.

(c) The applicant provides the department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.

(d) The applicant demonstrates to the department that there is an identifiable source of funds for the future maintenance and operation of the proposed project.

(e) Notwithstanding any other provision of this section, for grant projects approved for funding under section 19508(1)(a) on or after the effective date of the 2016 amendatory act that amended this section, subdivisions (a) to (d) do not apply and the department shall apply the same application requirements provided for a grant or loan in section 19609.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2016, Act 472, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19512 Recipient of grant or loan; conditions; noncompliance; revocation of grant or withholding payment; recovery of grant by department; withholding grant or loan; grant projects approved under MCL 324.19508(1)(a).

Sec. 19512. (1) A recipient of a grant or a loan made under section 19508(1)(a) or (b) must comply with all of the following:

(a) A recipient shall keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting is subject to a postaudit.

(b) A recipient shall obtain authorization from the department before implementing a change that significantly alters the proposed project or facility.

(2) The department may revoke a grant or a loan made by it under this part or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan or with the requirements of this part or the rules promulgated under this part.

(3) The department may recover a grant if the project for which the grant was made never operates.

(4) The department may withhold a grant or a loan until the department determines that the recipient is able to proceed with the proposed project or facility.

(5) To assure timely completion of a project, the department may withhold 10% of the grant or loan amount until the project is complete.

(6) Notwithstanding any other provision of this section, for grant projects approved for funding under section 19508(1)(a) on or after the effective date of the 2016 amendatory act that amended this section, subsections (1) to (5) do not apply and the recipient of any grant or loan must comply with the requirements of section 19612.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2016, Act 472, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

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324.19513 Rules.

Sec. 19513. (1) The department may promulgate rules as are necessary or required to implement this part.

(2) For grant projects funded under section 19508(1)(a), the department shall not implement or enforce R 299.5051 to R 299.5061 related to any grant or loan authorized or approved on or after the effective date of the 2016 amendatory act that amended this section.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2016, Act 472, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.5101 et seq. and R 299.51001 et seq. of the Michigan Administrative Code.

PART 196
CLEAN MICHIGAN INITIATIVE IMPLEMENTATION

324.19601 Definitions.

Sec. 19601. As used in this part:

(a) "Baseline environmental assessment" means that term as defined in sections 20101 and 21302.

(b) "Bonds" means the bonds authorized under the clean Michigan initiative act, 1998 PA 284, MCL 324.95101 to 324.95108.

(c) "Brownfield project" or "project" means the entire project to be undertaken, including, but not limited to, the actual site remediation and its resulting economic development.

(d) "Chief executive officer" means the mayor of a city, the village manager of a village, the township supervisor of a township, or the county executive of a county or, if the county does not have an elected county executive, the chairperson of the county board of commissioners.

(e) "Corrective action" means that term as it is defined in section 21302.

(f) "Department" means the department of environmental quality.

(g) "Due care activities" means those activities conducted under sections 20107a and 21304c.

(h) "Eligible activities" for projects with funding allocated under section 19608(1)(a)(*iv*) means:

(*i*) Baseline environmental assessment activities.

(*ii*) Investigations.

(*iii*) Due care activities.

(*iv*) Response activities, including response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a or 21304c.

(*v*) Removal and closure of underground storage tanks pursuant to parts 211 and 213.

(*vi*) Dust control related to construction activities.

(*vii*) Industrial cleaning.

(*viii*) Sheeting and shoring necessary for the removal of materials exceeding part 201 cleanup criteria at projects requiring a permit under part 301, 303, or 325.

(*ix*) The following activities, provided that the total cost of these activities does not exceed the total cost of project-related activities identified in subparagraphs (*i*) to (*viii*):

(A) Disposal of solid waste, as defined in part 115, from the eligible property, provided it was not generated or accumulated by the authority or the developer.

(B) Lead, asbestos, or mold abatement, and demolition of structures that are not a response activity.

(C) Removal and disposal of lake or river sediments exceeding part 201 unrestricted criteria from, at, or related to an economic development project if the upland property either is a facility or would become a facility as a result of the deposition of dredged spoils.

(i) "Eligible property" for projects with funding allocated under section 19608(1)(a)(*iv*) means property that is known or suspected to be a facility under part 201 or a site or property under part 213 and that was used or is currently being used for commercial, industrial, public, or residential purposes.

(j) "Facility" means that term as it is defined in part 201.

(k) "Fund" means the clean Michigan initiative bond fund created in section 19606.

(*l*) "Gaming facility" means a gaming facility regulated under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

(m) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; or a brownfield redevelopment authority, economic development corporation, or an authority or other public body created by or pursuant to state law.

(n) "Measurable economic benefit" means the permanent jobs that are created or retained, the capital invested, or the increased tax base to the applicable county, city, village, and township where the project is

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located.

(o) "Measurable environmental benefit" means the extent that the requirements of part 201 or part 213, or both, are advanced at a brownfield project where environmental conditions inhibit the site's redevelopment or reuse.

(p) "Part 213 property" means a property as defined in section 21303.

(q) "Response activity" means that term as it is defined in part 201 or corrective action as defined in part 213.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2016, Act 473, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19602 Findings and declaration.

Sec. 19602. The legislature finds and declares that the environmental and natural resources protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19603 Bonds; issuance; refund; security; authority of state treasurer; bonds not subject to revised municipal finance act; sale; issuance subject to agency financing reporting act; interest rate agreement.

Sec. 19603. (1) The bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities that may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued under this section shall not be counted against the limitation on principal amount provided in the clean Michigan initiative act, 1998 PA 284, MCL 324.95101 to 324.95108. Further, refunding bonds issued under this section are not subject to the restrictions of section 19607.

(3) The state administrative board may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy issued bonds at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The bonds or any series of the bonds shall be sold at a price as determined by the state administrative

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board.

(7) The bonds shall be sold in accordance with a schedule established by the state administrative board.

(8) The issuance of bonds under this section is subject to the agency financing reporting act.

(9) For the purpose of more effectively managing its debt service, the state administrative board may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the state administrative board.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2002, Act 383, Imd. Eff. May 28, 2002.

Popular name: Act 451

Popular name: NREPA

324.19604 Bonds as negotiable and exempt from taxation.

Sec. 19604. The bonds shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19605 Bonds as securities; investment of funds.

Sec. 19605. The bonds are securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19606 Clean Michigan initiative bond fund; creation; composition; establishment of restricted subaccounts.

Sec. 19606. (1) The clean Michigan initiative bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of the bonds and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayment of principal and interest made under a loan program authorized in this part.

(d) Any federal or other funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19607 Disposition and allocation of fund; investment; loan repayments; expenditures; unencumbered balance not to revert to general fund; annual accounting.

Sec. 19607. (1) The total proceeds of all bonds shall be deposited into the fund and allocated as follows:

(a) Not more than $335,000,000.00 shall be used for eligible activities at facilities and part 213 properties.

(b) Not more than $50,000,000.00 shall be used for waterfront improvements.

(c) Not more than $25,000,000.00 shall be used for remediation of contaminated lake and river sediments.

(d) Not more than $50,000,000.00 shall be used for nonpoint source pollution prevention and control projects or wellhead protection projects.

(e) Not more than $90,000,000.00 shall be used for water quality monitoring and water resources protection and pollution control activities.

(f) Not more than $20,000,000.00 shall be used for pollution prevention programs.

(g) Except as provided under subsection (1)(a), not more than $5,000,000.00 shall be used to abate lead hazards.

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(h) Not more than $50,000,000.00 shall be used for state park infrastructure improvements.

(i) Not more than $50,000,000.00 shall be used for local recreation projects.

(2) The state treasurer shall direct the investment of the fund. Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

(3) Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, all repayments of principal and interest earned under a loan program authorized by this part shall be credited to the appropriate restricted subaccount of the fund and used for the purposes authorized for that subaccount or to pay debt service on any obligation issued which pledges the loan repayments and the proceeds of which are deposited in that subaccount.

(4) The bond proceeds shall be expended in an appropriate manner that maintains the tax exempt status of the bonds.

(5) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) The department shall provide an annual accounting of bond proceeds spending on a cash basis to the department of treasury in order for the state to comply with requirements set forth for issuing tax exempt bonds, including arbitrage rebate calculations. This accounting shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2016, Act 473, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19608 Use of money allocated under MCL 324.19607; purposes; notice to public advisory council; payment of costs; grant prohibited; submission of annual project list; carrying over appropriations until project completion; submission of list of financed projects.

Sec. 19608. (1) Money in the fund that is allocated under section 19607 shall be used for the following purposes:

(a) Money allocated under section 19607(1)(a) shall be used by the department to fund all of the following:

(*i*) Corrective actions undertaken by the department to address releases from leaking underground storage tanks pursuant to part 213.

(*ii*) Response activities undertaken by the department at facilities pursuant to part 201 to address public health and environmental problems or to promote redevelopment.

(*iii*) Assessment activities undertaken by the department to determine whether a property is a facility.

(*iv*) $75,000,000.00 shall be used to provide grants and loans to local units of government for eligible activities at eligible properties with redevelopment potential. Of the money provided for in this subparagraph, not more than $50,000,000.00 shall be used to provide grants and not more than $25,000,000.00 shall be used to provide loans pursuant to the clean Michigan initiative grant and revolving loan program created in section 19608a. However, grants or loans provided for in this subparagraph shall not be made to a local unit of government that is responsible for causing a release or threat of release under part 201 or part 213 at the site proposed for grant or loan funding, except as provided in section 19608b(f).

(b) Money allocated under section 19607(1)(b) shall be used for waterfront redevelopment grants pursuant to part 795.

(c) Money allocated under section 19607(1)(c) shall be used for response activities for the remediation of contaminated lake and river sediments pursuant to part 201.

(d) Money allocated under section 19607(1)(d) shall be used for nonpoint source pollution prevention and control grants or wellhead protection grants under part 88.

(e) Money allocated under section 19607(1)(e) shall be deposited into the clean water fund created in section 8807.

(f) Money allocated under section 19607(1)(f) shall be expended as follows:

(*i*) $10,000,000.00 shall be deposited into the retired engineers technical assistance program fund created in section 14512.

(*ii*) $5,000,000.00 shall be deposited into the small business pollution prevention assistance revolving loan fund created in section 14513.

(*iii*) $5,000,000.00 shall be used by the department to implement pollution prevention activities other than

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those funded under subparagraphs (*i*) and (*ii*).

(g) Money that is allocated under section 19607(1)(g) shall be used by the department of health and human services for remediation and physical improvements to structures to abate or minimize exposure of persons to lead hazards.

(h) Money allocated under section 19607(1)(h) shall be used for infrastructure improvements at Michigan state parks as determined by the department of natural resources. The installation or upgrade of drinking water systems or rest room facilities shall be the first priority.

(i) Money allocated under section 19607(1)(i) shall be used to provide grants to local units of government for local recreation projects under part 716.

(2) Of the money allocated under section 19607(1)(a), $93,000,000.00 shall be used for facilities or part 213 properties that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. For purposes of this subsection, facilities or part 213 properties that pose an imminent or substantial endangerment include, but are not limited to, those where public access poses hazards because of potential exposure to chemicals or safety risks and where drinking water supplies are threatened by contamination.

(3) Before expending any funds allocated under subsection (1)(c) at an area of concern as designated by the parties to the Great Lakes water quality agreement of 1978 as amended by protocol signed September 7, 2012, the department shall notify the public advisory council established to oversee that area of concern regarding the development, implementation, and evaluation of response activities to be conducted with money in the fund at that area of concern.

(4) Money in the fund may be used by the department of treasury to pay for the cost of issuing bonds and by the department and the department of natural resources to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in section 19607(1)(a) to (f) shall be available for appropriation to the department to pay its costs directly associated with the completion of a project authorized by section 19607(1)(a) to (f). Not more than 3% of the total amount specified in section 19607(1)(h) and (i) shall be available for appropriation to the department of natural resources to pay its costs directly associated with the completion of a project authorized by section 19607(1)(h) and (i). It is the intent of the legislature that general fund appropriations to the department and to the department of natural resources shall not be reduced as a result of costs funded pursuant to this subsection.

(5) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

(6) The department, the department of natural resources, and the department of health and human services shall each submit annually a list of all projects that will be undertaken by that department that are recommended to be funded under this part. The list shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. The list shall be submitted to the legislative committees not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. For each eligible project, the list shall include the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the administering state department. A project that is funded by a grant or loan with money from the fund does not need to be included on the list submitted under this subsection. However, money in the fund that is appropriated for grants and loans shall not be encumbered or expended until the administering state department has reported those projects that have been approved for a grant or a loan to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment and to the appropriations subcommittees in the house of representatives and the senate on natural resources and environmental quality. The department shall post on its website the criteria it will use in evaluating and recommending projects for funding under this part.

(7) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

(8) Not later than December 31 of each year, the department, the department of natural resources, and the department of health and human services shall each submit a list of the projects financed under this part by that department to the governor, the standing committees of the house of representatives and the senate that

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primarily address issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations on natural resources and environmental quality. Each list shall include the name, address, and telephone number of the recipient or participant, if appropriate; the name and location of the project; the nature of the project; the amount of money allocated to the project; the county in which the project is located; a brief summary of what has been accomplished by the project; and other information considered pertinent by the administering state department.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2003, Act 252, Imd. Eff. Dec. 29, 2003;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 473, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19608a Clean Michigan initiative grant and revolving loan program.

Sec. 19608a. (1) The department shall create a clean Michigan initiative grant and revolving loan program for the purpose of making grants and loans to local units of government under section 19608(1)(a)(*iv*) for eligible activities at eligible properties with redevelopment potential.

(2) Grants provided under the clean Michigan initiative grant and revolving loan program that are used solely to determine whether a property is a site or a facility and, if so, to characterize the nature and extent of the contamination by means of an assessment or investigation shall be issued only if all of the following conditions are met:

(a) The characterization of the nature and extent of contamination includes an estimate of response activity costs in relation to the value of the property in an uncontaminated state and identifies future potential limitations on the use of the property based upon current environmental conditions.

(b) The property has demonstrable economic development potential. This subdivision does not require a specific development proposal to be identified.

(3) The department shall not make a grant or a loan under the clean Michigan initiative grant and revolving loan program unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in, or will result in, compliance with all applicable state laws and rules.

(b) The applicant demonstrates to the department the capability to carry out the proposed project.

(c) The applicant demonstrates to the department that there is an identifiable source of funds for the future maintenance and operation of the activities funded with money from the fund, if appropriate.

(d) Within the last 24 months, the applicant has successfully undergone an audit conducted in accordance with generally accepted auditing standards or an emergency manager has been appointed for the applicant under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(e) Within the last 24 months, the department has not revoked or terminated a grant to the applicant and the administering state department has not determined that the applicant demonstrated an inability to manage a grant.

History: Add. 2003, Act 253, Imd. Eff. Dec. 29, 2003;—Am. 2016, Act 473, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19608b Grants and loans under MCL 324.19608(1)(a)(iv); conditions.

Sec. 19608b. With respect to the grants and loans under section 19608(1)(a)(*iv*), all of the following conditions apply:

(a) An applicant must be a local unit of government.

(b) A recipient is not eligible to receive more than the following:

(*i*) Except as provided in subparagraphs (*iii*) and (*iv*), 1 grant per year, not to exceed $1,000,000.00 per grant.

(*ii*) Except as provided in subparagraphs (*iii*) and (*iv*), 1 loan per year, not to exceed $1,000,000.00 per loan.

(*iii*) Brownfield projects that have significant economic and environmental benefit may be considered for more than 1 grant or loan over consecutive years, provided that the loan or grant agreement includes project-specific benchmarks for eligible activities and failure to satisfy a benchmark would terminate the project's eligibility for additional grant or loan funding, as applicable.

(*iv*) A local unit of government may be considered for and awarded more than 1 grant or loan in a single year relating to multiple unrelated brownfield projects if the projects are determined to have significant

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environmental or economic benefits to the recipient's municipality or region.

(c) Except for a grant described in section 19608a(2), the department may award a grant only if it determines that both of the following apply:

(*i*) The property is an eligible property.

(*ii*) The proposed development of the property is expected to result in measurable economic benefit in excess of the grant amount requested by the applicant.

(d) The department may award a loan only if it determines that both of the following apply:

(*i*) The property is known or suspected to be an eligible property.

(*ii*) The property has economic development potential based on the applicant's planned use of the property.

(e) The department may approve funding for response activities that are more protective of the public health, safety, and welfare and the environment than required by section 20107a or 21304c if those activities provide public health or environmental benefit. In its review of a work plan that includes activities that are more protective of the public health, safety, and welfare and the environment, the department may consider, but is not limited to, all of the following:

(*i*) Proposed new land use and reliability of restrictions to prevent exposure to contamination.

(*ii*) Cost of implementation activities minimally necessary to satisfy due care requirements, the incremental cost of response activities relative to the cost of activities minimally necessary to satisfy due care requirements, and the total cost of all response activities.

(*iii*) Long-term obligations associated with leaving contamination in place and the value of reducing or eliminating these obligations.

(f) A grant or loan shall not be used to fund response activities that benefit a party that is responsible for an activity causing a release at the eligible property, except that a loan may be used to fund appropriate response activities related to redevelopment and due care activities necessary to facilitate redevelopment of the property if the party that is responsible for an activity causing a release at the eligible property meets all of the following:

(*i*) Is a local unit of government.

(*ii*) Has a proposed redevelopment for the property with measurable economic benefit.

(*iii*) Provides a minimum of 50% local matching funds for the project.

(g) A grant or loan may be used to fund due care activities necessary to facilitate redevelopment if the party responsible for an activity causing a release is not the developer of proposed redevelopment.

(h) A loan may be used to fund response activities if both of the following are met:

(*i*) A party responsible for an activity causing a release is neither the seller nor the developer of the property to receive funding.

(*ii*) The recipient can show that response activities are appropriate in relation to the redevelopment.

History: Add. 2016, Act 473, Eff. Apr. 5, 2017.

324.19609 Grant or loan application; form or format; funds under MCL 324.19608(1)(a)(iv).

Sec. 19609. (1) An application for a grant or a loan from the fund shall be made on a form or in a format prescribed by the administering state department. The administering state department may require the applicant to provide any information reasonably necessary to allow the administering state department to make a determination required by this part.

(2) Of the funds to be used to provide grants and loans under section 19608(1)(a)(*iv*), the following apply:

(a) The department shall accept, and consider for approval, applications for grants and loans throughout the year.

(b) The department shall make final application decisions within 90 days after receipt of a complete grant or loan application.

(c) A complete application includes all of the following:

(*i*) A description of the proposed eligible activities and the reasons they should be funded.

(*ii*) An itemized budget for the proposed eligible activities.

(*iii*) A schedule for the completion of the proposed eligible activities.

(*iv*) The location of the property.

(*v*) The current ownership and ownership history of the property.

(*vi*) The relevant history of the use of the property.

(*vii*) The current use of the property.

(*viii*) The existing and proposed future zoning of the property.

(*ix*) If the property is not owned by the applicant, a draft of an enforceable agreement between the property owner and the applicant that commits the property owner to cooperate with the applicant, including a commitment to allow access to the property to complete, at a minimum, the proposed eligible activities.

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(*x*) A description of the property's economic redevelopment potential.

(*xi*) For loans, a resolution from the governing body of the applicant committing to repayment of the loan.

(*xii*) A letter from the chief executive officer or highest ranking appointed official indicating that the local unit of government supports the brownfield project and that the brownfield project complies with all local zoning and planning ordinances.

(*xiii*) Any other relevant information the department requires.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2016, Act 475, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19610 Funding provided under MCL 324.19608(1)(a)(iv); application; review; considerations; grants for brownfield projects.

Sec. 19610.

(1) Upon receipt of a grant or loan application, for funding provided under section 19608(1)(a)(*iv*), the department shall review the application based on the following considerations:

(a) Whether the brownfield project proposed to be funded is authorized by this part.

(b) Whether the brownfield project is consistent with the local planning and zoning for the area in which the project is located.

(c) Whether the brownfield project provides measurable environmental benefit.

(d) Whether the brownfield project provides measurable economic benefit or will significantly contribute to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods.

(e) The viability of the redevelopment plan.

(f) The level of public and private commitment and other resources available for the project.

(g) How the brownfield project relates to a broader economic and community development plan for the local unit of government as a whole.

(h) Other criteria that the department considers relevant.

(2) The department shall issue grants under section 19608(1)(a)(*iv*) for brownfield projects that the department determines meet the requirements of this part and will contribute to the revitalization of underutilized properties.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2016, Act 475, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19610a Funding provided under MCL 324.19608(1)(iv); conditions.

Sec. 19610a. For the funds to be used to provide grants and loans under section 19608(1)(a)(*iv*), all of the following apply:

(a) To receive grant or loan funds, approved applicants must enter into a grant or loan agreement with the department. At a minimum, the grant or loan agreement shall contain all of the following:

(*i*) The approved eligible activities to be undertaken with grant or loan funds.

(*ii*) An implementation schedule for the approved eligible activities.

(*iii*) Reporting requirements, including, at a minimum, the following:

(A) The grant or loan recipient shall submit progress status reports to the department during the implementation of the brownfield project that include documentation of project costs and expenditures, at a frequency determined by the department.

(B) The grant or loan recipient shall provide a final report upon completion of the grant- or loan-funded activities within a time frame determined by the department.

(*iv*) If the property is not owned by the grant or loan recipient, an executed agreement that meets the requirements of section 19609(2)(c)(*ix*).

(*v*) When entering into a loan agreement, the loan recipient shall provide financial assurance of repayment of the loan including pledges of revenue sharing, escrow account, letter of credit, or other acceptable mechanism negotiated with the department. Use of real property as a means to secure a loan is not considered an acceptable mechanism. The department is authorized to include in the loan agreement a provision that permits the release of the financial assurance in favor of a pledge of the right of first refusal of the tax increment revenue to the department under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, if the brownfield project has been substantially completed and the annual tax increment being captured relative to the brownfield project is equal to or greater than 125% of the annual loan

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reimbursement payment.

(*vi*) Other provisions as considered appropriate by the department.

(b) All eligible activities must be consistent with an approved grant or loan work plan.

(c) Unless otherwise approved by the director of the department, only activities carried out and costs incurred after execution of a grant or loan agreement are eligible.

(d) Grant funds shall be disbursed on a reimbursement basis upon receipt of appropriate documentation.

(e) Loan funds shall be disbursed in draws based on an approved work plan, and supporting documentation must be submitted after expenses are incurred.

(f) The department shall specify documentation requirements for grants and loans on a form prescribed for requesting reimbursement or draws.

History: Add. 2016, Act 475, Eff. Apr. 5, 2017.

324.19611 Balancing distribution of grants and loans; considerations.

Sec. 19611. (1) Prior to making a grant or loan with money from the fund, the administering state department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

(2) In determining whether a grant or a loan is appropriate under section 19608(1)(a)(*iv*), the department shall consider whether the project is likely to be undertaken without state assistance, the availability of state funds from other sources, the degree of private sector participation in the type of project under consideration, and other factors considered important by the department.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2016, Act 475, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19612 Duties of grant or loan recipient; revoking grant or loan; withholding payment; cancellation of grant or loan offer; termination of grant or loan agreement; renegotiation of outstanding loan terms; disposition of loan payments and interest.

Sec. 19612. (1) A recipient of a grant or a loan made with money from the fund shall do both of the following:

(a) Keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting is subject to a postaudit.

(b) Obtain authorization from the administering state department before implementing a change that significantly alters the proposed project.

(2) The administering state department may revoke a grant or a loan made with money from the fund or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan agreement or with the requirements of this part or the rules promulgated under this part, or with other applicable law or rules. If a grant or loan is revoked, the administering state department may recover all funds awarded.

(3) The administering state department may withhold a grant or a loan until the administering state department determines that the recipient is able to proceed with the proposed project.

(4) To assure timely completion of a project, the administering state department may withhold 10% of the grant or loan amount until the project is complete.

(5) If an approved applicant fails to sign a grant or loan agreement within 90 days after receipt of a written grant or loan offer by the administering state department, the administering state department may cancel the grant or loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

(6) The administering state department may terminate a grant or loan agreement and require immediate repayment of the grant or loan if the recipient uses grant or loan funds for any purpose other than for the approved activities specified in the grant or loan agreement. The administering state department shall provide the recipient written notice of the termination 30 days prior to the termination.

(7) A loan made with money in the fund must be made on the following terms:

(a) A loan interest rate of not more than 50% of the prime rate as determined by the administering state department as of the date of approval of the loan.

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after the first draw of the loan and concluding not later than 15 years after the first draw of the loan.

(c) A loan recipient shall enter into a loan agreement with the administering state department.

(d) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold from state payments payable to the loan recipient amounts consistent with the repayment schedule in the loan agreement until the

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loan is repaid. The department of treasury shall deposit the withheld or collected money into the fund until the loan is repaid.

(8) Upon request of a loan recipient and a showing of financial hardship related to the project that was financed in whole or in part by the loan, the administering state department may renegotiate the terms of any outstanding loan, including the length of the loan, the interest rate, and the repayment terms. However, the administering state department shall not reduce or eliminate the amount of the outstanding loan principal. The department shall report to the legislature the number of loans refinanced under this subsection, the local unit of government or authority responsible for each loan refinanced, and the change in the terms of the loan, as appropriate. This information may be included in the report prepared by the department under section 16 of the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2666.

(9) Loan payments and interest shall be deposited in the fund.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 115, Imd. Eff. Apr. 11, 2014;—Am. 2016, Act 475, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: NREPA

324.19613 Grants and loans under MCL 324.19608; conditions.

Sec. 19613. Of the funds to be used to provide grants and loans under section 19608(1)(a)(*iv*), all of the following conditions apply:

(a) A recipient of a grant shall receive not more than 1 grant per year not to exceed $1,000,000.00 per grant.

(b) A recipient of a loan shall receive a maximum of 1 loan per year not to exceed $1,000,000.00 per loan.

(c) A grant shall be awarded only if the department determines that both of the following apply:

(*i*) The property is a facility as defined in section 20101.

(*ii*) The proposed development of the property will result in measurable economic benefit in excess of the grant amount requested by the applicant.

(d) A loan shall be awarded only if the department determines that both of the following apply:

(*i*) The property is a facility as defined in section 20101 or is suspected of being a facility.

(*ii*) The property has economic development potential based on the applicant's planned use of the property.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19614 Recovery of costs.

Sec. 19614. The department and the department of the attorney general may recover costs expended pursuant to section 19608(1)(a)(*i*) to (*iv*) for corrective actions, response activities, site assessments, and all other recoverable costs under part 201 from persons who are liable under part 201. Actions to recover costs shall be undertaken in the manner provided in part 201.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19615 Performance audit.

Sec. 19615. Every 2 years that state programs funded with money from the fund continue to be administered, the auditor general shall conduct a performance audit of these programs. Upon completion of a performance audit under this section, the auditor general shall submit a copy of the performance audit to the audited department and to the legislature.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.19616 Rules.

Sec. 19616. The department may promulgate rules as are necessary to implement this part.

History: Add. 1998, Act 288, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

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GREAT LAKES WATER QUALITY BOND IMPLEMENTATION

324.19701 Definitions.

Sec. 19701. As used in this part:

(a) "Bonds" means the bonds authorized under the Great Lakes water quality bond authorization act.

(b) "Department" means the department of environmental quality.

(c) "Fund" means the Great Lakes water quality bond fund created in section 19706.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19702 Legislative findings.

Sec. 19702. The legislature finds and declares that the environmental, natural resources, and water quality protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19703 Bonds generally.

Sec. 19703. (1) Subject to subsection (2), the bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount provided in the Great Lakes water quality bond authorization act.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part. The state administrative board may authorize and approve an interest rate exchange or swap, hedge, or similar agreement in connection with the issuance of bonds under this part, payable from the same source as the bonds.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

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(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy issued bonds.

(e) Approve interest rates or methods for determining interest rates, including fixed or variable rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(g) Determine the details of, execute, deliver, and pay the cost of any interest rate exchange or swap, hedge, or similar agreement.

(h) Pledge all or any portion of the strategic water quality initiatives fund created in section 5204 to secure bonds issued or to be issued by the Michigan municipal bond authority created in section 4 of the shared credit rating act, 1985 PA 227, MCL 141.1054, for the purpose of funding loans under the strategic water quality initiatives loan program under part 52.

(5) The bonds shall not be subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Issuance of the bonds shall be subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(6) The bonds or any series of the bonds shall be sold at public or private sale at such price or may be issued and deposited directly into the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, or the strategic water quality initiatives fund created in section 5204, as determined by or pursuant to a resolution of the state administrative board.

(7) Not more than 20% of the bonds shall be issued in any year. The first bond issuance shall be structured in such a manner that debt payments do not begin before October 1, 2003. In making the determination to issue these bonds, the department shall consider the availability of the workforce to conduct the activities authorized by this part, in order to ensure a competitive bidding process.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2003, Act 287, Imd. Eff. Jan. 8, 2004.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19703a Issuance of bonds; conditions; report; "fundable range" defined.

Sec. 19703a. (1) Bonds issued under this part are subject to the following:

(a) For the state fiscal year ending on September 30, 2011, bonds must not be issued or expended under this part for the purposes of section 5204b, unless the department of natural resources and environment has established a fundable range of at least $210,000,000.00 for that state fiscal year to fund projects under the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(b) For the state fiscal year ending on September 30, 2012, bonds must not be issued or expended under this part for the purposes of section 5204b, unless the department of natural resources and environment has established a fundable range of at least $259,000,000.00 for that state fiscal year to fund projects under the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, to the extent administratively possible and as long as sufficient applications have been submitted to the department of natural resources and environment.

(c) For each state fiscal year beginning with the state fiscal year ending September 30, 2013, the department of natural resources and environment, in conjunction with the department of treasury, shall seek to fully fund all eligible projects applying for assistance under part 53, to the extent administratively possible, utilizing the bond proceeds under this part as necessary to achieve this goal.

(2) If the department of natural resources and environment is not able to establish a fundable range under

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subsection (1)(b) of at least $259,000,000.00, the department of natural resources and environment shall submit to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment a report detailing the reasons why the fundable range was not set at this level.

(3) As used in this section, "fundable range" means that term as it is defined in section 5301.

History: Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.19704 Bonds as negotiable.

Sec. 19704. The bonds shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19705 Bonds as securities.

Sec. 19705. The bonds are securities in which banks, savings and loan associations, state authorities, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19706 Great Lakes water quality bond fund; creation; subaccounts.

Sec. 19706. (1) The Great Lakes water quality bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of the bonds sold at public or private sale and any premium and accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any federal or other funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of

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the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19707 Bond proceeds; disposition; investment; expenditure; tax exempt status; funds remaining at close of fiscal year; annual accounting.

Sec. 19707. (1) The total proceeds of all bonds sold at public or private sale shall be deposited into the fund.

(2) The state treasurer shall direct the investment of the fund.

(3) The bond proceeds shall be expended in an appropriate manner that maintains the tax exempt status of any bonds issued as tax exempt bonds.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(5) The department shall provide an annual accounting of bond proceeds spending on a cash basis to the department of treasury. This accounting shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.19708 Funds; transfer; use; deposit of certain bonds in determination of allocation and transfer; audit.

Sec. 19708. (1) Subject to subsections (2), (3), and (4), the state treasurer shall transfer money in the fund as follows:

(a) In aggregate, not more than $290,000,000.00 of the money in the fund shall be deposited into the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(b) In aggregate, not more than $710,000,000.00 of the money in the fund shall be deposited into the strategic water quality initiatives fund created in section 5204.

(2) Money in the fund may be used by the department of treasury to pay for the cost of issuing bonds and the costs incurred under section 19703(3).

(3) Bonds that are directly deposited into the state water pollution control revolving fund or strategic water quality initiatives fund as authorized by section 19703 shall be taken into account for the purpose of determining the allocation and transfer of money set forth in subsection (1).

(4) Not later than December 14, 2012, the auditor general shall conduct an audit of the fund to assure that the money in the fund has been expended in compliance with law. Not later than December 14, 2014, the auditor general shall update its initial audit to assure that money in the fund has been expended in compliance with law.

History: Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 256, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 562, Imd. Eff. Jan. 2, 2013.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

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Popular name: Act 451

Popular name: NREPA

CHAPTER 7
REMEDIATION

PART 201
ENVIRONMENTAL REMEDIATION

324.20101 Definitions.

Sec. 20101. (1) As used in this part:

(a) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(b) "Agricultural property" means real property used for farming in any of its branches, including cultivating of soil; growing and harvesting of any agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; turf and tree farming; or performing any practices on a farm as an incident to, or in conjunction with, these farming operations. Agricultural property does not include property used for commercial storage, processing, distribution, marketing, or shipping operations.

(c) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312 (2014).

(d) "Attorney general" means the department of the attorney general.

(e) "Background concentration" means the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility. A person may demonstrate that a hazardous substance is not present at a level that exceeds background concentration by any of the following methods:

(*i*) The hazardous substance complies with the statewide default background levels under table 2 as referenced in R 299.46 of the Michigan Administrative Code.

(*ii*) The hazardous substance is listed in table 2, 3, or 4 of the department's 2005 Michigan background soil survey, is present in a soil type identified in 1 or more of those tables, and meets 1 of the following:

(A) If a glacial lobe area in table 2, 3, or 4 lists an arithmetic or geometric mean for the hazardous substance that is represented by 9 or more samples, the concentration of that hazardous substance is the lesser of the following:

(I) Two standard deviations of that mean for the soil type and glacial lobe area in which the hazardous substance is located.

(II) The uppermost value in the typical range of data for the hazardous substance in table 1 of the department's 2005 Michigan background soil survey.

(B) If a glacial lobe area in table 2, 3, or 4 lists a nonparametric median for the hazardous substance that is represented by 10 or more samples, the concentration of that hazardous substance is the lesser of the following:

(I) The 97.5 quantile for the soil type and glacial lobe area in which the hazardous substance is located.

(II) The uppermost value in the typical range of data for the hazardous substance in table 1 of the department's 2005 Michigan background soil survey.

(C) The concentration of the hazardous substance meets a level established using the 2005 Michigan background soil survey in a manner that is approved by the department.

(*iii*) The hazardous substance is listed in any other study or survey conducted or approved by the department and is within the concentrations or falls within the typical ranges published in that study or survey.

(*iv*) A site-specific demonstration.

(f) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is or contains a facility. For purposes of a baseline environmental assessment, the all appropriate inquiry may be conducted or updated prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure.

(g) "Board" means the brownfield redevelopment board created in section 20104a.

(h) "Certificate of completion" means a written response provided by the department confirming that a response activity has been completed in accordance with the applicable requirements of this part and is

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approved by the department.

(i) "Cleanup criteria for unrestricted residential use" means any of the following:

(*i*) Cleanup criteria that satisfy the requirements for the residential category in section 20120a(1)(a).

(*ii*) Cleanup criteria for unrestricted residential use under part 213.

(*iii*) Site-specific cleanup criteria approved by the department for unrestricted residential use pursuant to sections 20120a and 20120b.

(j) "Department" means the director or his or her designee to whom the director delegates a power or duty by written instrument.

(k) "Director" means the director of the department of environmental quality.

(*l*) "Directors" means the directors or their designees of the departments of environmental quality, community health, agriculture and rural development, and state police.

(m) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance into or on any land or water so that the hazardous substance or any constituent of the hazardous substance may enter the environment or be emitted into the air or discharged into any groundwater or surface water.

(n) "Enforcement costs" means court expenses, reasonable attorney fees of the attorney general, and other reasonable expenses of an executive department that are incurred in relation to enforcement under this part.

(o) "Environment" or "natural resources" means land, surface water, groundwater, subsurface strata, air, fish, wildlife, or biota within this state.

(p) "Environmental contamination" means the release of a hazardous substance, or the potential release of a discarded hazardous substance, in a quantity which is or may become injurious to the environment or to the public health, safety, or welfare.

(q) "Evaluation" means those activities including, but not limited to, investigation, studies, sampling, analysis, development of feasibility studies, and administrative efforts that are needed to determine the nature, extent, and impact of a release or threat of release and necessary response activities.

(r) "Exacerbation" means the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to contamination for which the person is not liable:

(*i*) Migration of contamination beyond the boundaries of the property that is the source of the release at levels above cleanup criteria for unrestricted residential use unless a criterion is not relevant because exposure is reliably restricted as otherwise provided in this part.

(*ii*) A change in facility conditions that increases response activity costs.

(s) "Facility" means any area, place, parcel or parcels of property, or portion of a parcel of property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, parcel or parcels of property, or portion of a parcel of property where any of the following conditions are satisfied:

(*i*) Response activities have been completed under this part or the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, that satisfy the cleanup criteria for unrestricted residential use.

(*ii*) Corrective action has been completed under the resource conservation and recovery act, 42 USC 6901 to 6992k, part 111, or part 213 that satisfies the cleanup criteria for unrestricted residential use.

(*iii*) Site-specific criteria that have been approved by the department for application at the area, place, parcel of property, or portion of a parcel of property are met or satisfied and hazardous substances at the area, place, or property that are not addressed by site-specific criteria satisfy the cleanup criteria for unrestricted residential use.

(*iv*) Hazardous substances in concentrations above unrestricted residential cleanup criteria are present due only to the placement, storage, or use of beneficial use by-products or inert materials at the area, place, or property in compliance with part 115.

(*v*) The property has been lawfully split, subdivided, or divided from a facility and does not contain hazardous substances in excess of concentrations that satisfy the cleanup criteria for unrestricted residential use.

(*vi*) Natural attenuation or other natural processes have reduced concentrations of hazardous substances to levels at or below the cleanup criteria for unrestricted residential use.

(t) "Feasibility study" means a process for developing, evaluating, and selecting appropriate response activities.

(u) "Financial assurance" means a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or any combination thereof.

(v) "Foreclosure" means possession by a lender of a property on which it has foreclosed on a security

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interest or the expiration of a lawful redemption period, whichever occurs first.

(w) "Fund" means the cleanup and redevelopment fund established in section 20108.

(x) "Hazardous substance" means 1 or more of the following, but does not include fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices at the time of the application or stamp sands:

(*i*) Any substance that the department demonstrates, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material, dose-response, toxicity, or adverse impact on natural resources.

(*ii*) Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(*iii*) Hazardous waste as defined in part 111.

(*iv*) Petroleum as described as a regulated substance in section 21303.

(y) "Interim response activity" means the cleanup or removal of a released hazardous substance or the taking of other actions, prior to the implementation of a remedial action, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. Interim response activity also includes, but is not limited to, measures to limit access, replacement of water supplies, and temporary relocation of people as determined to be necessary by the department. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release.

(z) "Lender" means any of the following:

(*i*) A state or nationally chartered bank.

(*ii*) A state or federally chartered savings and loan association or savings bank.

(*iii*) A state or federally chartered credit union.

(*iv*) Any other state or federally chartered lending institution.

(*v*) Any state or federally regulated affiliate or regulated subsidiary of any entity listed in subparagraphs (*i*) to (*iv*).

(*vi*) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(*vii*) A motor vehicle sales finance company subject to the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, with net assets in excess of $50,000,000.00.

(*viii*) A foreign bank.

(*ix*) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of $50,000,000.00.

(*x*) A state or federal agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(*xi*) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(*xii*) Any other person that loans money for the purchase of or improvement of real property.

(*xiii*) Any person that retains or receives a security interest to service a debt or to secure a performance obligation.

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

(bb) "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include this state or the federal government or a state or federal agency.

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

(dd) "Migrating NAPL" means that terms as it is defined in section 21302.

(ee) "Mobile NAPL" means that term as it is defined in section 21302.

(ff) "NAPL" means that term as it is defined in section 21303.

(gg) "No further action letter" means a written response provided by the department under section 20114d confirming that a no further action report has been approved after review by the department.

(hh) "No further action report" means a report under section 20114d detailing the completion of remedial actions and including a postclosure plan and a postclosure agreement, if appropriate.

(ii) "Nonresidential" means that category of land use for parcels of property or portions of parcels of property that is not residential. This category of land use may include, but is not limited to, any of the

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following:

(*i*) Industrial, commercial, retail, office, and service uses.

(*ii*) Recreational properties that are not contiguous to residential property.

(*iii*) Hotels, hospitals, and campgrounds.

(*iv*) Natural areas such as woodlands, brushlands, grasslands, and wetlands.

(jj) "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that person participates in the management of the facility as described in section 20101a.

(*ii*) A person who is acting as a fiduciary in compliance with section 20101b.

(kk) "Owner" means a person who owns a facility. Owner does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, including, but not limited to, a vendor's interest under a recorded land contract, unless that person participates in the management of the facility as described in section 20101a.

(*ii*) A person who is acting as a fiduciary in compliance with section 20101b.

(*ll*) "Panel" means the response activity review panel established under section 20114e.

(mm) "Permitted release" means 1 or more of the following:

(*i*) A release in compliance with an applicable, legally enforceable permit issued under state law.

(*ii*) A lawful and authorized discharge into a permitted waste treatment facility.

(*iii*) A federally permitted release as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(nn) "Postclosure agreement" means an agreement between the department and a person who has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions as provided for in section 20114d.

(oo) "Postclosure plan" means a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions as provided for in section 20114c.

(pp) "Release" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. Release does not include any of the following:

(*i*) A release that results in exposure to persons solely within a workplace, with respect to a claim that these persons may assert against their employers.

(*ii*) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.

(*iii*) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, 42 USC 2011 to 2286i, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 USC 2210, or any release of source by-product or special nuclear material from any processing site designated under 42 USC 7912(a)(1) or 42 USC 7942(a).

(*iv*) If applied according to label directions and according to generally accepted agricultural and management practices at the time of the application, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in part 85, and pesticide has the meaning given to that term in part 83.

(*v*) Application of fruits, vegetables, field crop processing by-products, or aquatic plants to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices at the time of the application.

(*vi*) The relocation of soil under section 20120c.

(*vii*) The placement, storage, or use of beneficial use by-products or inert materials at the site of storage or use if in compliance with part 115.

(qq) "Remedial action" includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.

(rr) "Remedial action plan" means a work plan for performing remedial action under this part.

(ss) "Residential" means that category of land use for parcels of property or portions of parcels of property where people live and sleep for significant periods of time such that the frequency of exposure is reasonably expected or foreseeable to meet the exposure assumptions used by the department to develop generic

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residential cleanup criteria as set forth in rules promulgated under this part. This category of land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments.

(tt) "Residential closure" means a property at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria under section 20120a(1)(c) or the site-specific residential cleanup criteria under sections 20120a(2) and 20120b, that contains land use or resource use restrictions, and that is approved by the department or is considered approved by the department under section 20120d.

(uu) "Residual NAPL saturation" means that term as it is defined in part 213.

(vv) "Response activity" means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any response activity.

(ww) "Response activity costs" or "costs of response activity" means all costs incurred in taking or conducting a response activity, including enforcement costs.

(xx) "Response activity plan" means a plan for undertaking response activities. A response activity plan may include 1 or more of the following:

(*i*) A plan to undertake interim response activities.

(*ii*) A plan for evaluation activities.

(*iii*) A feasibility study.

(*iv*) A remedial action plan.

(yy) "Security interest" means any interest, including a reversionary interest, in real property created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, consignments, or any other transaction in which evidence of title is created if the transaction creates or establishes an interest in real property for the purpose of securing a loan or other obligation.

(zz) "Source" means any storage, handling, distribution, or processing equipment from which the release originates and first enters the environment.

(aaa) "Stamp sands" means finely grained crushed rock resulting from mining, milling, or smelting of copper ore and includes native substances contained within the crushed rock and any ancillary material associated with the crushed rock.

(bbb) "Target detection limit" means the detection limit for a hazardous substance in a given environmental medium that is specified in a rule promulgated by the department. The department shall identify 1 or more analytical methods, when a method is available, that are judged to be capable of achieving the target detection limit for a hazardous substance in a given environmental medium. The target detection limit for a given hazardous substance is greater than or equal to the method detection limit for that hazardous substance. In establishing a target detection limit, the department shall consider the following factors:

(*i*) The low level capabilities of methods published by government agencies.

(*ii*) Reported method detection limits published by state laboratories.

(*iii*) Reported method detection limits published by commercial laboratories.

(*iv*) The need to be able to measure a hazardous substance at concentrations at or below cleanup criteria.

(ccc) "Threatened release" or "threat of release" means any circumstance that may reasonably be anticipated to cause a release.

(ddd) "Venting groundwater" means groundwater that is entering a surface water of this state from a facility.

(2) As used in this part:

(a) The phrase "a person who is liable" includes a person who is described as being subject to liability in section 20126. The phrase "a person who is liable" does not presume that liability has been adjudicated.

(b) The phrase "this part" includes "rules promulgated under this part".

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1995, Act 117, Imd. Eff. June 29, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2013, Act 141, Imd. Eff. Oct. 22, 2013;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2014, Act 258, Eff. Mar. 31, 2015;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

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Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101a Participation in management of facility by lender; "workout" defined.

Sec. 20101a. (1) For purposes of this part, a lender holding a security interest in a facility participates in the management of the facility if that lender engages in acts of facility management that constitute actual participation in the management or operational affairs of a facility and that exceed the mere capacity to influence, or ability to influence, or the unexercised right to control facility operations. A lender holding a security interest is participating in the management of a facility, while the borrower is still in possession of the facility encumbered by the security interest, if the lender holding a security interest does any of the following:

(a) Exercises decision making control over the borrower's environmental compliance.

(b) Undertakes responsibility for the borrower's hazardous substance handling or disposal practices.

(c) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to either or both of the following:

(*i*) Environmental compliance.

(*ii*) All, or substantially all, of the operational aspects of the enterprise other than environmental compliance. As used in this subparagraph, "operational aspects of the enterprise" includes functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise such as that of credit manager, accounts payable or receivable manager, personnel manager, controller, chief financial officer, or similar functions.

(2) For purposes of this part, the following do not constitute participation in the management of a facility by a lender holding a security interest in the facility:

(a) The mere capacity to influence, or ability to influence, or the unexercised right to control facility operations.

(b) An act or omission prior to the time that indicia of ownership are held primarily to protect a security interest.

(c) Undertaking or requiring an environmental inspection of the facility in which indicia of ownership are to be held, or requiring a prospective borrower to undertake response activities at a facility or to comply or come into compliance, whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest, with any applicable law, rule, or regulation.

(d) Actions that are consistent with holding ownership indicia primarily to protect a security interest. The authority of the lender holding a security interest to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents.

(e) Engaging in policing activities prior to foreclosure if the lender holding a security interest does not by such actions participate in the management of the facility as described in subsection (1)(a) to (c). Permissible actions include, but are not limited to, requiring the borrower to undertake response activities at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; and securing or exercising authority to monitor or inspect the facility in which indicia of ownership are maintained, including on-site inspections, or the borrower's business or financial condition, during the term of the security interest. A lender holding a security interest that engages in workout activities prior to foreclosure and its equivalents will remain within the exemption if the lender holding a security interest does not by such action participate in the management of the facility.

(3) As used in this section, "workout" refers to those actions by which a lender holding a security interest, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower or obligor or to preserve, or prevent the diminution of, the value of the security. Workout activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; and providing specific or general financial or other advice, suggestions, counseling, or guidance.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

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Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101b Liability of lender as fiduciary or representative for disabled person; responsibilities.

Sec. 20101b. (1) A lender or other person that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property as a fiduciary, as defined by section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104, or in a representative capacity for a disabled person under a durable power of attorney as described in section 102 of the uniform power of attorney act and that is acting or has acted in a capacity permitted by the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, or negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender or other person; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(2) A lender that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property in a fiduciary capacity and that, under a fiduciary agreement entered into on or before August 1, 1990, owns or controls the property in a fiduciary capacity authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(3) A lender that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property in a fiduciary capacity, that, under a fiduciary agreement entered into after August 1, 1990, owns or controls the property in a fiduciary capacity authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, that has served only in an administrative, custodial, or financial capacity with respect to the property, and that has not exercised sufficient involvement to control the owner's or operator's handling of a hazardous substance is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2000, Act 65, Eff. Apr. 1, 2000;—Am. 2000, Act 368, Imd. Eff. Jan. 2, 2001;—Am. 2023, Act 188, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101c Property with deposit of stamp sands; regulation.

Sec. 20101c. Property onto which stamp sands have been deposited is not subject to regulation under this part unless the property otherwise contains hazardous substances in excess of the concentrations that satisfy

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cleanup criteria for unrestricted residential use.

History: Add. 2014, Act 258, Eff. Mar. 31, 2015;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20102 Legislative finding and declaration.

Sec. 20102. The legislature hereby finds and declares:

(a) That there exist in this state certain facilities containing hazardous substances that pose a danger to the public health, safety, or welfare, or to the environment of this state.

(b) That there is a need to provide for a method of eliminating the danger of environmental contamination caused by the existence of hazardous substances at facilities within the state.

(c) That it is the purpose of this part to provide for appropriate response activity to eliminate unacceptable risks to public health, safety, or welfare, or to the environment from environmental contamination at facilities within the state.

(d) That there is a need for additional administrative and judicial remedies to supplement existing statutory and common law remedies.

(e) That the responsibility for the cost of response activities pertaining to a release or threat of release and repairing injury, destruction, or loss to natural resources caused by a release or threat of release should not be placed upon the public except when funds cannot be collected from, or a response activity cannot be undertaken by, a person liable under this part.

(f) That liability for response activities to address environmental contamination should be imposed upon those persons who are responsible for the environmental contamination.

(g) That to the extent possible, consistent with requirements under this part and rules promulgated under this part, response activities shall be undertaken by persons liable under this part.

(h) That this part is intended to provide remedies for facilities posing any threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a hazardous substance occurred before or after October 13, 1982, the effective date of the former environmental response act, Act No. 307 of the Public Acts of 1982, and for this purpose this part shall be given retroactive application. However, criminal and civil penalties provided in this part shall apply to violations of this part that occur after July 1, 1991.

(i) That a facility that is owned by the federal government, the state, or a local unit of government, or a facility where a release or threat of release is caused by the federal government, the state, or a local unit of government, should not be treated differently in terms of the expenditure of money for response activities than any facility.

(j) That if a person who is liable under section 20126 is the state or a local unit of government, this part should be enforced by the attorney general and the department in the same manner as it would be for any other person who is liable under section 20126.

(k) That this part is not intended to impose penalties or exemplary damages upon parties conducting response activities pursuant to a decree or order to which the United States is a party.

(*l*) That this part is intended to foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential, if that redevelopment or reuse assures the protection of the public health, safety, welfare, and the environment.

(m) That it is the intent of the legislature that, in implementing this part, the department shall act reasonably in its exercise of professional judgment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20102a Applicability of provisions in effect on May 1, 1995 to certain actions; incorporation by reference; approval of changes in response activity plan.

Sec. 20102a. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995

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under this part.

(b) An administrative order that was issued on or before May 1, 1995 pursuant to section 20119.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(2) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(3) Notwithstanding subsection (1), upon request of a person implementing response activity, the department shall approve changes in a plan for response activity to be consistent with sections 20118 and 20120a.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20103 Federal assistance.

Sec. 20103. The department shall seek federal assistance for response activities required at facilities in this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20104 Coordination of activities; rules; guideline, bulletin, interpretive statement, or operational memorandum not binding on person; damages; use of nonuse valuation methods; applicability of provisions to certain bankruptcy actions or claims.

Sec. 20104. (1) The department shall coordinate all activities required under this part and may promulgate rules necessary to implement this part.

(2) A guideline, bulletin, interpretive statement, or operational memorandum under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or operational memorandum under this part is not legally binding on any person.

(3) Claims for natural resource damages may be pursued only in accordance with principles of scientific and economic validity and reliability. Contingent nonuse valuation methods or similar nonuse valuation methods shall not be utilized and damages shall not be recovered for nonuse values unless and until rules are promulgated that establish an appropriate means of determining such damages.

(4) A contingent nonuse valuation method or similar nonuse valuation method shall not be utilized for natural resource damage calculations unless a determination is made by the department that such a method satisfies principles of scientific and economic validity and reliability and rules for utilizing a contingent nonuse valuation method or a similar nonuse valuation method are subsequently promulgated.

(5) The provisions in this section related to natural resource damages as added by 1995 PA 71 do not apply to any judicial or administrative action or claim in bankruptcy initiated on or before March 1, 1995.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

Administrative rules: R 299.5101 et seq. and R 299.51001 et seq. of the Michigan Administrative Code.

324.20104a Brownfield redevelopment board; creation; membership; quorum; business conducted at public meeting; writings subject to freedom of information act; duties and responsibilities.

Sec. 20104a. (1) The brownfield redevelopment board is created within the department.

(2) The board shall consist of the following members:

(a) The director or his or her designee.

(b) The director of the department of technology, management, and budget or his or her designee.

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(c) The chief executive officer of the Michigan economic development corporation or his or her designee.

(3) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board.

(4) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) The board shall implement the duties and responsibilities as provided in this part and as otherwise provided by law.

History: Add. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

Compiler's note: For transfer of a position on Brownfield redevelopment board designated for the chief executive officer of Michigan jobs commission to the director of department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

324.20105 Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to duties of department upon discovery of contaminated site, inclusion of site on list, notification of inclusion on site, and removal of property from list.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20105a Sites receiving state funds to conduct response activities; compilation, arrangement, and submission of list.

Sec. 20105a. The department shall annually compile a list of sites that are receiving state funds to conduct response activities. This list shall be arranged in alphabetical order. The department shall annually submit this list to the legislature.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20106 Level of funding; recommendation of governor.

Sec. 20106. (1) The governor shall include in his or her annual budget recommendations to the legislature a recommended level of funding to provide for the activities necessary to implement this part.

(2) The governor's recommendations under this section shall be accompanied by a site specific description of the extent of known or suspected environmental contamination, the recommended response activities to be undertaken, and an estimate of cost of those response activities.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20107 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.

Sec. 20107. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous substances or marking boundaries of a facility subject to response activity under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

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Popular name: Environmental Response Act

Popular name: NREPA

324.20107a Duties of owner or operator having knowledge of facility; hazardous substances; obligations based on current numeric cleanup or site-specific criteria; liability for costs and damages; compliance with section; applicability of subsection (1)(a) to (c) to state or local unit of government; "express public purpose" explained.

Sec. 20107a. (1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resource use restrictions established or relied on in connection with the response activities at the facility.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the facility in connection with response activities.

(2) The owner's or operator's obligations under this section shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

(3) A person who violates subsection (1) who is not otherwise liable under this part for the release at the facility is liable for response activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to June 5, 1995 or to a person who is exempt from liability under section 20126(4)(c). However, if the state or local unit of government, acting as the operator of a parcel of property that the state or local unit of government has knowledge is a facility, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the facility that is opened to and used by the general public for that express purpose, and not the entire facility. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person who is exempt from liability under section 20126(3)(c) or (d) except with regard to that person's activities at the facility.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108 Cleanup and redevelopment fund; creation; deposit of assets into fund;

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subaccounts; unexpended balance to be carried forward.

Sec. 20108. (1) The cleanup and redevelopment fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) In addition to the money received under subsection (2), the fund shall receive as revenue money collected by the attorney general in actions filed under this part, collected by the state under this part, or collected by a person under section 20135(2). Money collected and placed into the fund under this subsection may be earmarked by the department for use at specific sites.

(4) The state treasurer may establish subaccounts within the fund, and shall establish a subaccount for all money in the former environmental response fund on the effective date of the 1996 amendments to this section. Proceeds of all cost recovery actions taken and settlements entered into pursuant to this part, excluding natural resource damages, by the department or the attorney general, or both, shall be credited to this subaccount.

(5) An unexpended balance within the fund at the close of the fiscal year shall be carried forward to the following fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108a Revitalization revolving loan fund; creation; deposit of assets into fund; investment; interest and earnings; carrying forward unexpended balance; lump-sum appropriation; expenditure.

Sec. 20108a. (1) The revitalization revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the revitalization revolving loan fund. The state treasurer shall direct the investment of the revitalization revolving loan fund. The state treasurer shall credit to the revitalization revolving loan fund interest and earnings from revitalization revolving loan fund investments.

(3) An unexpended balance within the revitalization revolving loan fund at the close of the fiscal year shall be carried forward to the following fiscal year.

(4) The department shall annually submit to the governor a request for a lump-sum appropriation from the revitalization revolving loan fund for loans pursuant to the revitalization revolving loan program under section 20108b.

(5) The department shall expend money from the revitalization revolving loan fund, upon appropriation, only for the revitalization loan program created in section 20108b.

History: Add. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108b Revitalization revolving loan program.

Sec. 20108b. (1) The department shall create a revitalization revolving loan program for the purpose of making loans to certain local units of government to provide for eligible activities at certain properties in order to promote economic redevelopment.

(2) Loan funds from the revitalization revolving loan program created in subsection (1) shall be issued for the purposes provided in and utilizing the criteria provided in sections 19608a through 19613.

(3) Loan payments and interest shall be deposited back into the revitalization revolving loan fund created in section 20108a.

History: Add. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010;—Am. 2016, Act 476, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

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324.20108c State site cleanup fund; creation; deposit of assets into fund; investment; interest and earnings; money remaining in fund; lapse; use of money; state sites cleanup program; establishment; purpose; expenditure; list of facilities with state liability; prioritized list; payment for necessary response activities; carrying forward unexpended funds; compliance with MCL 18.1451; report.

Sec. 20108c. (1) The state site cleanup fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the state site cleanup fund. The state treasurer shall direct the investment of the state site cleanup fund. The state treasurer shall credit to the state site cleanup fund interest and earnings from fund investments.

(3) Money in the state site cleanup fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the state site cleanup fund shall be used for the state sites cleanup program established under this section.

(5) The department shall establish a state sites cleanup program for the purpose of expending money in the state sites cleanup fund, including the $20,000,000.00 appropriated by the legislature for state site cleanup pursuant to Act No. 265 of the Public Acts of 1994.

(6) The department shall expend money appropriated for state site cleanup only for response activities at facilities where the state is liable as an owner or operator under section 20126 or where the state has licensure or decommissioning obligations as an owner or possessor of radioactive materials that are regulated by the nuclear regulatory commission. Money expended for the state sites cleanup program shall not be used to pay fines, penalties, or damages.

(7) Six months after the effective date of this section, and annually thereafter by October 1 of each year, each state executive department and agency shall provide to the department a detailed list of all facilities where the state executive department or agency is liable as an owner or operator under section 20126. Subsequent lists do not need to include facilities identified in a previous list. This list shall include the following information for each facility:

(a) The facility name.

(b) Location.

(c) Use history of the facility.

(d) A detailed summary of available information regarding the source, nature, and extent of the contamination at the facility.

(e) A detailed summary of available information on any public health or environmental impacts at the facility.

(f) A detailed summary of available information on the resale and redevelopment potential of the facility.

(g) A description of and estimated cost of the response activities needed at the facility, if known.

(8) Within 12 months after the effective date of this section and by February 1 of each year thereafter, the board shall develop a prioritized list of the facilities identified pursuant to subsection (3). Sites posing the greatest risk to the public health, safety, welfare, or the environment and those having high resale and redevelopment potential shall be given the highest priority. The list shall include the following information for each facility:

(a) The facility's priority order.

(b) Response activities to be completed at the facility.

(c) Estimated cost of the response activities.

(d) The state executive department or agency that is liable as an owner or operator under section 20126.

(9) All state executive departments and agencies that are liable as an owner or operator under section 20126 are responsible for undertaking and paying for all necessary response activities that cannot be addressed with money appropriated to the department for state site cleanup as described in subsection (1) or any money appropriated to the department specifically for the purpose of response activities at facilities for which the state is liable as an owner or operator. The existence of these funds does not affect the liability of any person under this part or any state or federal law.

(10) The $20,000,000.00 appropriated pursuant to Act No. 265 of the Public Acts of 1994 and to be expended pursuant to this section shall carry over to succeeding fiscal years. The unexpended portion of the appropriation is considered a work project appropriation, and any unencumbered or unallotted funds are carried forward to the succeeding fiscal year. The following is in compliance with section 451(3) of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1451 of the Michigan Compiled Laws:

(a) The purpose of the project to be carried forward is to provide for contaminated site cleanups.

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(b) The project will be accomplished by contracts.

(c) The total estimated cost of the project will be $20,000,000.00.

(d) The tentative completion date is September 30, 1999.

(11) The department shall submit an annual report to the governor and the legislature on the status of the response activities being conducted with money appropriated to the department to implement this section and the need for additional funds to conduct future response activities.

History: Add. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20109 Repealed. 1996, Act 380, Imd. Eff. July 24, 1996.

Compiler's note: The repealed section pertained to Michigan unclaimed bottle fund.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20109a Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to municipal landfill cost share grant program.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20110, 324.20111 Repealed. 1996, Act 380, Imd. Eff. July 24, 1996.

Compiler's note: The repealed sections pertained to long-term maintenance trust fund board and long-term maintenance trust fund.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to study of cleanup costs.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112a Inventory of residential closures; creation and update; compilation of data; no further action reports.

Sec. 20112a. (1) Subject to subsection (3), the department shall create, and update on an ongoing basis, an inventory of residential closures and a separate inventory of other known facilities. Each inventory shall contain, if applicable, at least the following information for each facility:

(a) Location.

(b) Whether 1 or more response activity plans were submitted under section 20114b and the status of department approval.

(c) Whether a notice of land use or resource use restrictions under section 20114c was submitted to the department.

(d) Whether a no further action report under section 20114d was submitted to the department and whether the report included a postclosure plan or proposed postclosure agreement and the status of department approval.

(2) The department may categorize facilities on the inventory created under subsection (1) in a manner that the department believes is useful for the general public.

(3) The department shall create and update on an ongoing basis a separate inventory of residential closures.

(4) The department shall post the inventories created under subsections (1) and (2) on the department's

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website.

(5) The department shall compile the following data on a quarterly basis and post the data on its website:

(a) The number of response activity plans received by the department and itemized as follows:

(*i*) Approved by the department.

(*ii*) Disapproved by the department.

(*iii*) Recommended for approval by the panel.

(*iv*) Recommended for disapproval by the panel.

(*v*) Approved by operation of law under section 20114b.

(b) The number of no further action reports received by the department and itemized as follows:

(*i*) Approved by the department.

(*ii*) Disapproved by the department.

(*iii*) Recommended for approval by the panel.

(*iv*) Recommended for disapproval by the panel.

(*v*) Approved by operation of law.

(c) The number of baseline environmental assessments received by the department.

(6) The department shall annually determine the percentage of no further action reports approved by operation of law under section 20114d. If the percentage in any year is in excess of 10%, the department shall notify the standing committees of the senate and the house of representatives with jurisdiction over issues related to natural resources and the environment of this occurrence.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112b Repealed. 2018, Act 237, Eff. Sept. 25, 2018.

Compiler's note: The repealed section pertained to a biennial report on contamination caused by releases associated with clandestine drug laboratories.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20113 Appropriation; purposes; request to governor; list of facilities; use of fund; expenditures; limitation; providing list of projects to governor and legislative committees; "urbanized area" defined.

Sec. 20113. (1) Money required to implement the programs described under this part and to pay for response activities recommended under this part shall be appropriated from the fund and any other source the legislature considers necessary to implement the requirements of this part.

(2) The department shall annually submit to the governor a request for appropriation from the fund. The request will include a lump sum amount for the purposes of subsection (3)(e). For the purposes set forth in subsection (3)(a), (b), (c), and (d), the request shall include a list of facilities where the department is proposing to expend funds. The list shall include the following information for each facility: the common name of the facility, the response activities that are planned to be conducted, and the estimated amount of money that is needed to conduct the response activities. The legislature shall approve by law the list of facilities to be addressed and shall provide a lump sum appropriation for these sites based on the total estimated amount needed for the approved facilities.

(3) Money from the fund may be used, upon appropriation, for the following as determined by the department:

(a) Superfund match, which includes funding for any response activity that is required to match federal dollars at a superfund site as required under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(b) Response activities to address actual or potential public health or environmental problems.

(c) Completion of response activities initiated by the state using environmental protection bond funds or completion of response activities at facilities initiated by a person who was liable under this part prior to 1995 PA 71 but is not liable under section 20126 of this part, where such response activities have ceased.

(d) Response activities at facilities that will facilitate redevelopment.

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(e) Emergency response actions for facilities to be determined by the department.

(4) Money in the fund shall be expended first for the purposes described in subsection (3)(a) and (e) and health or environmental problems under subsection (3)(b) that are related to acute health or environmental problems. Following these expenditures, not less than 50% of the remaining money expended under this section shall be expended for response activities that facilitate redevelopment of urbanized areas. All additional expenditures under this section shall be expended following the expenditures described in this subsection. As used in this subsection, "urbanized area" means an urbanized area as determined by the economics and statistics administration, United States bureau of census, according to the 2000 census.

(5) Not later than April 1 of each year, the department shall provide to the governor, the senate and house of representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment, and the senate and house of representatives appropriations committees a list of all projects financed under this part through the preceding fiscal year. The list shall include the project site and location, the nature of the project, the total amount of money authorized, the total amount of money expended, and project status.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114 Owner or operator of facility; duties; response activity without prior approval; easement; applicability of subsections (1) and (3); effect of section on authority of department to conduct response activities or on liability of certain persons; determination of nature and extent of hazardous substance; "available analytical method" defined.

Sec. 20114. (1) Except as provided in subsection (4), an owner or operator of property who has knowledge that the property is a facility shall do all of the following with respect to a release for which the owner or operator is liable under section 20126:

(a) Subject to subsection (6), determine the nature and extent of the release at the facility.

(b) Make the following notifications:

(*i*) If the release is of a reportable quantity of a hazardous substance under 40 CFR 302.4 and 302.6 (July 1, 2012 edition), report the release to the department within 24 hours after obtaining knowledge of the release.

(*ii*) If the owner or operator has reason to believe that 1 or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of his or her property at a concentration in excess of cleanup criteria for unrestricted residential use, notify the department and the owners of property where the hazardous substances are present within 30 days after obtaining knowledge that the release has migrated.

(*iii*) If the release is a result of an activity that is subject to permitting under part 615 and the owner or operator is not the owner of the surface property and the release results in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use, notify the department and the surface owner within 30 days after obtaining knowledge of the release.

(c) Immediately stop or prevent an ongoing release at the source.

(d) Immediately implement measures to address, remove, or contain hazardous substances that are released after June 5, 1995 if those measures are technically practical, are cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment. At a facility where hazardous substances are released after June 5, 1995, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment.

(e) Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards.

(f) Initiate a remedial action that is necessary and feasible to address unacceptable risks associated with residual NAPL saturation, migrating NAPL, and mobile NAPL using best practices for managing NAPL, including, but not limited to, best practices developed by the American society for testing and materials or the interstate technology and regulatory council.

(g) Diligently pursue response activities necessary to achieve the cleanup criteria established under this part. Except as otherwise provided in this part, in pursuing response activities under this subdivision, the owner or operator may do either of the following:

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(*i*) Proceed under section 20114a to conduct self-implemented response activities.

(*ii*) Proceed under section 20114b if the owner or operator wishes to, or is required to, obtain departmental approval of 1 or more aspects of planning response activities.

(h) Upon written request by the department, take 1 or more of the following actions:

(*i*) Provide a response activity plan containing a plan for undertaking interim response activities and undertake interim response activities consistent with that plan.

(*ii*) Provide a response activity plan containing a plan for undertaking evaluation activities and undertake evaluation activities consistent with that plan.

(*iii*) Pursue remedial actions under section 20114a and, upon completion, submit a no further action report under section 20114d.

(*iv*) Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

(*v*) Submit to the department for approval a response activity plan containing a remedial action plan that, when implemented, will achieve the cleanup criteria established under this part.

(*vi*) Implement an approved response activity plan in accordance with a schedule approved by the department pursuant to this part.

(*vii*) Submit a no further action report under section 20114d after completion of remedial action.

(2) Subsection (1) does not preclude a person from simultaneously undertaking 1 or more aspects of planning or implementing response activities at a facility under section 20114a without the prior approval of the department, unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval, and submitting a response activity plan to the department under section 20114b.

(3) Except as provided in subsection (4), a person who holds an easement interest in a portion of a property who has knowledge that there may be a release within that easement shall report the release to the department within 24 hours after obtaining knowledge of the release. This subsection applies to reportable quantities of hazardous substances established pursuant to 40 CFR 302.4 and 302.6 (July 1, 2012 edition).

(4) The requirements of subsections (1) and (3) do not apply to a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws.

(5) This section does not do either of the following:

(a) Limit the authority of the department to take or conduct response activities pursuant to this part.

(b) Limit the liability of a person who is liable under section 20126.

(6) If a hazardous substance is released at a property and there is no available analytical method or generic cleanup criteria for that hazardous substance, the nature and extent of the hazardous substance may be determined by any of the following means, singly or in combination:

(a) If another hazardous substance with an available analytical method was released at the same location and has similar fate and mobility characteristics, determine the nature and extent of that hazardous substance as a surrogate.

(b) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to determine whether the hazardous substance has reached surface water.

(c) Develop and propose to the department an analytical method for approval by the department.

(d) In lieu of determining the nature and extent of the hazardous substance release, eliminate the potential for exposure in areas where the hazardous substance is expected to be located through removal, containment, exposure barriers, or land use or resource use restrictions.

(7) As used in this section, "available analytical method" means a method that is approved and published by a governmental agency, is conducted routinely by commercial laboratories in the United States, and identifies and quantitatively measures the specific hazardous substance or class of substances.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114a Undertaking response activities without prior approval of department; exception; completion; submission of no further action report.

Sec. 20114a. (1) Subject to section 20114 and other applicable law, a person may undertake response

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activities without prior approval by the department unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval. Except as otherwise provided in this part, conducting response activities under this section does not relieve any person who is liable under this part from the obligation to conduct further response activities as may be required by the department under this part or other applicable law.

(2) Upon completion of remedial actions that satisfy the cleanup criteria established under this part, a person undertaking remedial actions may submit to the department a no further action report.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114b Response activity plan; submission; form; availability; response by department; failure of department to respond within certain time frames; extension; appeal of department's decision.

Sec. 20114b. (1) Subject to section 20114(1)(h), a person undertaking response activity under this part may submit to the department a response activity plan that includes a request for department approval of 1 or more aspects of response activity.

(2) A person who submits a response activity plan under this section and who is not subject to an administrative order or agreement or judicial decree that requires prior department approval of response activity shall submit a response activity plan review request form with the response activity plan. The department shall specify the required content of the response activity request form and make the form available on the department's website.

(3) Upon receipt of a response activity plan submitted for approval under this subsection, the department shall approve, approve with conditions, or deny the response activity plan, or shall notify the submitter that the plan does not contain sufficient information for the department to make a decision. The department shall provide its determination within 150 days after the plan was received by the department unless the plan requires public participation under section 20120d(2). If the plan requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the plan does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a plan is approved with conditions, the department's approval shall state with specificity the conditions of the approval. If the plan is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial.

(4) If the department fails to provide a written response within the time frames required by subsection (3), the response activity plan is considered approved. If the department denies a response activity plan under subsection (3), a person may subsequently revise and resubmit the response activity plan for approval.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a response activity plan. An agreement extending a time frame shall be in writing.

(6) A person requesting approval of a response activity plan may appeal the department's decision in accordance with section 20114e, if applicable.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114c Remedial actions satisfying or not satisfying cleanup criteria for unrestricted residential use; preparation and implementation of postclosure plan; contents; notice of land use or resource use restrictions to department and zoning authority; liability; obligation to undertake response activities.

Sec. 20114c. (1) If remedial actions at a facility satisfy cleanup criteria for unrestricted residential use, land use or resource use restrictions or monitoring is not required.

(2) Upon completion of remedial actions at a facility for a category of cleanup that does not satisfy cleanup criteria for unrestricted residential use, the person conducting the remedial actions shall prepare and implement a postclosure plan for that facility. A postclosure plan shall include both of the following:

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(a) Land use or resource use restrictions as provided in section 20121.

(b) Permanent markers to describe restricted areas of the facility and the nature of any restrictions. A permanent marker is not required under this subdivision if the only applicable land use or resource use restrictions relate to 1 or more of the following:

(*i*) A facility at which remedial action satisfies the cleanup criteria for the nonresidential category under section 20120a(1)(b).

(*ii*) Use of groundwater.

(*iii*) Protection of the integrity of exposure controls that prevent contact with soil, and those controls are composed solely of asphalt, concrete, or landscaping materials. This subparagraph does not apply if the hazardous substances that are addressed by the barrier exceed a cleanup criterion based on acute toxic effects, reactivity, corrosivity, ignitability, explosivity, or flammability.

(*iv*) Construction requirements or limitations for structures that may be built in the future.

(3) A person who implements a postclosure plan shall provide notice of the land use or resource use restrictions to the department and to the zoning authority for the local unit of government in which the facility is located within 30 days after recording the land use or resource use restrictions with the register of deeds.

(4) Implementation of remedial actions does not relieve a person who is liable under section 20126 of that person's responsibility to report and provide for response activity to address a subsequent release or threat of release.

(5) Implementation by any person of remedial actions without department approval does not relieve that person of an obligation to undertake response activities or limit the ability of the department to take action to require response activities necessary to comply with this part by a person who is liable under section 20126.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114d No further action report.

Sec. 20114d. (1) A person may submit a no further action report under this subsection for remedial actions addressing contamination for which the person is or is not liable. Remedial actions included in a no further action report may address all or a portion of contamination at a facility as follows:

(a) The remedial actions may address 1 or more releases at a facility.

(b) The remedial actions may address 1 or more hazardous substances at a facility.

(c) The remedial actions may address contamination in 1 or more environmental media at a facility.

(d) The remedial actions may address contamination within the entire facility or only a portion of a facility.

(e) The remedial actions may address contamination at a facility through any combination of subdivisions (a) through (d).

(2) A no further action report submitted under subsection (1) must document the basis for concluding that the remedial actions included in the no further action report are protective of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial actions. A no further action report may include a request that, upon approval, the release or conditions addressed by the no further action report be designated as a residential closure. A no further action report shall be submitted with a form developed by the department. The department shall make this form available on its website.

(3) A no further action report submitted under subsection (1) shall be submitted with the following, as applicable:

(a) If the remedial action at the facility satisfies the cleanup criteria for unrestricted residential use for the hazardous substances and portion of the facility addressed in the no further action report, neither a postclosure plan or a proposed postclosure agreement is required to be submitted.

(b) If the remedial action requires only land use or resource use restrictions and financial assurance is not required or the financial assurance is de minimis, a postclosure plan is required but a proposed postclosure agreement is not required to be submitted.

(c) For circumstances other than those described in subdivision (a) or (b), a postclosure plan and a proposed postclosure agreement are required to be submitted.

(4) A proposed postclosure agreement that is submitted as part of a no further action report must include all of the following:

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(a) Provisions for monitoring, operation and maintenance, and oversight necessary to assure the effectiveness and integrity of the remedial action.

(b) Financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the department to be necessary to assure the effectiveness and integrity of the remedial action.

(c) A provision requiring notice to the department of the owner's intent to convey any interest in the facility 14 days prior to consummating the conveyance. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for compliance with the terms and conditions of the postclosure plan and the postclosure agreement.

(d) A provision granting the department the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the postclosure plan and postclosure agreement, including the right to take samples, inspect the operation of the remedial action measures, and inspect records.

(5) A postclosure agreement may waive the requirement for permanent markers.

(6) The person submitting a no further action report shall include a signed affidavit attesting to the fact that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. The no further action report must also include a signed affidavit from an environmental consultant who meets the professional qualifications described in section 20114e(2) and who prepared the no further action report, attesting to the fact that the remedial actions detailed in the no further action report comply with all applicable requirements and that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. In addition, the environmental consultant shall attach a certificate of insurance demonstrating that the environmental consultant has obtained at least all of the following from a carrier that is authorized to conduct business in this state:

(a) Statutory worker compensation insurance as required in this state.

(b) Professional liability errors and omissions insurance. This policy must not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and must be issued with a limit of not less than $1,000,000.00 per claim.

(c) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per claim, if not included under the professional liability errors and omissions insurance required under subdivision (b). The insurance requirement under this subdivision is not required for environmental consultants who do not perform contracting functions.

(d) Commercial general liability insurance with limits of not less than $1,000,000.00 per claim and $2,000,000.00 aggregate.

(e) Automobile liability insurance with limits of not less than $1,000,000.00 per claim.

(7) A person submitting a no further action report shall maintain all documents and data prepared, acquired, or relied upon in connection with the no further action report for not less than 10 years after the later of the date on which the department approves the no further action report under this section, or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the report. All documents and data required to be maintained under this section shall be made available to the department upon request.

(8) Upon receipt of a no further action report submitted under this subsection, the department shall approve or deny the no further action report or shall notify the submitter that the report does not contain sufficient information for the department to make a decision. If the no further action report requires a postclosure agreement, the department may negotiate alternative terms than those included within the proposed postclosure agreement. The department shall provide its determination within 150 days after the report was received by the department under this subsection unless the report requires public participation under section 20120d(2). If the report requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the report is denied, the department's denial must, to the extent practical, state with specificity all of the reasons for denial. If the no further action report, including any required postclosure plan and postclosure agreement, is approved, the department shall provide the person submitting the no further action report with a no further action letter. The department shall review and provide a written response within the time frames required by this subsection for at least 90% of the no further action reports submitted to the department under this section in each calendar year.

(9) If the department fails to provide a written response within the time frames required by subsection (8), the no further action report is considered approved.

(10) A person requesting approval of a no further action report under subsection (8) may appeal the department's decision in accordance with section 20114e.

(11) Any time frame required by this section may be extended by mutual agreement of the department and

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a person submitting a no further action report. An agreement extending a time frame must be in writing.

(12) Following approval of a no further action report under this section, the owner or operator of the facility addressed by the no further action report may submit to the department an amended no further action report. The amended no further action report must include the proposed changes to the original no further action report and an accompanying rationale for the proposed change. The process for review and approval of an amended no further action report is the same as the process for no further action reports.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114e Response activity review panel.

Sec. 20114e. (1) The director shall establish a response activity review panel to advise him or her on disputes.

(2) The panel must consist of 15 individuals, appointed by the director. Each member of the panel must meet all of the following minimum requirements:

(a) Meet 1 or more of the following:

(*i*) Hold a current professional engineer's or professional geologist's license or registration from a state, tribe, or United States territory, or the Commonwealth of Puerto Rico, and have the equivalent of 6 years of full-time relevant experience.

(*ii*) Have a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 10 years of full-time relevant experience.

(*iii*) Have a master's degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 8 years of full-time relevant experience.

(b) Remain current in his or her field through participation in continuing education or other activities.

(3) An individual is not eligible to be a member of the panel if any of the following is true:

(a) The individual is a current employee of any office, department, or agency of this state.

(b) The individual is a party to 1 or more contracts with the department and the compensation paid under those contracts represented more than 5% of the individual's annual gross revenue in any of the preceding 3 years.

(c) The individual is employed by an entity that is a party to 1 or more contracts with the department and the compensation paid to the individual's employer under these contracts represented more than 5% of the employer's annual gross revenue in any of the preceding 3 years.

(d) The individual was employed by the department within the preceding 3 years.

(4) An individual appointed to the panel serves for a term of 3 years and may be reappointed for 1 additional 3-year term. After serving 2 consecutive terms, the individual shall not be a member of the panel for a period of at least 2 years before being eligible to be appointed to the panel again. The terms for members first appointed must be staggered so that not more than 5 vacancies are scheduled to occur in a single year. Individuals appointed to the panel serve without compensation. However, members of the panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the panel.

(5) A vacancy on the panel shall be filled in the same manner as the original appointment.

(6) The business that the panel may perform shall be conducted at a public meeting of the panel held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A person who submitted a response activity plan; remedial action plan; postclosure plan; a no further action report; a request for certificate of completion or documentation of due care compliance under this part; or an initial assessment report, final assessment report, closure report, or documentation of due care compliance under part 213 may appeal a decision made by the department regarding a dispute by submitting a petition to the director. However, an issue that was addressed as part of the final decision of the director under section 21332 or that is the subject of a contested case hearing under section 21332 is not eligible for review by the panel. The petition must include the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, opinion, and supporting documentation for the petitioner's position. The petitioner shall also submit a fee of $3,500.00. If the director believes that the dispute may be able to be resolved without convening the panel, the director may contact the petitioner regarding the issues in dispute and may negotiate a resolution of the dispute. This negotiation period must not exceed 45 days. If the dispute

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is resolved without convening the panel, any fee that is submitted with the petition shall be returned.

(8) If a dispute is not resolved pursuant to subsection (7), the director shall schedule a meeting of 5 members of the panel, selected on the basis of their relevant expertise, within 45 days after receiving the original petition. If the dispute involves an underground storage tank system, at least 3 of the members selected must have relevant experience in the American Society for Testing and Materials risk-based corrective action processes described in part 213. A member selected for the dispute resolution process shall agree not to accept employment by the person bringing the dispute before the panel, or to undertake any employment concerning the facility in question for a period of 1 year after the decision has been rendered on the matter if that employment would represent more than 5% of the member's gross revenue in any of the preceding 3 years. The director shall provide a copy of all supporting documentation to members of the panel who will hear the dispute. An alternative member may be selected by the director to replace a member who is unable to participate in the dispute resolution process. Any action by the members selected to hear the dispute requires a majority of the votes cast. The members selected for the dispute resolution process shall elect a chairperson of the dispute resolution process. At a meeting scheduled to hear the dispute, representatives of the petitioner and the department must each be afforded an opportunity to present their positions to the panel. The fee that is received by the director along with the petition shall be forwarded to the state treasurer for deposit into the fund.

(9) Within 45 days after hearing the dispute, the members of the panel who were selected for and participated in the dispute resolution process shall make a recommendation regarding the petition and provide written notice of the recommendation to the director of the department and the petitioner. The written recommendation must include the specific scientific or technical rationale for the recommendation. The panel's recommendation regarding the petition may be to adopt, modify, or reverse, in whole or in part, the department's decision that is the subject of the petition. If the panel does not make its recommendation within this 45-day time period, the decision of the department is the final decision of the director.

(10) Within 60 days after receiving written notice of the panel's recommendation, the director shall issue a final decision, in writing, regarding the petition. However, this time period may be extended by written agreement between the director and the petitioner. If the director agrees with the recommendation of the panel, the department shall incorporate the recommendation into its response to the response activity plan, no further action report, request for certificate of completion, initial assessment report, final assessment report, closure report, or documentation of due care compliance. If the director rejects the recommendation of the panel, the director shall issue a written decision to the petitioner with a specific rationale for rejecting the recommendation of the panel. If the director fails to issue a final decision within the time period provided for in this subsection, the recommendation of the panel shall be considered the final decision of the director. The final decision of the director under this subsection is subject to review pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(11) Upon request of the director, the panel shall make a recommendation to the department on whether a member should be removed from the panel for noncompliance with this part. Prior to making this recommendation, the panel may convene a peer review panel to evaluate the conduct of the member.

(12) A member of the panel shall not participate in the dispute resolution process for any appeal in which that member has a conflict of interest. The director shall select a member of the panel to replace a member who has a conflict of interest under this subsection. For purposes of this subsection, a member has a conflict of interest if a petitioner has hired that member or the member's employer on any environmental matter within the preceding 3 years.

(13) As used in this section:

(a) "Dispute" means any disagreement over a technical, scientific, or administrative issue, including, but not limited to, disagreements over assessment of risk, response activity plans, remedial action plans, no further action reports, certificates of completion, documentation of due care compliance under this part, determinations of whether a person has submitted sufficient information for the department to make a decision regarding a submittal under this part or part 213, and initial assessment reports, final assessment reports, closure reports, postclosure plans, and documentations of due care compliance under part 213.

(b) "Relevant experience" means active participation in the preparation, design, implementation, and assessment of remedial investigations, feasibility studies, interim response activities, and remedial actions under this part or experience in the American society for testing and materials risk-based corrective action processes described in part 213. This experience must demonstrate the exercise of sound professional judgment and knowledge of the requirements of this part or part 213, or both.

History: Add. 2010, Act 227, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

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Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.20114f Certificate of completion.

Sec. 20114f. (1) Upon completion of a response activity a person may request a certificate of completion from the department.

(2) To obtain a certificate of completion from the department under this section, a person shall submit each of the following to the department:

(a) A certificate of completion request form. The department shall specify the required content of the request form and make the form available on the department's website.

(b) Documentation of the completed response activity.

(3) Upon receipt of a request for a certificate of completion submitted under this subsection, the department shall issue a certificate or deny the request, or shall notify the submitter that there is not sufficient information for the department to make a decision. If the department's response is that the request does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the request is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. The department shall make a decision under this subsection and shall provide the person submitting the request with a certificate of completion, as appropriate, within 1 of the following time frames, as applicable:

(a) 150 days after the request was received by the department if the response activity was undertaken without prior approval of the department and the department determines that the response activity complies with the applicable requirements of this part.

(b) 90 days after the request was received by the department if the response activity was undertaken pursuant to a response activity plan that was approved under section 20114b and the department determines that the response activity was completed in accordance with the approved plan.

(4) If the department fails to provide a written response within the time frame required by subsection (3), the response activity is considered approved.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a request for a certificate of completion or a person who has received a certificate of completion. An agreement extending a time frame shall be in writing.

(6) A person requesting a certificate of completion may appeal the department's decision in accordance with section 20114e, if applicable.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114g Documentation of due care compliance.

Sec. 20114g. (1) A person may submit to the department documentation of due care compliance regarding a facility. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 20107a, and other information required by the department.

(2) Within 45 business days after receipt of the documentation of due care compliance under subsection (1) containing sufficient information for the department to make a decision, the department shall approve, approve with conditions, or deny the documentation of due care compliance. If the department does not approve the documentation of due care compliance, the department shall provide the person that submitted the documentation the reasons why the documentation of due care compliance was not approved.

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115 Notice to department of agriculture and rural development; information;

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"substance regulated by the department of agriculture and rural development" defined; response activities to be consistent with MCL 324.8714(2).

Sec. 20115. (1) The department, upon confirmation of a release or threat of release of a substance that is regulated by the department of agriculture and rural development, shall notify the department of agriculture and rural development. The department of agriculture and rural development shall undertake or ensure the initiation of the necessary response activity to immediately stop or prevent further releases at the site. The department of agriculture and rural development shall consult with the department in the development of response activities if a release or threat of a release of a substance regulated by the department of agriculture and rural development occurs. The department of agriculture and rural development shall provide to the department information necessary to identify substances regulated by the department of agriculture and rural development. This information shall include but is not limited to the list of state registered pesticides.

(2) As used in this section, "substance regulated by the department of agriculture and rural development" means any of the following:

(a) A pesticide as defined in section 8305.

(b) A fertilizer as defined in section 8501.

(c) A soil conditioner as defined in section 8501a.

(d) A liming material as defined in section 1 of 1955 PA 162, MCL 290.531.

(3) Response activities conducted under this section shall be consistent with the requirements of section 8714(2).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1995, Act 117, Imd. Eff. June 29, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115a Release or threat of release from underground storage tank system; corrective actions.

Sec. 20115a. (1) Notwithstanding any other provision of this part, if a release or threat of release at a facility is solely the result of a release or threat of release from an underground storage tank system regulated under part 213, the response activities implemented at the facility shall be the corrective actions required under part 213, and the requirements of section 20114 shall not apply to that release.

(2) Notwithstanding any other provision of this part, if a release or threat of release at a facility is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator of the underground storage tank system as defined in part 213 may choose to conduct corrective actions of the release from the underground storage tank system pursuant to part 213, and the requirements of section 20114 shall not apply to that release.

History: Add. 1996, Act 115, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115b Release from disposal area; corrective actions; exception.

Sec. 20115b. Notwithstanding any other provision of this part, if a release at a disposal area licensed under part 115 is solely a release from that disposal area and the release is discovered through the disposal area's hydrogeological monitoring plan, the response activities implemented at the disposal area shall be the corrective actions required under part 115. This section does not apply to releases from a disposal area after completion of the postclosure monitoring period of the disposal area.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20116 Transfer of interest in real property; notice; certification of completed response activity.

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Sec. 20116. (1) A person who has knowledge or information or is on notice through a recorded instrument that a portion or the entirety of a parcel of that person's property is a facility shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or other person to which the property is transferred disclosing the known general nature and extent of the hazardous substance release and any land or resource use restrictions that are known by the person to apply. A restrictive covenant or notice that contains the required information that is recorded in the deed records for the property satisfies this requirement.

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of a response activity under this part for the facility, record with the register of deeds for the appropriate county a certification that the response activity has been completed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20117 Information required to be furnished; requirements; right to enter public or private property; purposes; duties of person entering public or private property; copies of sample analyses, photographs, or videotapes; completion of inspections and investigations; refusing entry or information; powers of attorney general; injunction; civil fine; availability of information to public; protection of information; administrative subpoena; witness fees and mileage; court order; contempt; "information" defined.

Sec. 20117. (1) To determine the need for response activity or selecting or taking a response activity or otherwise enforcing this part or a rule promulgated under this part, the directors or their authorized representatives may upon reasonable notice require a person to furnish any information that the person may have relating to any of the following:

(a) The identification, nature, and quantity of materials that have been or are generated, treated, stored, handled, or disposed of at a facility or transported to a facility.

(b) The nature or extent of a release or threatened release at or from a facility.

(2) Upon reasonable notice, a person required to furnish information pursuant to subsection (1) shall either:

(a) Grant the directors or their authorized representatives access at all reasonable times to any place, property, or location to inspect and copy the related information.

(b) Copy and furnish to the directors or their authorized representatives the related information.

(3) If there is a reasonable basis to believe that there may be a release or threat of release, the directors or their authorized representatives have the right to enter at all reasonable times any public or private property for any of the following purposes:

(a) Identifying a facility.

(b) Investigating the existence, origin, nature, or extent of a release or threatened release.

(c) Inspecting, testing, taking photographs or videotapes, or sampling of any of the following: soils, air, surface water, groundwater, suspected hazardous substances, or any containers or labels of suspected hazardous substances.

(d) Determining the need for or selecting any response activity.

(e) Taking or monitoring implementation of any response activity.

(4) A person that enters public or private property pursuant to subsection (3) shall present credentials; make a reasonable effort to contact the person in charge of the facility or that person's designee; describe the nature of the activities authorized under subsection (3) to be undertaken; and inform the person that is in charge of the facility that he or she is entitled to participate in the collection of split samples, and is entitled to a copy of the results of any analysis of samples and a copy of any photograph or videotape taken. The person in charge or his or her agent may accompany the directors or their authorized representatives during the activities authorized under subsection (3) that take place and may participate in the collection of any split samples on the property. The absence or unavailability of the person in charge or that person's agent shall not delay or limit the authority of the directors or their authorized representatives to enter the property or proceed with the activities authorized under subsection (3).

(5) If the directors or their authorized representatives obtain any samples, before leaving the property they shall give to the person in charge of the property from which the samples were obtained a receipt describing the sample. A copy of the results of any analysis of the samples shall upon request be furnished promptly to

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the person in charge. A copy of any photograph or videotape taken pursuant to subsection (3)(c) shall upon request be furnished promptly to the person in charge.

(6) All inspections and investigations undertaken by the directors or their authorized representatives under this section shall be completed with reasonable promptness.

(7) If refused entry or information under subsections (1) to (4), for the purposes of enforcing the information gathering and entry authority provided in this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing access to property or information pursuant to this section.

(b) Commence a civil action to compel compliance with a request for information or entry pursuant to this section, to authorize information gathering and entry provided for in this section, and to enjoin interference with the exercise of the authority provided in this section.

(8) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court shall in the case of interference or noncompliance with information requests pursuant to subsection (1), or with entry or inspection requests pursuant to subsection (3), enjoin interference with and direct compliance with the requests unless the defendant establishes that, under the circumstances of the case, the request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(9) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court may assess a civil fine not to exceed $25,000.00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1), (2), or (3).

(10) Information obtained by the directors or their authorized representatives as authorized under subsection (1) or (2) shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. A person who provides information pursuant to subsection (1) or (2), or the person in charge of a facility at which photographs or videotapes are taken pursuant to subsection (3), may designate the information that the person believes to be entitled to protection as if the information was exempt from disclosure as being either trade secrets or information of a personal nature under section 13(1)(a) or (g) of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws, and submit that specifically designated information separately from other information required to be provided under this section.

(11) Notwithstanding subsection (10), the following information obtained by the directors or their authorized representatives as required by this section shall be available to the public:

(a) The trade name, common name, or generic class or category of the hazardous substance.

(b) The physical properties of a hazardous substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.

(c) The hazards to the public health, safety, or welfare, or the environment posed by a hazardous substance, including physical hazards, such as explosion, and potential acute and chronic health hazards.

(d) The potential routes of human exposure to the hazardous substance at the facility being investigated, entered, or inspected under this section.

(e) The location of disposal of any waste stream released or threatened to be released from the facility.

(f) Monitoring data or analysis of monitoring data pertaining to disposal activities related to the facility.

(g) Hydrogeologic data.

(h) Groundwater monitoring data.

(12) To collect information for the purpose of identifying persons who are liable under section 20126 or to otherwise enforce this part or a rule promulgated under this part, the attorney general may by administrative subpoena require the attendance and testimony of witnesses and production of papers, reports, documents, answers to questions, and other information the attorney general considers necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. If a person fails or refuses to obey the administrative subpoena, the circuit court for the county of Ingham or for the county in which that person resides has jurisdiction to order that person to comply with the subpoena. A failure to obey the order of the court is punishable by the court as contempt.

(13) As used in this section, "information" includes, but is not limited to, documents, materials, records, photographs, and videotapes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

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Popular name: Environmental Response Act

Popular name: NREPA

324.20118 Response activity; remedial action; purposes; selection or approval; conditions.

Sec. 20118. (1) The department may take response activity or approve of response activity proposed by a person that is consistent with this part and the rules promulgated under this part relating to the selection and implementation of response activity that the department concludes is necessary and appropriate to protect the public health, safety, or welfare, or the environment.

(2) Remedial action undertaken under subsection (1) may address all or a portion of contamination at a facility as follows:

(a) Remedial action may address 1 or more releases at a facility.

(b) Remedial action may address 1 or more hazardous substances at a facility.

(c) Remedial action may address contamination in 1 or more environmental media at a facility.

(d) Remedial action may address contamination within the entire facility or only a portion of a facility.

(e) Remedial action may address contamination at a facility through any combination of subdivisions (a) through (d).

(3) Remedial action undertaken under subsection (1) shall accomplish all of the following:

(a) Assure the protection of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial action.

(b) Except as otherwise provided in subsections (4) and (5), attain a degree of cleanup and control of the environmental contamination addressed by the remedial action that complies with all applicable or relevant and appropriate requirements, rules, criteria, limitations, and standards of state and federal environmental law.

(c) Except as otherwise provided in subsections (4) and (5), be consistent with any cleanup criteria incorporated in rules promulgated under this part for the environmental contamination addressed by the remedial action.

(4) The department may select or approve of a remedial action meeting the criteria provided for in section 20120a that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) or R 299.3(6) of the Michigan administrative code, or both, if the department makes a finding that the remedial action is protective of the public health, safety, and welfare, and the environment. Notwithstanding any other provision of this subsection, the department shall not approve of a remedial action that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) or R 299.3(6) of the Michigan administrative code if the remedial action is being implemented by a person who is liable under section 20126 and the release was grossly negligent or intentional, unless attaining that degree of control is technically infeasible, or the adverse environmental impact of implementing a remedial action to satisfy the rule would exceed the environmental benefit of that remedial action.

(5) A remedial action may be selected or approved pursuant to subsection (4) with regard to R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code, if the department determines, based on the administrative record, that 1 or more of the following conditions are satisfied:

(a) Compliance with R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code is technically impractical.

(b) The remedial action selected or approved will, within a reasonable period of time, attain a standard of performance that is equivalent to that required under R 299.3(5) or R 299.3(6) of the Michigan administrative code.

(c) The adverse environmental impact of implementing a remedial action to satisfy R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code would exceed the environmental benefit of the remedial action.

(d) The remedial action provides for the reduction of hazardous substance concentrations in the aquifer through a naturally occurring process that is documented to occur at the facility and both of the following conditions are met:

(*i*) It has been demonstrated that there will be no adverse impact on the environment as the result of migration of the hazardous substances during the remedial action, except for that part of the aquifer approved by the department in connection with the remedial action.

(*ii*) The remedial action includes enforceable land use restrictions or other institutional controls necessary to prevent unacceptable risk from exposure to the hazardous substances, as defined by the cleanup criteria approved as part of the remedial action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

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Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20119 Action to abate danger or threat; administrative order; noncompliance; liability; petition for reimbursement; action in court of claims; evidence.

Sec. 20119. (1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to which the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person, to which an administrative order was issued under this section and that complied with the terms of the order, who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section 20126a(3) and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition, which denial is reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable under section 20126 or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120 Selection of remedial action; factors.

Sec. 20120. (1) All of the following shall be considered when a person is selecting a remedial action or the department is selecting or approving a remedial action:

(a) The effectiveness of alternatives in protecting the public health, safety, and welfare and the environment.

(b) The long-term uncertainties associated with the proposed remedial action.

(c) The persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances.

(d) The short- and long-term potential for adverse health effects from human exposure.

(e) Costs of remedial action, including long-term maintenance costs. However, the cost of a remedial action shall be a factor only in choosing among alternatives that adequately protect the public health, safety, and welfare and the environment, consistent with the requirements of section 20120a.

(f) Reliability of the alternatives.

(g) The potential for future response activity costs if an alternative fails.

(h) The potential threat to human health, safety, and welfare and the environment associated with excavation, transportation, and redisposal or containment.

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(i) The ability to monitor remedial performance.

(j) For remedial actions that require the opportunity for public participation under section 20120d, the public's perspective about the extent to which the proposed remedial action effectively addresses requirements of this part.

(2) Evaluation of the factors in subsection (1) shall consider all factors in balance with one another as necessary to achieve the objectives of this part. No single factor in subsection (1) shall be considered the most important.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: Former MCL 324.20120, which pertained to schedule of remedial action plans, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

***** *324.20120a THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.20120a.amended* *****

324.20120a Cleanup criteria; response activity plan; departmental duties; rules.

Sec. 20120a. (1) The department may establish cleanup criteria and approve of remedial actions in the categories listed in this subsection. The cleanup category proposed shall be the option of the person proposing the remedial action, subject to department approval if required, considering the appropriateness of the categorical criteria to the facility. The categories are as follows:

(a) Residential.

(b) Nonresidential.

(c) Limited residential.

(d) Limited nonresidential.

(2) As an alternative to the categorical criteria under subsection (1), the department may approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements of section 20120b and other applicable requirements of this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site-specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

(3) The department shall develop cleanup criteria pursuant to subsection (1) based on generic human health risk assessment assumptions that are determined by the department to appropriately characterize patterns of human exposure associated with certain land uses. The department shall consider only reasonable and relevant exposure pathways and factors in determining these assumptions. The department may prescribe more than 1 generic set of exposure assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify facility characteristics that determine the applicability of criteria derived for these categories or subcategories. When developing and promulgating cleanup criteria under subsection (1), the department shall do all of the following:

(a) Except as set forth in subdivision (c), for each hazardous substance, use final toxicity values from the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, if available. If the United States Environmental Protection Agency has determined that there is insufficient scientific data to derive a value for inclusion in the integrated risk information system, the department shall not derive or adopt such a value for that hazardous substance. If a value is not available in the integrated risk information system, the department shall apply the following order of precedence when selecting toxicity values:

(*i*) The best value from the agency for toxic substances and disease registry final minimal risk levels for hazardous substances or the United States Environmental Protection Agency provisional peer-reviewed toxicity values.

(*ii*) If a value is not available under subparagraph (*i*), the best final value from the United States Environmental Protection Agency health effects assessment summary table, or final values adopted by other states, the World Health Organization, Canada, or the European Union.

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(*iii*) If a value is not available under subparagraph (*i*) or (*ii*), a value developed by the department if there is sufficient supporting toxicity data and information available in the peer-reviewed published scientific literature.

(b) Apply the following order of precedence when selecting chemical or physical data for the development of cleanup criteria:

(*i*) The best relevant experimentally measured data.

(*ii*) If data is not available under subparagraph (*i*), the best relevant modeled or estimated data.

(c) If the department desires to use a toxicity value or input that is different than a value that is available on the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, or desires to establish a value when the Environmental Protection Agency determined that there was insufficient scientific data to do so when last evaluated by the Environmental Protection Agency, the department shall provide public notice and a written explanation of its intent to do so and conduct a stakeholder process to obtain input. After obtaining stakeholder input, the department may promulgate a rule to use an alternative value in accordance with the order of precedence set forth in subdivision (a)(*i*) through (*iii*), if the department demonstrates all of the following:

(*i*) The integrated risk information system value is based on a determination that is at least 10 years old.

(*ii*) There is more current data in the peer-reviewed scientific literature that is used on a general basis by the United States Environmental Protection Agency or multiple other regulatory agencies nationally for the purpose of calculating cleanup criteria or standards.

(*iii*) After assessing the body of evidence for the hazardous substance using a rigorous systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority, the weight of scientific evidence clearly supports the use of the proposed value as best available science for the purpose of calculating generic cleanup criteria.

(d) Use a daily exposure time for inhalation in the exposure intake for a nonresidential worker in an algorithm or equation used to calculate generic cleanup criteria under this part that is equal to the average number of hours, not to exceed 10 hours, that a nonresidential worker spends working in a 5-day work week according to the most appropriate governmental data or information.

(e) When the department considers the pregnant woman as a potential sensitive receptor to address prenatal developmental effects, the department may apply a single-event exposure scenario for a hazardous substance, pursuant to the process set forth in subdivision (f), only when either of the following occurs:

(*i*) The United States Environmental Protection Agency applies a single-event exposure scenario to establish regional screening levels for that hazardous substance.

(*ii*) The department demonstrates, after conducting a comprehensive assessment of the specific hazardous substance, that, for that specific hazardous substance, a single exposure may result in an adverse effect and the weight of scientific evidence supports the application of a single-event exposure scenario. The department's comprehensive assessment must evaluate the body of scientific evidence using a systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority. The comprehensive assessment must, if appropriate, take into account all of the following:

(A) Whether there is data available involving single-day exposures to the hazardous substance during pregnancy.

(B) The differences in sensitivity, periods of development, and progression of different types of developmental effects in humans and animals.

(C) Differences in toxicokinetics between species.

(f) Before conducting the comprehensive assessment in subdivision (e)(*ii*), the department shall provide public notice and a written explanation of its intent to do so. Upon completion of the assessment, the department shall conduct a stakeholder process to obtain input. If, upon obtaining stakeholder input, the department elects to apply a single-event exposure scenario for a particular hazardous substance, the department shall do so in a rule.

(4) If a hazardous substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk under this section shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. If the hazardous substance poses a risk of an adverse health effect other than cancer, cleanup criteria shall be derived using appropriate human health risk assessment methods for that adverse health effect and the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. A hazard quotient of 1.0 shall be used to

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derive noncancer cleanup criteria. For the noncarcinogenic effects of a hazardous substance present in soils, the intake shall be assumed to be 100% of the protective level, unless compound and site-specific data are available to demonstrate that a different source contribution is appropriate. If a hazardous substance poses a risk of both cancer and 1 or more adverse health effects other than cancer, cleanup criteria shall be derived under this section for the most sensitive effect.

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standards established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established pursuant to 42 USC 300g-1, or (c), if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States Environmental Protection Agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion is the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted or controlled under provisions of a postclosure plan or a postclosure agreement or by site-specific criteria approved by the department under section 20120b.

(6) The department shall not approve a remedial action plan or no further action report in categories set forth in subsection (1)(b) to (d), unless the person documents that the current zoning of the property is consistent with the categorical criteria being proposed, or that the governing zoning authority intends to change the zoning designation so that the proposed criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The department shall not grant final approval for a remedial action plan or no further action report that relies on a change in zoning designation until a final determination of that zoning change has been made by the local unit of government. The department may approve of a remedial action plan or no further action report that achieves categorical criteria that are based on greater exposure potential than the criteria applicable to current zoning. In addition, the remedial action plan or no further action report must include documentation that the current property use is consistent with the current zoning or is a legal nonconforming use. Abandoned or inactive property must be considered on the basis of zoning classifications as described above.

(7) Cleanup criteria from 1 or more categories in subsection (1) may be applied at a facility, if all relevant requirements are satisfied for application of a pertinent criterion.

(8) The need for soil remediation to protect an aquifer from hazardous substances in soil shall consider the vulnerability of the aquifer or aquifers potentially affected if the soil remains at the facility. Migration of hazardous substances in soil to an aquifer is a pertinent pathway if appropriate based on consideration of site specific factors.

(9) The department may establish cleanup criteria for a hazardous substance using a biologically based model developed or identified as appropriate by the United States Environmental Protection Agency if the department determines all of the following:

(a) That application of the model results in a criterion that more accurately reflects the risk posed.

(b) That data of sufficient quantity and quality are available for a specified hazardous substance to allow the scientifically valid application of the model.

(c) The United States Environmental Protection Agency has determined that application of the model is appropriate for the hazardous substance in question.

(10) If the target detection limit or the background concentration for a hazardous substance is greater than a cleanup criterion developed for a category pursuant to subsection (1), the criterion is the target detection limit or background concentration, whichever is larger, for that hazardous substance in that category.

(11) The department may also approve cleanup criteria if necessary to address conditions that prevent a hazardous substance from being reliably measured at levels that are consistently achievable in samples from the facility in order to allow for comparison with generic cleanup criteria. A person seeking approval of a criterion under this subsection shall document the basis for determining that the relevant published target detection limit cannot be achieved in samples from the facility.

(12) In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, 15 USC 2601 to 2692.

(13) Remedial action to address the release of uncontaminated mineral oil satisfies cleanup criteria under this part for groundwater or for soil if all visible traces of mineral oil are removed from groundwater and soil.

(14) Approval by the department of remedial action based on the categorical standard in subsection (1)(a) or (b) shall be granted only if the pertinent criteria are satisfied in the affected media. The department shall approve the use of probabilistic or statistical methods or other scientific methods of evaluating environmental

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data when determining compliance with a pertinent cleanup criterion if the methods are determined by the department to be reliable, scientifically valid, and best represent actual site conditions and exposure potential.

(15) If a discharge of venting groundwater complies with this part, a permit for the discharge is not required.

(16) Remedial actions that rely on categorical cleanup criteria developed pursuant to subsection (1) shall also consider other factors necessary to protect the public health, safety, and welfare, and the environment as specified by the department, if the department determines based on data and existing information that such considerations are relevant to a specific facility. These factors include, but are not limited to, the protection of surface water quality and consideration of ecological risks if pertinent to the facility based on the requirements of this part.

(17) The department shall promulgate all generic cleanup criteria and target detection limits as rules. Except for generic cleanup criteria and target detection limits developed before January 11, 2018, and those generic cleanup criteria determined as set forth in subsections (5) and (23) and section 20120e(1)(a), generic cleanup criteria and target detection limits, and any modifications or revisions to generic cleanup criteria and target detection limits, are not legally enforceable until promulgated as rules. The generic cleanup criteria and target detection limits are subject to all of the following:

(a) The department may periodically repromulgate rules for any portion of the generic cleanup criteria to adopt and use new toxicity values or chemical or physical data selected pursuant to subsection (3)(a) and (b) or to otherwise update the generic cleanup criteria in accordance with this part to incorporate, as appropriate, knowledge gained through research and studies in the areas of fate and transport and risk assessment taking into account best practices from other states, reasonable and realistic conditions, and sound science. The department may also repromulgate rules that establish target detection limits to update those limits in accordance with this part.

(b) If generic cleanup criteria are included in or relied upon as a basis for decision in a work plan, response activity plan, remedial action plan, postclosure plan, request for certificate of completion, or similar document, that is submitted to the department or approved by the department prior to the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal or prior approval continue to apply to the review, revision, or implementation of the plan, request, or document, as well as to any future review, approval, or disapproval of a no further action report or any part thereof that is based on the plan, request, or document, unless either of the following occur:

(*i*) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(*ii*) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure. This subparagraph does not apply if, no later than 6 months after the promulgation of the rule revision changing the cleanup criteria, both of the following conditions are met:

(A) The person has substantially completed all active remediation as set forth in the approved plan, request, or similar document, and only monitoring, maintenance, or postclosure activities remain.

(B) The person submits a request for a no further action approval to the department.

(c) No further action reports that have been approved by the department and that rely on cleanup criteria that have been subsequently revised remain valid, subject to the liability provisions of section 20126(4)(e).

(d) If generic cleanup criteria are included in or relied upon as a basis for decision in a no further action report, other than a no further action report described in subdivision (b)(*ii*), that is submitted to the department but not yet approved by the department prior to the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal continue to apply to the review, revision, and approval of the report unless either of the following occur:

(*i*) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(*ii*) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior generic cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure.

(e) A demonstration by the department director under subdivision (b) or (d) that prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, is appealable in accordance with section 20114e.

(f) Notwithstanding subdivisions (b) through (d), an owner's or operator's obligations under section 20107a shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

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(18) A person demonstrates compliance with indoor air inhalation criteria for a hazardous substance at a facility under this part if all of the following conditions are met:

(a) The facility is an establishment covered by the classifications provided by sector 31-33 – manufacturing, of the North American Industry Classification System, United States, 2012, published by the Office of Management and Budget.

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, the occupational health standards for air contaminants, R 325.51101 to R 325.51108 of the Michigan Administrative Code.

(c) The hazardous substance is included in the facility's hazard communication program under section 14a of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014a, and the hazard communication rules, R 325.77001 to R 325.77004 of the Michigan Administrative Code, except that, unless the hazardous substance is in use in the facility, the requirement to have a material safety data sheet in the workplace requires only a generic material safety data sheet for the hazardous substance and the labeling requirements do not apply.

(19) The department shall promulgate as rules the algorithms used to calculate, modify, or revise all residential and nonresidential generic cleanup criteria, as well as the tables listing, by hazardous substance, all toxicity, exposure, and other algorithm factors or variables used in the department's calculations, modifications, or revisions.

(20) Calculation and application of toxic equivalency quotients are subject to the following:

(a) The toxic equivalency factors used must only be those adopted by the World Health Organization.

(b) When compounds contributed by 2 or more persons acting independently are combined in a toxic equivalency quotient to assess human health risks, harm is divisible and subject to apportionment of liability under subsections 20129(1) and (2).

(c) To assess human health risks, the toxic equivalency quotient must be compared to generic or site-specific criteria for the reference hazardous substance.

(21) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to leach from soil to groundwater. The groundwater surface water interface protection and the residential drinking water protection exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners unless the department demonstrates that those congeners are leaching at material concentrations through co-solvation.

(22) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to volatilize from soil or groundwater into the air. Vapor inhalation exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners.

(23) For a substance that does not have generic cleanup criteria, if, based on the best available information, the department determines that the substance is a hazardous substance, the department may calculate generic cleanup criteria for that hazardous substance using toxicity values and chemical and physical data selected pursuant to subsection (3)(a) and (b) and in accordance with all other requirements of this part and publish the generic cleanup criteria on the department's website. Within 30 days after publishing the new generic cleanup criteria, the department shall initiate rule-making to promulgate rules for the new criteria by filing a rule-making request under section 39 of the administrative procedures act, 1969 PA 306, MCL 24.239. The rule-making request shall only include the revisions necessary to promulgate the new generic cleanup criteria. The new generic cleanup criteria published pursuant to this subsection take effect and are legally enforceable when published by the department if the department also initiates rule-making to promulgate rules for the new criteria within 30 days. The new generic cleanup criteria published pursuant to this subsection remain effective and legally enforceable until replaced by a final rule or, until the director directs the department to withdraw the rule request under section 66(11) of the administrative procedures act, 1969 PA 306, MCL 24.266, or the time limitation in either section 45(1) or section 66(12) of the administrative procedures act, 1969 PA 306, MCL 24.245 and 24.266, is not met.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

****** 324.20120a.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT*

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324.20120a.amended Cleanup criteria; response activity plan; departmental duties; rules.

Sec. 20120a. (1) The department may establish cleanup criteria and approve of remedial actions in the categories listed in this subsection. The cleanup category proposed must be the option of the person proposing the remedial action, subject to department approval if required, considering the appropriateness of the categorical criteria to the facility. The categories are as follows:

(a) Residential.

(b) Nonresidential.

(c) Limited residential.

(d) Limited nonresidential.

(2) As an alternative to the categorical criteria under subsection (1), the department may approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements of section 20120b and other applicable requirements of this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site-specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

(3) The department shall develop cleanup criteria under subsection (1) based on generic human health risk assessment assumptions that are determined by the department to appropriately characterize patterns of human exposure associated with certain land uses. The department shall consider only reasonable and relevant exposure pathways and factors in determining these assumptions. The department may prescribe more than 1 generic set of exposure assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify facility characteristics that determine the applicability of criteria derived for these categories or subcategories. When developing and promulgating cleanup criteria under subsection (1), the department shall do all of the following:

(a) Except as set forth in subdivision (c), for each hazardous substance, use final toxicity values from the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, if available. If the United States Environmental Protection Agency has determined that there is insufficient scientific data to derive a value for inclusion in the integrated risk information system, the department shall not derive or adopt a value for that hazardous substance. If a value is not available in the integrated risk information system, the department shall apply the following order of precedence when selecting toxicity values:

(*i*) The best value from the agency for toxic substances and disease registry final minimal risk levels for hazardous substances or the United States Environmental Protection Agency provisional peer-reviewed toxicity values.

(*ii*) If a value is not available under subparagraph (*i*), the best final value from the United States Environmental Protection Agency health effects assessment summary table, or final values adopted by other states, the World Health Organization, Canada, or the European Union.

(*iii*) If a value is not available under subparagraph (*i*) or (*ii*), a value developed by the department if there is sufficient supporting toxicity data and information available in the peer-reviewed published scientific literature.

(b) Apply the following order of precedence when selecting chemical or physical data for the development of cleanup criteria:

(*i*) The best relevant experimentally measured data.

(*ii*) If data is not available under subparagraph (*i*), the best relevant modeled or estimated data.

(c) If the department desires to use a toxicity value or input that is different than a value that is available on the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, or desires to establish a value when the United States Environmental Protection Agency determined that there was insufficient scientific data to do so when last evaluated by the United States Environmental Protection Agency, the department shall provide public notice and a written explanation of its intent to do so and conduct a stakeholder process to obtain input. After obtaining stakeholder input, the department may promulgate a rule to use an alternative value in accordance with the

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order of precedence set forth in subdivision (a)(*i*) to (*iii*), if the department demonstrates all of the following:

(*i*) The integrated risk information system value is based on a determination that is at least 10 years old.

(*ii*) There is more current data in the peer-reviewed scientific literature that is used on a general basis by the United States Environmental Protection Agency or multiple other regulatory agencies nationally for the purpose of calculating cleanup criteria or standards.

(*iii*) After assessing the body of evidence for the hazardous substance using a rigorous systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority, the weight of scientific evidence clearly supports the use of the proposed value as best available science for the purpose of calculating generic cleanup criteria.

(d) Use a daily exposure time for inhalation in the exposure intake for a nonresidential worker in an algorithm or equation used to calculate generic cleanup criteria under this part that is equal to the average number of hours, not to exceed 10 hours, that a nonresidential worker spends working in a 5-day work week according to the most appropriate governmental data or information.

(e) When the department considers the pregnant woman as a potential sensitive receptor to address prenatal developmental effects, the department may apply a single-event exposure scenario for a hazardous substance, under the process set forth in subdivision (f), only when either of the following occurs:

(*i*) The United States Environmental Protection Agency applies a single-event exposure scenario to establish regional screening levels for that hazardous substance.

(*ii*) The department demonstrates, after conducting a comprehensive assessment of the specific hazardous substance, that, for that specific hazardous substance, a single exposure may result in an adverse effect and the weight of scientific evidence supports the application of a single-event exposure scenario. The department's comprehensive assessment must evaluate the body of scientific evidence using a systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority. The comprehensive assessment must, if appropriate, take into account all of the following:

(A) Whether there is data available involving single-day exposures to the hazardous substance during pregnancy.

(B) The differences in sensitivity, periods of development, and progression of different types of developmental effects in humans and animals.

(C) Differences in toxicokinetics between species.

(f) Before conducting the comprehensive assessment in subdivision (e)(*ii*), the department shall provide public notice and a written explanation of its intent to do so. On completion of the assessment, the department shall conduct a stakeholder process to obtain input. If, after obtaining stakeholder input, the department elects to apply a single-event exposure scenario for a particular hazardous substance, the department shall do so in a rule.

(4) If a hazardous substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk under this section must be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. If the hazardous substance poses a risk of an adverse health effect other than cancer, cleanup criteria must be derived using appropriate human health risk assessment methods for that adverse health effect and the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. A hazard quotient of 1.0 must be used to derive noncancer cleanup criteria. For the noncarcinogenic effects of a hazardous substance present in soils, the intake must be assumed to be 100% of the protective level, unless compound and site-specific data are available to demonstrate that a different source contribution is appropriate. If a hazardous substance poses a risk of both cancer and 1 or more adverse health effects other than cancer, cleanup criteria must be derived under this section for the most sensitive effect.

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standards established under section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established under 42 USC 300g-1, or (c), if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States Environmental Protection Agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion is the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted or controlled under provisions of a postclosure plan or a postclosure agreement or by site-specific criteria approved by the department under section 20120b.

(6) The department shall not approve a remedial action plan or no further action report in categories set

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forth in subsection (1)(b) to (d), unless the person documents that the current zoning of the property is consistent with the categorical criteria being proposed, or that the governing zoning authority intends to change the zoning designation so that the proposed criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The department shall not grant final approval for a remedial action plan or no further action report that relies on a change in zoning designation until a final determination of that zoning change has been made by the local unit of government. The department may approve a remedial action plan or no further action report that achieves categorical criteria that are based on greater exposure potential than the criteria applicable to current zoning. In addition, the remedial action plan or no further action report must include documentation that the current property use is consistent with the current zoning or is a legal nonconforming use. Abandoned or inactive property must be considered on the basis of zoning classifications as described above.

(7) Cleanup criteria from 1 or more categories in subsection (1) may be applied at a facility, if all relevant requirements are satisfied for application of a pertinent criterion.

(8) The need for soil remediation to protect an aquifer from hazardous substances in soil must consider the vulnerability of the aquifer or aquifers potentially affected if the soil remains at the facility. Migration of hazardous substances in soil to an aquifer is a pertinent pathway if appropriately based on consideration of site-specific factors.

(9) The department may establish cleanup criteria for a hazardous substance using a biologically based model developed or identified as appropriate by the United States Environmental Protection Agency if the department determines all of the following:

(a) That application of the model results in a criterion that more accurately reflects the risk posed.

(b) That data of sufficient quantity and quality are available for a specified hazardous substance to allow the scientifically valid application of the model.

(c) The United States Environmental Protection Agency has determined that application of the model is appropriate for the hazardous substance in question.

(10) If the target detection limit or the background concentration for a hazardous substance is greater than a cleanup criterion developed for a category under subsection (1), the criterion is the target detection limit or background concentration, whichever is larger, for that hazardous substance in that category.

(11) The department may also approve cleanup criteria if necessary to address conditions that prevent a hazardous substance from being reliably measured at levels that are consistently achievable in samples from the facility in order to allow for comparison with generic cleanup criteria. A person seeking approval of a criterion under this subsection shall document the basis for determining that the relevant published target detection limit cannot be achieved in samples from the facility.

(12) In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, 15 USC 2601 to 2697.

(13) Remedial action to address the release of uncontaminated mineral oil satisfies cleanup criteria under this part for groundwater or for soil if all visible traces of mineral oil are removed from groundwater and soil.

(14) Approval by the department of remedial action based on the categorical standard in subsection (1)(a) or (b) must be granted only if the pertinent criteria are satisfied in the affected media. The department shall approve the use of probabilistic or statistical methods or other scientific methods of evaluating environmental data when determining compliance with a pertinent cleanup criterion if the methods are determined by the department to be reliable, scientifically valid, and best represent actual site conditions and exposure potential.

(15) If a discharge of venting groundwater complies with this part, a permit for the discharge is not required.

(16) Remedial actions that rely on categorical cleanup criteria developed under subsection (1) must also consider other factors necessary to protect the public health, safety, and welfare, and the environment as specified by the department, if the department determines based on data and existing information that these considerations are relevant to a specific facility. These factors include, but are not limited to, the protection of surface water quality and consideration of ecological risks if pertinent to the facility based on the requirements of this part.

(17) The department shall promulgate all generic cleanup criteria and target detection limits as rules. Except for generic cleanup criteria and target detection limits developed before January 11, 2018, and those generic cleanup criteria determined as set forth in subsections (5) and (23) and section 20120e(1)(a), generic cleanup criteria and target detection limits, and any modifications or revisions to generic cleanup criteria and target detection limits, are not legally enforceable until promulgated as rules. The generic cleanup criteria and target detection limits are subject to all of the following:

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(a) The department may periodically repromulgate rules for any portion of the generic cleanup criteria to adopt and use new toxicity values or chemical or physical data selected under subsection (3)(a) and (b) or to otherwise update the generic cleanup criteria in accordance with this part to incorporate, as appropriate, knowledge gained through research and studies in the areas of fate and transport and risk assessment taking into account best practices from other states, reasonable and realistic conditions, and sound science. The department may also repromulgate rules that establish target detection limits to update those limits in accordance with this part.

(b) If generic cleanup criteria are included in or relied on as a basis for decision in a work plan, response activity plan, remedial action plan, postclosure plan, request for certificate of completion, or similar document, that is submitted to the department or approved by the department before the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal or prior approval continue to apply to the review, revision, or implementation of the plan, request, or document, as well as to any future review, approval, or disapproval of a no further action report or any part of the no further action report that is based on the plan, request, or document, unless either of the following occurs:

(*i*) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(*ii*) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure. This subparagraph does not apply if, no later than 6 months after the promulgation of the rule revision changing the cleanup criteria, both of the following conditions are met:

(A) The person has substantially completed all active remediation as set forth in the approved plan, request, or similar document, and only monitoring, maintenance, or postclosure activities remain.

(B) The person submits a request for a no further action approval to the department.

(c) No further action reports that have been approved by the department and that rely on cleanup criteria that have been subsequently revised remain valid, subject to the liability provisions of section 20126(4)(e).

(d) If generic cleanup criteria are included in or relied on as a basis for decision in a no further action report, other than a no further action report described in subdivision (b)(*ii*), that is submitted to the department but not yet approved by the department before the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal continue to apply to the review, revision, and approval of the report unless either of the following occurs:

(*i*) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(*ii*) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior generic cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure.

(e) A demonstration by the department director under subdivision (b) or (d) that prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, is appealable in accordance with section 20114e.

(f) Notwithstanding subdivisions (b) to (d), an owner's or operator's obligations under section 20107a are based on the current numeric cleanup criteria under subsection (1) or site-specific criteria approved under section 20120b.

(18) A person demonstrates compliance with indoor air inhalation criteria for a hazardous substance at a facility under this part if all of the following conditions are met:

(a) The facility is an establishment covered by the classifications provided by sector 31-33 – manufacturing, of the North American Industry Classification System, United States, 2012, published by the Office of Management and Budget.

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, the occupational health standards for air contaminants, R 325.51101 to R 325.51108 of the Michigan Administrative Code.

(c) The hazardous substance is included in the facility's hazard communication program under section 14a of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014a, and the hazard communication rules, R 325.77001 to R 325.77004 of the Michigan Administrative Code, except that, unless the hazardous substance is in use in the facility, the requirement to have a material safety data sheet in the workplace requires only a generic material safety data sheet for the hazardous substance and the labeling requirements do not apply.

(19) The department shall promulgate as rules the algorithms used to calculate, modify, or revise all

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residential and nonresidential generic cleanup criteria, as well as the tables listing, by hazardous substance, all toxicity, exposure, and other algorithm factors or variables used in the department's calculations, modifications, or revisions.

(20) Calculation and application of toxic equivalency quotients are subject to the following:

(a) The toxic equivalency factors used must only be those adopted by the World Health Organization.

(b) When compounds contributed by 2 or more persons acting independently are combined in a toxic equivalency quotient to assess human health risks, harm is divisible and subject to apportionment of liability under subsections 20129(1) and (2).

(c) To assess human health risks, the toxic equivalency quotient must be compared to generic or site-specific criteria for the reference hazardous substance.

(21) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to leach from soil to groundwater. The groundwater surface water interface protection and the residential drinking water protection exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners unless the department demonstrates that those congeners are leaching at material concentrations through co-solvation.

(22) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to volatilize from soil or groundwater into the air. Vapor inhalation exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners.

(23) For a substance that does not have generic cleanup criteria, if, based on the best available information, the department determines that the substance is a hazardous substance, the department may calculate generic cleanup criteria for that hazardous substance using toxicity values and chemical and physical data selected under subsection (3)(a) and (b) and in accordance with all other requirements of this part and publish the generic cleanup criteria on the department's website. Within 30 days after publishing the new generic cleanup criteria, the department shall initiate rule-making to promulgate rules for the new criteria by filing a rule-making request under section 39 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.239. The rule-making request must only include the revisions necessary to promulgate the new generic cleanup criteria. The new generic cleanup criteria published under this subsection take effect and are legally enforceable when published by the department if the department also initiates rule-making to promulgate rules for the new criteria within 30 days. The new generic cleanup criteria published under this subsection remain effective and legally enforceable until replaced by a final rule, or the time limitation in section 45(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.245, is not met.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018;—Am. 2024, Act 7, Eff. (sine die).

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Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120b Numeric or nonnumeric site-specific criteria.

Sec. 20120b. (1) Subject to subsection (4), the department shall approve numeric or nonnumeric site-specific criteria in a response activity under section 20120a if such criteria, in comparison to generic criteria, better reflect best available information concerning the toxicity or exposure risk posed by the hazardous substance or other factors.

(2) Site-specific criteria approved under subsection (1) may, as appropriate:

(a) Use the algorithms for calculating generic criteria established by rule or propose and use different algorithms.

(b) Alter any value, parameter, or assumption used to calculate generic criteria, with the exception of the risk targets specified in section 20120a(4).

(c) Take into consideration the depth below the ground surface of contamination, which may reduce the potential for exposure and serve as an exposure barrier.

(d) Be based on information related to the specific facility or information of general applicability, including peer-reviewed scientific literature.

(e) Use probabilistic methods of calculation.

(f) Use nonlinear-threshold-based calculations where scientifically justified.

(g) Take into account a land use or resource use restriction.

(3) If there is not a generic cleanup criterion for a hazardous substance in regard to a relevant exposure pathway, releases of the hazardous substance may be addressed through any of the following means, singly or

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in combination:

(a) Eliminate exposure to the hazardous substance through removal, containment, exposure barriers, or land use or resource use restrictions.

(b) If another hazardous substance is expected to have similar fate, mobility, bioaccumulation, and toxicity characteristics, apply the cleanup criteria for that hazardous substance as a surrogate. Before using a surrogate, the person shall notify the department, provide a written explanation why the surrogate is suitable, and request approval. If the department does not notify the person that it disapproves the use of the chosen surrogate within 90 days after receipt of the notice, the surrogate is considered approved. A hazardous substance may be used as a surrogate for a single hazardous substance or for a class or category of hazardous substances.

(c) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to demonstrate that the hazardous substance is not likely to migrate to a surface water body or has not or will not impair the existing or designated uses for a surface water body.

(d) If toxicity information is available for the hazardous substance, develop site-specific cleanup criteria for the hazardous substance pursuant to subsections (1) and (2), or develop simplified site-specific screening criteria based upon toxicity and concentrations found on site, and request department approval. If the department does not notify the person that it disapproves the site-specific criteria or screening criteria within 90 days after receipt of the request, the criteria are considered approved.

(e) Any other method approved by the department.

(4) Site-specific criteria approved by the department are not invalidated by subsequent changes to the generic criteria for that hazardous substance, including changes to toxicity, exposure, or other values or variables used by the department to calculate the generic criteria.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

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324.20120c Relocation of contaminated soil.

Sec. 20120c. (1) An owner or operator may relocate contaminated soil off-site or allow contaminated soil to be relocated off-site if all of the following requirements are met:

(a) The person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare or the environment. In making the determination, the owner or operator shall consider whether the soil is subject to regulation under part 111. For the purposes of this subdivision, soil poses a threat to the public health, safety, or welfare or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the facility to which the soil will be relocated. Any land use or resource use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the facility before the soil is relocated. Contaminated soil shall not be relocated to a location that is not a facility.

(b) Prior department approval is obtained if the contaminated soil is being relocated off-site from or to either of the following:

(*i*) A facility where a remedial action plan that includes soil as an affected media has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(b), (c), or (d) or site-specific criteria under section 20120a(2).

(*ii*) A facility where a no further action report that includes soil as an affected medium has been approved by the department.

(c) If contaminated soil is being relocated off-site in a manner not addressed by subdivision (b), the owner or operator of the facility from which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was relocated.

(*iii*) The volume of soil relocated.

(*iv*) A summary of information or data on which the owner or operator based the determination required in subdivision (a) that the soil did not present a threat to the public health, safety, or welfare or the environment.

(*v*) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to

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the soil when it is relocated, documentation that those restrictions are in place.

(2) An owner or operator may relocate contaminated soil, or allow contaminated soil to be relocated, on-site if all of the following requirements are met:

(a) If either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved for a facility, the person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) under the remedial action plan or no further action report is provided for the contaminated soil. This subdivision does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(b) If 500 cubic yards or more of contaminated soil are being relocated on-site at a facility where either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved by the department, the owner or operator of the facility at which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was taken.

(*iii*) The volume of soil relocated.

(*iv*) A summary of information or data assuring that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil under subdivision (a).

(*v*) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to the soil when it is relocated, documentation that those restrictions are in place.

(c) If subdivision (b) does not apply and an owner or operator relocates contaminated soil on-site without department approval or notice to the department, the owner of the facility within which contaminated soil is relocated includes the following information regarding the relocation as part of disclosing the general nature and extent of the release under section 20116 to a purchaser or other person to which the facility is transferred:

(*i*) The facility from which soil was relocated.

(*ii*) The facility to which the soil was taken.

(*iii*) The volume of soil relocated.

(*iv*) A summary of the basis for the owner's or operator's determination that the relocation did not cause any exacerbation under section 20107a(1).

(d) Section 20107a(1) and (3) applies to the relocation of soil under this subsection even if an owner or operator is not otherwise subject to section 20107a.

(3) The determination required by subsections (1)(a) and (2)(a) shall be based on knowledge of the person undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(4) This section does not apply to the following:

(a) Soil that is designated as an inert material pursuant to section 11507(3).

(b) Uncontaminated soil that is mixed with a beneficial use by-product under part 115.

(c) Soil that is relocated for treatment or disposal in conformance with applicable laws and regulations.

(d) The relocation of uncontaminated soil.

(5) As used in this section:

(a) "Contaminated soil" means soil that meets all of the following criteria:

(*i*) The soil is contaminated with 1 or more hazardous substances at levels that exceed the background concentration for that hazardous substance or those hazardous substances.

(*ii*) The soil is contaminated with 1 or more hazardous substances at levels that exceed any applicable cleanup criteria under section 20120a(1) or any applicable site-specific criteria under section 20120b.

(b) "Off-site" means property that is not on-site.

(c) "On-site" means within any contiguous or adjacent parcels owned by or under the control of an owner or operator.

(d) "Uncontaminated soil" means soil that is either of the following:

(*i*) Not contaminated with any hazardous substances due to human activity.

(*ii*) Contaminated with 1 or more hazardous substances as a result of human activity but the levels of those hazardous substances at the facility do not exceed any categorical cleanup criteria under section 20120a(1) or site-specific criteria under section 20120b.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

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324.20120d Public meeting; notice; publication; summary document; administrative record; comments or information not included in record.

Sec. 20120d. (1) At a facility where state funds will be spent to develop or implement a remedial action plan or where the department determines there is a significant public interest, within 30 days after the completion of a remedial investigation for the facility, the department shall provide the county and the township, city, or village in which the facility is located a notice of the completion of the remedial investigation, a summary of the remedial investigation, and notice of an opportunity for residents of the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility. Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government, the department shall, within 30 days of the request, meet with persons in the local unit of government. The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting. The meeting shall be held in the local unit of government in which the facility is located. The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government, to the known persons who are liable under section 20126, and to the main public library of the local unit of government in which the facility is located. The department shall send representatives to the meeting who are familiar with the facility and who are involved with determining the appropriate remedial actions to be taken at the facility. Persons who are liable under section 20126 for the facility may send representatives to the meeting.

(2) Before approval of a proposed remedial action plan, response activity plan, or no further action report based on categorical criteria provided for in section 20120a(1)(c) or (d) or site-specific criteria provided for in section 20120a(2) and where the department determines that there is significant public interest, the department shall do all of the following:

(a) Publish a notice and brief summary of the proposed remedial action plan, response activity plan, or no further action report.

(b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan, response activity plan, or no further action report.

(c) Provide an opportunity for a public meeting at or near the facility when any of the following occur:

(*i*) The department determines that there is a significant public interest or that for any other reason a public meeting is appropriate.

(*ii*) A city, township, or village in which the facility is located, by a majority vote of its governing body, requests a public meeting.

(*iii*) A local health department with jurisdiction in the area in which the facility is located requests a public meeting.

(d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan, response activity plan, or no further action report.

(3) For purposes of this section, publication shall include, at a minimum, publication in a local newspaper or newspaper of general circulation in this state. In addition, the administrative record shall be made available by the department for inspection by members of the public at or near the facility and in Lansing.

(4) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan, response activity plan, or no further action report. In addition, the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan. The administrative record shall contain all of the following:

(a) Remedial investigation data regarding the facility.

(b) If applicable, a feasibility study and remedial actions planned or completed.

(c) If applicable, a summary document that explains the reasons why a remedial investigation or feasibility study was not conducted.

(d) Applicable comments and information received from the public, if any.

(e) If applicable, a document that summarizes the significant concerns raised by the members of the public and how they are to be addressed.

(f) Other information appropriate to the facility.

(5) If comments or information are submitted for inclusion in the administrative record that are not included in the administrative record, a brief explanation of why the information was not considered relevant shall be sent to the party by the department and included in the record.

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History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

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324.20120e Response activity providing for venting groundwater; definitions.

Sec. 20120e. (1) Subject to other requirements of this section, a person may demonstrate compliance with requirements under this part for a response activity providing for venting groundwater by meeting any of the following, singly or in combination:

(a) Generic GSI criteria, which are the water quality standards for surface waters developed by the department pursuant to part 31. The use of surface water quality standards or variances shall be allowable in any of the cleanup categories provided for in section 20120a(1).

(b) A variance from the surface water quality standards as approved by the department under part 31. A variance shall be used only if the variance is requested by a person performing response activities with respect to venting groundwater.

(c) Mixing zone-based GSI criteria established under this part, which are consistent with part 31. The use of mixing zone-based GSI criteria shall be allowable in any of the categories provided for in section 20120a(1) and (2) and shall be allowable for criteria based on chronic-based or acute-based surface water quality criteria.

(d) Site-specific criteria established under section 20120b or this subdivision or a combination of both. The use of mixing zones established under this part may be applied to, or included as, site-specific criteria. Biological criteria may be used as site-specific criteria. If biological criteria are used, then sentinel wells shall be used for a period as needed to determine if the biological criteria may be exceeded due to future increased mass loading to the surface water from the venting plume. Numerical evaluations of analyses of the samples from the sentinel wells shall be performed in connection with this determination.

(e) An ecological demonstration under subsection (9).

(f) A modeling demonstration under subsection (10).

(2) Whole effluent toxicity testing shall not be required or be a criterion or be the basis for any criteria under subsection (1) for venting groundwater except for samples taken at the GSI.

(3) The pathway addressed by GSI criteria under subsection (1) shall be considered a relevant pathway when a remedial investigation or application of best professional judgment leads to the conclusion that a hazardous substance in groundwater is reasonably expected to vent to surface water in concentrations that exceed the generic GSI criteria. The factors to be considered in determining whether the pathway is relevant include all of the following:

(a) Whether there is a hydraulic connection between groundwater and the surface water in question.

(b) The proximity of surface water to source areas and areas of the groundwater contaminant plume that currently, or may in the future be expected to, exceed the generic GSI criteria.

(c) Subject to subsection (23)(g), whether the receiving surface water is a surface water of the state as that term is defined in part 31 and rules promulgated under that part.

(d) The direction of groundwater movement.

(e) The presence of artificial structures or natural features that would alter hydraulic pathways. This includes, but is not limited to, highly permeable zones, utility corridors, and seawalls.

(f) The mass of hazardous substances present at the facility that may affect groundwater.

(g) Documented facility-specific evidence of natural attenuation, if any.

(h) Whether or not a sewer that has an outfall to surface water has openings in the portion of the sewer where the sewer and the groundwater contaminant plume intersect that allows the groundwater contaminant plume to migrate into the sewer. If it can be demonstrated that the sewer is sufficiently tight to prevent inflow to the sewer where the groundwater contaminant plume intersects the sewer or if the sewer is otherwise impervious, based on accepted industry standards, to prevent inflow from groundwater into the sewer at that location, then the GSI pathway with respect to the sewer is not relevant and shall not apply.

(4) For purposes of determining the relevance of a pathway under subsection (3), both of the following apply:

(a) GSI monitoring wells are not required in order to make a determination if other information is sufficient to make a judgment that the pathway is not relevant.

(b) Fate and transport modeling may be used, if appropriate, to support a professional judgment.

(5) A person may proceed under section 20114a to undertake the following response activities involving

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venting groundwater:

(a) Evaluation activities associated with a response activity providing for venting groundwater using alternative monitoring points, an ecological demonstration, a modeling demonstration, or any combination of these. If a person who is liable under section 20126 decides not to take additional response activities to address the GSI pathway based on alternative monitoring points, an ecological demonstration, a modeling demonstration, or a determination under subsection (14), or any combination of these, the person shall notify the department and request department approval. A notification and request for approval under this subdivision shall not be considered an admission of liability under section 20126.

(b) Response activities that rely on GSI monitoring wells to demonstrate compliance under subsection (1)(a).

(c) Except as provided in subdivision (a) and subsection (6), response activities that rely on monitoring from alternative monitoring points to demonstrate compliance with subsection (1)(a) if the person submits to the department a notice of alternative monitoring points at least 30 days prior to relying on those alternative monitoring points that contains substantiating evidence that the alternative monitoring points comply with this section.

(d) Response activities implemented by a person who is not liable under section 20126 that rely on a modeling demonstration, or rely on an ecological demonstration, or a combination of these, to demonstrate compliance with subsection (1)(a).

(6) A person shall proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points or rely on an ecological demonstration, a modeling demonstration, or a combination of these, to demonstrate compliance with subsection (1)(a) if 1 or more of the following conditions apply to the venting groundwater:

(a) An applicable criterion is based on acute toxicity endpoints.

(b) The venting groundwater contains a bioaccumulative chemical of concern as identified in the water quality standards for surface waters developed pursuant to part 31 and for which the person is liable under this part.

(c) The venting groundwater is entering a surface water body protected for coldwater fisheries identified in the following publications:

(*i*) "Coldwater Lakes of Michigan," as published in 1976 by the department of natural resources.

(*ii*) "Designated Trout Lakes and Regulations," issued September 10, 1998, by the director of the department of natural resources under the authority of part 411.

(*iii*) "Designated Trout Streams for the State of Michigan," as issued under order of the director of the department of natural resources, FO-210.08, on November 8, 2007.

(d) The venting groundwater is entering a surface water body designated as an outstanding state resource water or outstanding international resource water as identified in the water quality standards for surface waters developed pursuant to part 31.

(7) A person shall proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points, or rely on an ecological demonstration, or rely on a modeling demonstration or that use mixing zone-based GSI criteria, or any combination of these, as applicable, to demonstrate compliance with subsection (1)(b), (c), (d), (e), or (f).

(8) Alternative monitoring points may be used to demonstrate compliance with subsection (1) if the alternative monitoring points meet the following standards:

(a) The locations where venting groundwater enters surface water have been reasonably identified to allow monitoring for the evaluation of compliance with criteria. This identification shall include all of the following:

(*i*) Identification of the location of alternative monitoring points within areas of venting groundwater.

(*ii*) Documentation of the approximate boundaries of the areas where the groundwater plume vents to surface water. This documentation shall include information about the substrate character and geology in the areas where groundwater vents to surface water.

(*iii*) Documentation that the venting area identified and alternative monitoring points include points that are reasonably representative of the higher concentrations of hazardous substances present in the groundwater at the GSI.

(b) The alternative monitoring points allow for venting groundwater to be sampled at the GSI. Devices used for sampling at alternative monitoring points may be beyond the water's edge and on top of or into the sediments, at the GSI.

(c) Sentinel monitoring points are used in conjunction with the alternative monitoring points for a period as needed to assure that any potential exceedance of an applicable surface water quality standard can be identified with sufficient notice to allow additional response activity, if needed, to be implemented that will

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address the exceedance. Sentinel monitoring points shall include, at a minimum, monitoring points upland of the surface water body.

(9) An ecological demonstration may be used to demonstrate compliance with subsection (1) if the ecological demonstration meets the following:

(a) The boundaries of the area where the groundwater plume vents to surface water are documented as provided in subsection (8)(a)(*ii*).

(b) Sampling data for the area described in subdivision (a), when compared to other reasonably proximate areas of that surface water body, do not show an impairment of existing or designated uses for that surface water body caused by, or contributed to by, the venting plume, or do not show that the venting plume will cause or contribute to impairment of existing or designated uses of that surface water body in a situation where the area of the surface water immediately outside the venting area of the venting plume shows an impairment of existing or designated uses.

(c) Sampling data for the area described in subdivision (a) do not show exceedances of applicable criteria under subsection (1) in the surface water body caused by, or contributed to by, the venting plume.

(d) The sampling data in subdivisions (b) and (c) may be data on benthic organisms, fish, and the water column of the surface water, which data may be in the form of an in situ bioassay or a biological community assessment.

(e) Sentinel monitoring in on-land wells is performed for a period as needed to show that the groundwater plume is not likely to migrate to the surface water body and vent in the future in a mass amount and rate that would impair the existing or designated uses for that surface water body, or cause or contribute to exceedances of surface water quality standards in the surface water body.

(10) A modeling demonstration may be used to demonstrate compliance with subsection (1) if the modeling demonstration meets all of the following:

(a) The modeling methodology is generally recognized as a means to model venting groundwater plumes or is an innovative method that is scientifically justifiable.

(b) The results of the modeling show that the venting plume at the GSI complies with the applicable criteria under subsection (1) or supports the ecological demonstration, as applicable.

(c) The model is supported by site-specific information and appropriate field measurements.

(11) If alternative monitoring points or an ecological demonstration or a modeling demonstration or a combination of these is used for the response activity and sentinel wells are installed, a contingency plan for potential additional response activity may be required.

(12) If a person intends to utilize mixing zone-based GSI criteria under subsection (1)(c) or site-specific criteria under subsection (1)(d) in conjunction with alternative monitoring points, an ecological demonstration, or a modeling demonstration, or a combination of these, the person shall submit to the department a response activity plan that includes the following:

(a) A demonstration of compliance with the standards in subsection (6), (7), or (8), as applicable.

(b) If compliance with a mixing zone-based groundwater-surface water interface criterion under subsection (1)(c) is to be determined with data from the alternative monitoring points, documentation that it is possible to reasonably estimate the volume and rate of venting groundwater.

(c) A site-specific monitoring plan that takes into account the basis for the site-specific criterion or mixing zone criterion.

(13) If there is an exceedance of an applicable GSI criterion based on acute toxicity at a compliance monitoring point applicable at a particular facility, then action shall be taken as follows:

(a) A person that is implementing the response activity at that facility and that determines that there is an exceedance shall notify the department of that condition within 7 days of obtaining knowledge that the exceedance is occurring.

(b) If the person described in subdivision (a) is a person liable under section 20126, then that person shall, within 30 days of the date on which notice is required under subdivision (a), do 1 or more of the following:

(*i*) Commence response activity to address the exceedance at the applicable compliance monitoring point and submit a schedule to the department for the response activity.

(*ii*) Submit a notice of intent to the department to propose an alternative monitoring point or perform an ecological demonstration or perform a modeling demonstration or a combination of these. The notice shall include a schedule for submission of the proposal.

(*iii*) Submit a notice of intent to the department to propose a site-specific criterion or a mixing zone criterion under sections 20120a and 20120b. The notice shall include a schedule for submission of the proposal.

(c) The department may approve a schedule as submitted under subdivision (b) or direct reasonable modifications in the schedule. The department may grant extensions of time for actions required under

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subdivision (b) and for activities in an approved or department-modified schedule if the person is acting in good faith and site conditions inhibit progress or completion of the activity. The department's decision to grant an extension or impose a schedule modification shall consider the practical problems associated with carrying out the response activity and the nature and extent of the exceedances of applicable GSI criteria.

(14) Response activity beyond evaluations shall not be required if venting groundwater has no effect or only a de minimis effect on a surface water body. A determination under this subsection may be based on mass flow and rate of groundwater movement calculations. A person evaluating a venting plume that determines that the plume has no effect or only a de minimis effect on a surface water body shall notify the department of the determination. The department may, within 90 days after receipt of the determination, disapprove the determination. If the department does not notify the person that it disapproves the determination within the 90-day period, then the person's determination shall be final.

(15) If a person has controlled the source of groundwater contamination and has demonstrated that compliance with GSI criteria developed under this part is unachievable, that person may file a technical impracticability waiver request with the department. The technical impracticability waiver shall document the reasons why compliance is unachievable. The department shall respond to the waiver within 180 days with an approval, request for additional information, or denial that provides a detailed description of the reasons for denial.

(16) Natural attenuation of hazardous substances in venting groundwater upgradient of the GSI is an acceptable form of remediation and may be relied upon in lieu of any active remediation of the groundwater. Natural attenuation may be occurring by way of dispersion, diffusion, sorption, degradation, transformative reactions, and other methods.

(17) A permit shall not be required under part 31 for any venting groundwater contamination plume that is addressed under this section.

(18) Wetlands shall be protected for the groundwater surface water pathway to the extent that particular designated uses, as defined by part 31, which are specific to that wetland would otherwise be impaired by a groundwater contamination plume venting to surface water in the wetland.

(19) If a groundwater contamination plume is entering a sewer that discharges to surface water, and the GSI pathway is relevant, all of the following apply:

(a) If the groundwater enters a storm sewer that is owned or operated by an entity that is subject to federal municipal separate storm sewer system regulations and a part 31 permit for the discharges from the system, the contaminated groundwater entering the sewer is subject to regulation by the entity's ordinance regarding illicit discharges, but the regulation of the contaminated groundwater shall not prevent the use of subdivision (b) or other provisions of this section to determine the need for response activity under this part.

(b) All of the following apply:

(*i*) The compliance monitoring point may be a groundwater monitoring well, if proposed by the person performing the response action, or that person may choose another point for measuring compliance under this subparagraph.

(*ii*) A mixing zone may be applied that accounts for the mixing which occurs in the receiving surface water into which the sewer system discharges.

(*iii*) Attenuation that occurs in the sewer system prior to the sewer system outfall to surface water shall be considered.

(*iv*) The compliance point is at the sewer system outfall to surface water, which shall account for any applicable mixing zone for the sewer system outfall.

(*v*) Monitoring to determine compliance may be performed at a location where the contaminated groundwater enters the sewer or downstream from that location but upstream of the sewer outfall at the surface water, if practicable and representative. Appropriate back calculation from the compliance point to the monitoring point may be applied to account for mixing and other attenuation that occurs in the sewer system before the compliance point. As appropriate, such a monitoring point may require another monitoring point in the sewer system upstream from the area where the contaminated groundwater enters the sewer. Upstream sampling in the sewer may be performed to determine source contribution.

(*vi*) The contaminant mass flow, and the rate and amount of groundwater flow, into the sewer may be considered and may result in a determination that the migration into the sewer is de minimis and does not require any response activity in addition to the evaluation that leads to such determination.

(c) Factors in subdivision (b) may be considered and applied to determine if an illicit discharge is occurring and how to regulate the discharge.

(20) If the department denies a response activity plan containing a proposal for alternative monitoring points, an ecological demonstration, or a modeling demonstration, or a combination of these, the department shall state the reasons for denial, including the scientific and technical basis for the denial. A person may

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appeal a decision of the department in a response activity plan or no further action report regarding venting groundwater as a scientific or technical dispute under section 20114e.

(21) This section is intended to allow a person to demonstrate compliance with requirements under this part for a response activity involving venting groundwater, and, for this purpose, this section shall be given retroactive application and shall be available for use by such person. A person performing response activity involving venting groundwater under any judgment, consent judgment, order, consent order, or agreement that was entered prior to the effective date of the 2012 amendatory act that amended this section may pursue, alter, or terminate such response activity based on any provision of this section subject to any necessary entry or approval by the court in a case of a judgment, consent judgment, or court order or any necessary amendment procedure to amend an agreement. The department shall not oppose use of any provision of this section as grounds to amend an agreement or for a court to modify or terminate response activity obligations involving venting groundwater under a judgment, consent judgment, or court order. A person performing response activity involving venting groundwater under any remedial action plan, interim response plan designed to meet criteria, interim response action plan, or response activity plan that was approved by the department prior to the effective date of the 2012 amendatory act that amended this section may submit an amended plan to the department for approval that pursues, alters, or terminates response activity based on any provision of this section. The department shall not oppose use of any provision of this section in approving an amended plan.

(22) A person that undertakes response activity under subsection (4) or that takes action under subsection (13)(b) shall not be considered to be making an admission of liability by undertaking such response activities or taking such action.

(23) As used in this section:

(a) "Alternative monitoring points" means alternative monitoring points authorized under subsection (8).

(b) "Ecological demonstration" means an ecological demonstration authorized under subsection (1)(e).

(c) "GSI" means groundwater-surface water interface, which is the location at which groundwater enters surface water.

(d) "GSI monitoring well" means a vertical well installed in the saturated zone as close as practicable to surface water with a screened interval or intervals that are representative of the groundwater venting to the surface water.

(e) "Mixing zone-based GSI criteria" means mixing zone-based GSI criteria authorized under subsection (1)(c).

(f) "Modeling demonstration" means a modeling demonstration authorized under subsection (1)(f).

(g) "Surface water" does not include any of the following:

(*i*) Groundwater.

(*ii*) Hyporheic zone water.

(*iii*) Water in enclosed sewers.

(*iv*) Water in drainage ways and ponds used solely for wastewater or storm water conveyance, treatment, or control.

(*v*) Water in subgrade utility runs and utility lines and permeable fill in and around them.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 190, Imd. Eff. June 20, 2012.

Compiler's note: Former MCL 324.20120e, which pertained to recalculation of cleanup criteria, was repealed by Act 603 of 2006, Eff. Jan. 3, 2008.

Enacting section 1 of Act 190 of 2012 provides:

"Enacting section 1. R 299.5716 of the Michigan administrative code is rescinded."

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120f Vapor intrusion; evaluation and management methods.

Sec. 20120f. (1) To satisfy the requirements of this part, a person may evaluate, address, and manage the vapor intrusion to the indoor air inhalation exposure pathway for a hazardous substance using any of the following methods:

(a) Meeting all of the conditions in section 20120a(18).

(b) For purposes of evaluating and addressing the vapor intrusion to the indoor air inhalation pathway in connection with any release of petroleum as described as a regulated substance defined in section 21303(h)(*ii*), the process outlined in the Interstate Technology Regulatory Council petroleum vapor intrusion guidance document (PVI-1, Oct-14).

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(c) An approach, using multiple lines of evidence, demonstrating that the vapor intrusion to the indoor air inhalation exposure pathway does not pose an unacceptable risk to the public health, safety, or welfare, or the environment consistent with all or a combination of 1 or more of the following:

(*i*) The United States Environmental Protection Agency "OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air" (OSWER Publication 9200.2-154, June 2015).

(*ii*) The Interstate Technology Regulatory Council petroleum vapor intrusion guidance document (PVI-1, Oct-14).

(*iii*) The United States Environmental Protection Agency's "Documentation for EPA's Implementation of the Johnson and Ettinger Model to Evaluate Site Specific Vapor Intrusion into Buildings Version 6.0" (USEPA, September 2017).

(d) Indoor air sampling that accounts for actual site conditions and demonstrates acceptable indoor air concentrations resulting from vapor intrusion compared to any of the following:

(*i*) When criteria in subparagraph (*ii*) are not available, regional screening levels published by the United States Environmental Protection Agency that are applicable to residential or nonresidential land use, as appropriate, at cancer and noncancer risk levels specified in section 20120a(4).

(*ii*) Applicable indoor air inhalation generic cleanup criteria promulgated by the department.

(*iii*) Site-specific criteria approved by the department.

(e) An alternative method or model for assessing vapor intrusion risk that utilizes only site-specific variables or a combination of site-specific or building-specific variables if the method or model is scientifically sound and supported by adequate site information. An alternative method or model under this subdivision to address contamination that has migrated beyond the boundaries of the property that is the source of the release must be approved by the department.

(f) A method or model allowed in a promulgated rule.

(2) The indoor air inhalation pathway is not a reasonable and relevant pathway for purposes of response activities undertaken under this part if there is no occupied building or planned occupied building that is within the following distances from subsurface volatile hazardous substance contamination:

(a) For petroleum contamination, within both a 30-foot lateral separation distance and the permissible vertical separation distance under the Interstate Technology Regulatory Council petroleum vapor intrusion guidance document (PVI-1, Oct-14).

(b) For any volatile hazardous substance contamination other than petroleum, within both a 100-foot lateral separation distance and a 100-foot vertical separation distance.

(3) If there is an occupied building or planned occupied building within the distances from subsurface volatile hazardous substance contamination in subsection (2), the indoor air inhalation pathway is not necessarily a reasonable and relevant pathway; rather, further evaluation is needed to determine whether the indoor air inhalation pathway is reasonable and relevant considering site-specific factors such as site-specific geology or hydrogeology, measured contaminant concentrations, the existence of institutional controls, including land use or resource use restrictions, or the existence of exposure controls, exposure barriers, or other mitigating factors, including building ventilation or use.

History: Add. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20121 Land or resource use restrictions; restrictive covenants or other instruments.

Sec. 20121. (1) A person may impose land or resource use restrictions to reduce or restrict exposure to hazardous substances, to eliminate a potential exposure pathway, to assure the effectiveness and integrity of containment or exposure barriers, to provide for access, or to otherwise assure the effectiveness and integrity of response activities undertaken at a property.

(2) A restrictive covenant used to impose land or resource use restrictions under subsection (1) shall, at a minimum, include all of the following:

(a) A legal description of the property that is subject to the restrictions that is sufficient to identify the property and is sufficient to record the document with the register of deeds for the county where the property is located. If the property being restricted constitutes a portion of a parcel, the restrictive covenant shall also include 1 of the following:

(*i*) A legal description and a scaled drawing of the portion that is restricted.

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(*ii*) A survey of the portion that is restricted.

(*iii*) Another type of description or drawing approved by the department.

(b) A brief narrative description of response activities and environmental contamination at the property or identify a publicly accessible information repository where that information may be obtained, such as a public library.

(c) A description of the activity and use limitations imposed on the property. The description should be drafted, to the extent practicable, using plain, everyday language in an effort to make the activity and use limitations understandable to the reader without having to reference statutory or regulatory text or department guidance.

(d) A grant to the department of the ability to enforce the restrictive covenant by legal action in a court of appropriate jurisdiction.

(e) A signature of the property owner or someone with the express written consent of the property owner unless the restrictive covenant has been ordered by a court of competent jurisdiction. For condominium common elements and similar commonly owned property, the restrictive covenant may be signed by an authorized person.

(3) In addition to the requirements of subsection (2), a restrictive covenant may contain other information, restrictions, requirements, and rights agreed to by the persons signing it, including, but not limited to, 1 or more of the following:

(a) A provision requiring notice to the department or other persons upon transfer or before construction or changes in use that could affect environmental contamination or increase exposure at the property.

(b) A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.

(c) A provision subordinating a property interest that has priority, if agreed to by the person that owns the superior interest.

(d) A provision granting the right to enforce the restrictive covenant to persons in addition to the department, including, but not limited to, the local unit of government in which the property is located or the United States environmental protection agency.

(e) A provision obligating the owner of the land subject to the restrictive covenant to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy.

(f) A provision limiting the restrictive covenant to a specific duration, or terminating the restrictive covenant upon the occurrence of a specific event or condition, such as the completion of additional response activities that are approved by the department.

(g) A provision providing notice of hazardous substances that exceed aesthetic-based cleanup criteria.

(4) A restrictive covenant used to impose land or resource use restrictions under this section shall be recorded with the register of deeds for the county where the property is located.

(5) A restrictive covenant under this section that is recorded under subsection (4) does both of the following:

(a) Runs with the land.

(b) Is perpetual unless, by its terms, it is limited to a specific duration or is terminated by the occurrence of a specific event.

(6) Upon recording, a copy of the restrictive covenant shall be provided to the department together with a notice that includes the street address or parcel number for the property or properties subject to the covenant. A restrictive covenant that meets the requirements of this section need not be approved by the department except as expressly required elsewhere in this part.

(7) The following instruments may impose the land or resource use restrictions described in subsection (1) if they meet the requirements of a restrictive covenant under this section:

(a) A conservation easement.

(b) A court order or judicially approved settlement involving the property.

(8) An institutional control may be used to impose the land or resource use restrictions described in subsection (1) instead of or in addition to a restrictive covenant. Institutional controls that may be considered include, but are not limited to, local ordinances or state laws and regulations that limit or prohibit the use of contaminated groundwater, prohibit the raising of livestock, prohibit development in certain locations, or restrict property to certain uses, such as a zoning ordinance. A local ordinance that serves as an institutional control under this section shall be published and maintained in the same manner as a zoning ordinance and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance or prior to the lapsing or revocation of the ordinance.

(9) Alternative instruments and means may be used, with department approval, to impose the land or

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resource use restrictions described in subsection (1), including, but not limited to, licenses and license agreements, contracts with local, state, or federal units of government, health codes or regulations, or government permitting requirements.

(10) The department, with the approval of the state administrative board, may place restrictive covenants described in this section on deeds of state-owned property.

(11) A restrictive covenant recorded pursuant to this part, whether recorded before or after the effective date of the amendatory act that added this section, is valid and enforceable even if 1 or more of the following situations exist:

(a) It is not appurtenant to an interest in real property.

(b) The right to enforce it can be or has been assigned.

(c) It is not of a character that has been recognized traditionally at common law.

(d) It imposes a negative burden.

(e) It imposes an affirmative obligation on a person having an interest in the real property.

(f) The benefit or burden does not touch or concern real property.

(g) There is no privity of estate or contract.

(h) The owner of the land subject to the restrictive covenant and the person benefited or burdened are the same person.

(12) Restrictive covenants or other instruments that impose land or resource use restrictions that were recorded before the effective date of the amendatory act that added this section are not invalidated or made unenforceable by this section. Except as provided in subsection (11), this section only applies to a restrictive covenant or other instrument recorded after the effective date of the amendatory act that added this section. This section does not invalidate or render unenforceable any instrument or interest that is otherwise enforceable under the law of this state.

History: Add. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Compiler's note: Former MCL 324.20121, which pertained to creation of office of environmental cleanup facilitation, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20122-324.20125 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed sections pertained to creation and duties of science advisory council, report to legislature, and approval of remedial action plans.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20126 Liability under part.

Sec. 20126. (1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

(c) An owner or operator of a facility who becomes an owner or operator on or after June 5, 1995, unless the owner or operator complies with either of the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure, and the owner or operator provides the baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator requests and receives from the department a determination that its failure to comply with the time frames in subparagraph (*i*) when conducting and submitting a baseline environmental assessment was inconsequential.

(d) A person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the

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person, by any other person, at a facility owned or operated by another person and containing the hazardous substance. This subdivision does not include any of the following:

(*i*) A person who, on or after June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

(*ii*) A person who, prior to June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product unless the state has incurred response activity costs associated with these secondary materials prior to December 17, 1999. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

(*iii*) A person who arranges the lawful transport or disposal of any product or container that is commonly used in a residential household, is in a quantity commonly used in a residential household, and was used in the person's residential household.

(*iv*) A person who stores or uses or arranges for the storage or use of a beneficial use by-product or inert material in compliance with part 115.

(e) A person who accepts or accepted any hazardous substance for transport to a facility selected by that person.

(f) The estate or trust of a person described in subdivisions (a) to (e).

(2) Subject to section 20107a, an owner or operator who complies with subsection (1)(c)(*i*) and (*ii*) is not liable for contamination existing at the facility at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination existing at the facility. Subsection (1)(c) does not alter a person's liability with regard to a subsequent release or threat of release at a facility if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at a facility resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) The state or a local unit of government that acquired ownership or control of a facility involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part; a local unit of government to which ownership or control of a facility is transferred by the state or by another local unit of government that is not liable under subsection (1); or the state or a local unit of government that acquired ownership or control of a facility by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) A state or local unit of government that holds or acquires an easement interest in a facility, holds or acquires an interest in a facility by dedication in a plat, or by dedication pursuant to 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in a facility for a transportation or utility corridor, including sewers, pipes, and pipelines, or public right of way.

(c) A person who holds an easement interest in a facility or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person who owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) The state or a local unit of government that leases property to a person if the state or the local unit of government is not liable under this part for environmental contamination at the property.

(f) A person who owns or occupies residential real property if hazardous substance use at the property is consistent with residential use.

(g) A person who acquires a facility as a result of the death of the prior owner or operator of the facility, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(h) A person who did not know and had no reason to know that the property was a facility. To establish that the person did not know and did not have a reason to know that the property was a facility, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this subdivision shall take into account any specialized knowledge or experience on the part of the person, the

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relationship of the purchase price to the value of the property if uncontaminated by a hazardous substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(i) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(j) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's hazardous substance use.

(k) A person who holds a license, easement, or lease, or who otherwise occupies or operates property, for the purpose of siting, constructing, operating, or removing a wind energy conversion system or any component of a wind energy conversion system. As used in this subdivision, "wind energy conversion system" means that term as defined in section 13 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1013.

(*l*) A person who owns or occupies a residential condominium unit for both of the following:

(*i*) Contamination of the unit if hazardous substance use within the unit is consistent with residential use.

(*ii*) Contamination of any general common element, limited common element, or common area in which the person has an ownership interest or right of occupation by reason of owning or occupying the residential condominium unit.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) The owner or operator of property at or from which there is a release or threat of release and the release or threat of release is subject to corrective action under part 111 or is being addressed as part of a corrective action under part 111. A corrective action under part 111 may be implemented using processes and cleanup criteria, as appropriate, under this part. However, a release or threat of release that is subject to or that has been or is being addressed through part 111 corrective action shall not also be subject to remediation and department oversight under this part.

(b) A lender that engages in or conducts a lawful marshalling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the facility.

(c) The owner or operator of property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(d) A person who owns or operates a facility in which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person who is liable under this section.

(e) Any person for environmental contamination addressed in a no further action report that is approved by the department or is considered approved under section 20114d. However, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the no further action report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the no further action report and for which the person is otherwise liable under this part.

(*iii*) If the no further action report relies on land use or resource use restrictions, an owner or operator who desires to change those restrictions is responsible for any response activities necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the no further action report.

(*iv*) If the no further action report relies on monitoring necessary to ensure the effectiveness and integrity of the remedial action, an owner or operator who is otherwise liable for environmental contamination addressed in a no further action report is liable under this part for additional response activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the no further action report.

(*v*) If the remedial actions that were the basis for the no further action report fail to meet performance objectives that are identified in the no further action report, an owner or operator who is otherwise liable for environmental contamination addressed in the no further action report is liable under this part for response activities necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the facility is not liable under this part for costs or damages as a

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result of response activity taken in response to a release or threat of release. For a lender, this subsection applies only to response activity undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) Notwithstanding subsection (1)(c), if the owner or operator of the facility became the owner or operator of the facility on or after June 5, 1995 and prior to March 6, 1996, and the facility contains an underground storage tank system as defined in part 213, that owner or operator is liable under this part only if the owner or operator is responsible for an activity causing a release or threat of release.

(8) An owner or operator who was in compliance with subsection (1)(c)(*i*) and (*ii*) prior to December 14, 2010 is considered to be in compliance with subsection (1)(c)(*i*) and (*ii*).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1999, Act 196, Imd. Eff. Dec. 17, 1999;—Am. 2010, Act 227, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 179, Imd. Eff. June 17, 2014;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20126a Joint several liability; costs of amounts recoverable; interest; recovery; permitted release; action by attorney general; action brought by state or other person.

Sec. 20126a. (1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(b) Any other costs of response activity reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of response activity recoverable under subsection (1) shall also include all costs of response activity reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of response activity under this part, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department, for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake response activity for a permitted release. Recovery by any person for response activity costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a hazardous substance or for response activity or the costs of response activity.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment because of an actual or threatened release from a facility, the attorney general may bring an action against any person who is liable under section 20126 or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

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(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 227, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20127 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to liability.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20128 Liability of response activity contractor; effect of warranty; liability of employer to employee; governmental employee exempt from liability; definitions; liability of person in rendering care, assistance, or advice on release of petroleum; effect of exception under subsection (6); burden of establishing liability.

Sec. 20128. (1) Except as otherwise provided in this section, a person who is a response activity contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the response activity contractor that is negligent, grossly negligent, or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a response activity contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a response activity while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the response activity contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Response activity contract" means a written contract or agreement entered into by a response activity contractor with 1 or more of the following:

(*i*) The department.

(*ii*) The department of public health.

(*iii*) A person who is arranging for response activity under this part.

(b) "Response activity contractor" means 1 or both of the following:

(*i*) A person who enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person who is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a response activity.

(6) Notwithstanding any other provision of law, a person is not liable for response activity costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person who is liable under section 20126 who is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person who is liable under section 20126 who is a responsible party is liable for any response activity costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

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(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan, or the official designated by the lead agency to coordinate and direct response activity under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, chapter 758, 86 Stat. 862, 33 U.S.C. 1321.

(d) "Petroleum" means that term as it is defined in part 213.

(e) "Responsible party" means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990, Public Law 101-380, 33 U.S.C. 2701.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20129 Divisibility of harm and apportionment of liability; liability for indivisible harm; contribution; factors in allocating response activity costs and damages; reallocation of uncollectible amount; effect of consent order; resolution of liability in approved settlement; contribution protection; effect of state obtaining less than complete relief; contribution from person not party to consent order; subordinate rights in action for contribution.

Sec. 20129. (1) If 2 or more persons acting independently are liable under section 20126 and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit his or her liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 20126 for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person who is liable under section 20126 during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating response activity costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the hazardous substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person who has resolved his or her liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 20126 unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person who is not liable under this part, including a person who was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and who is otherwise in compliance with section 20107a, shall be considered to have resolved his or her liability to the state in an administratively approved settlement under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, and shall by operation of law be granted contribution

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protection under 42 USC 9613(f)(2) and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person who has resolved his or her liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 20126 who has not resolved his or her liability.

(8) A person who has resolved his or her liability to the state for some or all of a response activity in an administrative or judicially approved consent order may seek contribution from any person who is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person who has resolved his or her liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20129a Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to petition for exemption from liability of owner or operator of facility after June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20130 Indemnification, hold harmless, or similar agreement or conveyance; subrogation.

Sec. 20130. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person who is liable under section 20126 to the state for evaluation or response activity costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20131 Limitations on liability; circumstances requiring total costs and damages.

Sec. 20131. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of response activities, fines, and exemplary damages, plus $50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a hazardous substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

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324.20132 Covenant not to sue generally; future enforcement action.

Sec. 20132. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by response activities, whether that action is on a facility or off a facility, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite response activity consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The response activity has been approved by the department.

(2) The state shall provide a person, to which the department is authorized under subsection (1) to issue a covenant not to sue for the portion of response activity described in subdivision (a) or (b), with a covenant not to sue with respect to future liability to the state under this part for a future release or threatened release, and a person provided the covenant not to sue is not liable to the state under section 20126 with respect to that release or threatened release at a future time. The portion of response activity to which the covenant not to sue pertains is either of the following:

(a) The transport and secure disposition off site of hazardous substances in a facility meeting the requirements of sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the department has required off-site disposition and has rejected proposed remedial action that is consistent with the rules promulgated under this part and that does not include off-site disposition.

(b) The treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of the substances, so that, in the judgment of the department, the substances no longer present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment; no by-product of the treatment or destruction process presents any significant hazard to the public health, safety, or welfare, or the environment; and all by-products are themselves treated, destroyed, or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment.

(3) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that remedial action has been completed in accordance with the requirements of this part at the facility that is the subject of the covenant.

(4) In assessing the appropriateness of a covenant not to sue granted under subsection (1) and any condition to be included in a covenant not to sue under subsection (1) or (2), the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(b) The nature of the risks remaining at the facility.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the response activity provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(e) The extent to which the technology used in the response activity is demonstrated to be effective.

(f) Whether the fund or other sources of funding would be available for any additional response activities that might eventually be necessary at the facility.

(g) Whether response activity will be carried out, in whole or in significant part, by persons who are liable under section 20126.

(5) A covenant not to sue under this section is subject to the satisfactory performance by a person of his or her obligations under the agreement concerned.

(6) Except for the portion of the remedial action that is subject to a covenant not to sue under subsection (2), a covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (3) that remedial action has been completed at the facility concerned.

(7) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (6) if other terms, conditions, or requirements of the agreement

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containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the facility.

(8) The state may include any provisions providing for future enforcement action under section 20119 or 20137 that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, welfare, and the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20133 Redevelopment or reuse of facility; covenant not to sue; conditions; demonstration; limitation; reservation of right to assert claims; irrevocable right of entry; monitoring compliance.

Sec. 20133. (1) The state may provide a person who proposes to redevelop or reuse a facility, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 20126 and 20107a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of response activity.

(c) The covenant not to sue would, when appropriate, expedite response activity consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the facility is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of response activities.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the facility.

(e) The proposal to redevelop or reuse the facility has economic development potential.

(2) A person who requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the facility in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person who is liable under section 20126 for a release or threat of release at the facility.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a facility and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the facility, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the facility to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting response activities approved by the department.

(c) Failure to comply with section 20107a.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing response activity related to the release or threat of release addressed by the covenant not to sue for the purposes listed in section 20117(3)(a) through (e) and for monitoring compliance with the covenant not to sue.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20134 Consent order; settlement.

Sec. 20134. (1) The department and the attorney general may enter into a consent order with a person who is liable under section 20126 or any group of persons who are liable under section 20126 to perform a response activity if the department and the attorney general determine that the persons who are liable under

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section 20126 will properly implement the response activity and that the consent order is in the public interest, will expedite effective response activity, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons who are liable under section 20126 of any portion of response activity at the facility. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other hazardous substances at the facility:

(*i*) The amount of the hazardous substances contributed by that person to the facility.

(*ii*) The toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the real property on or in which the facility is located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility.

(*iii*) The person did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a hazardous substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

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324.20134a Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to transfer of exempt status by state or local unit of government.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20135 Civil action; jurisdiction; conditions; notice; awarding costs and fees; rights not impaired; venue.

Sec. 20135. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility or threat of release from a facility, other than a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 20126 for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare, or the environment from a release or threatened release in relation to that facility.

(b) A person who is liable under section 20126 for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that facility.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare, or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the

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violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that an award is appropriate.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20135a Access to property; action by court.

Sec. 20135a. (1) A person who is liable under section 20126 or a lender that has a security interest in all or a portion of a facility may file a petition in the circuit court of the county in which the facility is located seeking access to the facility in order to conduct response activities approved by the department. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the property owner or operator for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the response activities.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the owner or operator of the property to which access is granted is not liable for either of the following:

(a) A release caused by the response activities for which access is granted unless the owner or operator is otherwise liable under section 20126.

(b) For conditions associated with the response activity that may present a threat to public health or safety.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20136 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to grant programs.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20137 Additional relief; failure of facility owner or operator to report hazardous substance release; civil fine; providing copy of complaint to attorney general; jurisdiction;

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judicial review; intervenor.

Sec. 20137. (1) Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to section 20126a.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response activity costs and damages.

(e) A civil fine of not more than $1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than $10,000.00 for each day of violation of this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part.

(g) A civil fine of not more than $25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.

(h) Enforcement of an administrative order issued pursuant to section 20119.

(i) Enforcement of information gathering and entry authority pursuant to section 20117.

(j) Enforcement of the reporting requirements under section 20114.

(k) Any other relief necessary for the enforcement of this part.

(2) An owner or operator of a facility from which a hazardous substance is released that is determined to be reportable under section 20114(1)(b)(*i*), other than a permitted release, who fails to notify the department within 24 hours after obtaining knowledge of the release or who submits in such notification any information that the person knows to be false or misleading, is subject to a civil fine of not more than $25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good-faith efforts by the violator to comply with this subsection.

(3) A person who is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to section 20120a(1)(a) or (b), as appropriate for the use of the property, is subject to a civil fine as provided in this part unless a fine or penalty has already been imposed for the release under another part of this act. However, a civil fine shall not be imposed under this subsection against a person who made a good-faith effort to prevent the release and to comply with the provisions of this part. This subsection does not apply to a release from an underground storage tank system as defined in part 213.

(4) If an action is brought under this part by a plaintiff other than the attorney general, the plaintiff shall, at the time of filing, provide a copy of the complaint to the attorney general.

(5) Except as otherwise provided in this part, an action brought under this part may be brought in the circuit court for the county of Ingham, in the county in which the defendant resides, has a place of business, or in which the registered office of a defendant corporation is located, or in the county where the release occurred.

(6) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following:

(a) An action to recover response costs, damages, or for contribution.

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order.

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement.

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department, if the action is filed after the completion of the response activity.

(e) An action by the state pursuant to section 20126a(6) to compel response activity.

(7) In any judicial action under this part, judicial review of any issues concerning the selection or adequacy of a response activity taken, ordered, or agreed to by the state are limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the

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action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

(8) In an action commenced under this part, any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the court finds the person's interest is adequately represented by an existing party.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20138 Unpaid costs and damages as lien on facility; priority; commencement and sufficiency of lien; petition; notice of hearing; increased value as lien; perfection, duration, and release of lien; document stating completion of response activities.

Sec. 20138. (1) All unpaid costs and damages for which a person is liable under section 20126 constitute a lien in favor of the state upon a facility that has been the subject of response activity by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for response activity at the facility for which the person is responsible.

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of the state in recovering response costs at a facility, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the facility subject to response activity that takes priority over all other liens and encumbrances that are or have been recorded on the facility.

(b) A lien upon real or personal property or rights to real or personal property, other than the facility, owned by the person described in subsection (1), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subdivision:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (2), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the real property subject to response activity. A lien shall not be granted under subsection (2) against the owner of the facility if the owner is not liable under section 20126.

(4) In addition to the lien provided in subsections (1) and (2), if the state incurs costs for response activity that increases the market value of real property that is the location of a release or threatened release, the increase in value caused by the state funded response activity, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(5) A lien provided in subsection (1), (2), or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (2) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

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(6) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in section 20140.

(7) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (5).

(8) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (7), has made a determination that the person liable under section 20126 has completed all of the response activity at the real property pursuant to the approved remedial action plan, the department shall execute and file with the notice of release of lien a document stating that all response activities required in the approved remedial action plan have been completed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20139 Applicability of penalties; conduct constituting felony; penalties; jurisdiction; criminal liability for substantial endangerment to public health, safety, or welfare; determination; knowledge attributable to defendant; award; rules; "serious bodily injury" defined.

Sec. 20139. (1) The penalties provided in this section only apply to a release that occurs after July 1, 1991.

(2) A person who does any of the following is guilty of a felony and shall be fined not less than $2,500.00 or more than $25,000.00 for each violation:

(a) Knowingly releases or causes a release contrary to applicable federal, state, or local requirements or contrary to any permit or license held by that person, if that person knew or should have known that the release could cause personal injury or property damage.

(b) Intentionally makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part.

(c) Intentionally renders inaccurate any monitoring device or record required to be maintained under this part.

(d) Misrepresents his or her qualifications under section 20114d or 20114e.

(3) In addition to a fine imposed under subsection (2), the court may impose an additional fine of not more than $25,000.00 for each day during which the release occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than $25,000.00 and not more than $50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction.

(4) Upon a finding by the court that the action of a criminal defendant prosecuted under this section poses or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsections (2) and (3), a fine of not less than $1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

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

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

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

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

(7) The department may pay an award of up to $10,000.00 to an individual that provides information leading to the arrest and conviction of a person for a violation of this section. The department shall promulgate rules that prescribe criteria for granting awards under this section. An award shall not be made under this section until rules are promulgated prescribing the criteria for making awards. Awards under this subsection may be paid from the Michigan environmental assurance fund, if enabling legislation creating the

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fund is enacted into law.

(8) As used in this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20140 Limitation periods; effect of subsection (3).

Sec. 20140. (1) Except as provided in subsections (2) and (3), the limitation period for filing actions under this part is as follows:

(a) For the recovery of response activity costs and natural resources damages pursuant to section 20126a(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of response activity costs pursuant to section 20126, at any time during the response activity, if commenced not later than 3 years after the date of completion of all response activity at the facility.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

(2) For recovery of natural resources damages that accrued prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

(3) For recovery of response activity costs that were incurred prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

(4) Subsection (3) is curative and intended to clarify the original intent of the legislature and applies retroactively.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2000, Act 254, Imd. Eff. June 29, 2000.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20141 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to citizens review board.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20142 Compliance as bar to certain claims; exceptions.

Sec. 20142. (1) Except as provided in section 20126a(5), a person who has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of response activities under part 17, part 31, or common law.

(2) This section does not bar any of the following:

(a) Tort claims unrelated to performance of response activities.

(b) Tort claims for damages which result from response activities.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 20107a.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

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VOLUNTEER IMMUNITY

324.20301 Definitions.

Sec. 20301. As used in this part:

(a) "Hazardous material" means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment.

(b) "Remedial action" means an activity to protect the public health, safety, welfare, or the environment and includes, but is not limited to, cleanup, removal, containment, or isolation of spills.

(c) "Spill" means any leaking, pumping, pouring, emptying, emitting, discharging, escaping, leaching, or disposing of a hazardous material in a quantity which is or may become injurious to the public health, safety, welfare, or to the environment.

(d) "Volunteer" means an individual who is designated as a volunteer by the public entity designated by the governor and is acting solely on behalf of that entity without remuneration beyond reimbursement for out-of-pocket expenses in connection with the assistance.

(e) "Waters of the state" means all groundwaters, lakes, rivers, streams, and other watercourses including the Great Lakes and their connecting waterways within the jurisdiction of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.20302 Hazardous material spills; immunity of volunteers from civil suits; effect of gross negligence or willful misconduct.

Sec. 20302. (1) A volunteer who assists in remedial actions associated with a spill of a hazardous material into the waters of the state following a declaration by the governor pursuant to section 3 of the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being section 30.403 of the Michigan Compiled Laws, that the spill has caused a state of disaster is not liable in a civil action for damages resulting from an act or omission arising out of and in the course of the volunteer's good faith rendering of that assistance.

(2) Subsection (1) does not apply to a volunteer whose act or omission was the result of the volunteer's gross negligence or willful misconduct.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 205

324.20501-324.20507 Repealed. 2010, Act 159, Imd. Eff. Sept. 17, 2010.

Compiler's note: The repealed sections pertained to laboratory data quality recognition program.

Popular name: Act 451

Popular name: NREPA

324.20509 Repealed. 2010, Act 159, Eff. Jan. 16, 2011.

Compiler's note: The repealed section pertained to the laboratory data quality program fund.

324.20511-324.20519 Repealed. 2010, Act 159, Imd. Eff. Sept. 17, 2010.

Compiler's note: The repealed sections pertained to laboratory data quality recognition program and the laboratory data quality assurance advisory council.

Popular name: Act 451

Popular name: NREPA

CHAPTER 8

UNDERGROUND STORAGE TANKS

PART 211

UNDERGROUND STORAGE TANK REGULATIONS

****** 324.21101 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

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324.21101 Definitions; applicability of certain authority.

Sec. 21101. As used in this part:

(a) "Department" means the department of natural resources, underground storage tank division.

(b) "Fund" means the underground storage tank regulatory enforcement fund created in section 21104.

(c) "Local unit of government" means a municipality, county, or governmental authority or any combination of municipalities, counties, or governmental authorities.

(d) "Natural gas" means natural gas, synthetic gas, and manufactured gas.

(e) "Operator" means a person who is presently, or was at the time of a release, in control of or responsible for the operation of an underground storage tank system.

(f) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(g) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances, and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(h) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subparagraphs (*i*) to (*xvi*).

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(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system with a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21102 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21102 Underground storage tank system; registration or renewal of registration; notification of change; indication of materials stored; tests; forwarding copy of registration or notification of change to local unit of government; rules; exemption; notification of closure or removal.

Sec. 21102. (1) A person that is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an underground storage tank closed prior to January 1, 1974 in compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the rules promulgated under that act, is exempt from the registration requirements of this section.

(2) A person that is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) Except as otherwise provided in subsections (4) and (5), a person that is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 21103 or of the removal of an underground storage tank system from service.

(4) A person that is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(5) Except as otherwise provided in section 21103(2), a person that is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(6) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of a registration or notification of change under this section to the local unit of government where the underground storage tank system is located.

(7) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(8) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank

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system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2016, Act 465, Eff. Mar. 29, 2017.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

324.21102a Installation of underground storage tanks; prohibited conditions.

Sec. 21102a. (1) Except as provided in subsection (2), a person shall not install an underground storage tank that meets any of the following conditions:

(a) Is within 2,000 feet of an existing type I community or type IIa noncommunity public water well.

(b) Is within 800 feet of an existing type IIb or type III noncommunity public water well.

(c) Is within 300 feet of any other type of well not described in subdivision (a) or (b).

(2) A person that wishes to install an underground storage tank that does not meet the conditions described under subsection (1) may only replace an active underground storage tank if both of the following requirements are met:

(a) A professional engineer or qualified underground storage tank consultant certifies that a combination of the construction material of the underground storage tank and the leak detection used to monitor the underground storage tank is more likely to prevent and detect a release from the replacement underground storage tank than the existing underground storage tank.

(b) The facility where the active, existing underground storage tank is located is in compliance with this part and the rules promulgated under this part.

(3) As used in this section:

(a) "Professional engineer" means that term as defined in section 2001 of the occupational code, 1980 PA 299, MCL 339.2001.

(b) "Qualified underground storage tank consultant" means an individual who meets the requirements described under section 21325.

History: Add. 2022, Act 160, Imd. Eff. July 19, 2022.

Popular name: Act 451

Popular name: NREPA

****** 324.21103 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21103 Registration forms; suspected or confirmed release from system; notice; supplementary information.

Sec. 21103. (1) The registration required by section 21102(1) and (2) shall be provided either:

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a.

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act.

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or operator of the underground storage tank system shall notify the department within 24 hours and if requested by the department shall file the following supplementary information if known:

(a) The owner of the property where the underground storage tank system is located.

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed.

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to the underground storage tank system and the resulting findings.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

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Popular name: Act 451

Popular name: NREPA

****** 324.21104 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21104 Underground storage tank regulatory enforcement fund; creation; receipts; investment; crediting interest and earnings; reversion to general fund prohibited; use of money; notice of balance in fund.

Sec. 21104. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used by the department only to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, pertaining to the delivery and dispensing operations of regulated substances.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2016, Act 465, Eff. Mar. 29, 2017.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21105 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21105 Collection and evaluation of information; report.

Sec. 21105. The department shall collect and evaluate the information obtained through the registration of underground storage tanks required by section 21102. Not later than September 30, 1987, the department shall provide to the legislature a report containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21106 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21106 Rules.

Sec. 21106. The department shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 29.2101 et seq. of the Michigan Administrative Code.

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****** 324.21107 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21107 Maintaining pollution liability insurance; limits.

Sec. 21107. A person who installs or removes underground storage tank systems shall maintain pollution liability insurance with limits of not less than $1,000,000.00 per occurrence.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21108 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21108 Enforcement of part and rules.

Sec. 21108. (1) The department shall enforce this part and the rules promulgated under this part.

(2) The department may delegate the authority to enforce this part and the rules promulgated under this part to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this part, the rules promulgated under this part, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this part and the rules promulgated under this part as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this part or rules promulgated under this part.

(4) If the department elects to delegate enforcement authority under subsection (2), the department shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this part and the rules promulgated under this part.

(6) The department or a certified underground storage tank system inspector within his or her jurisdiction, at the discretion of the department or inspector and without a complaint and without restraint or liability for trespass, may, at an hour reasonable under the circumstances involved, enter into and upon real property including a building or premises where regulated substances may be stored for the purpose of inspecting and examining the property, buildings, or premises, and their occupancies and contents to determine compliance with this part and the rules promulgated under this part.

(7) The department shall enhance its audit and inspection program to monitor the installation and operation of new underground storage tank systems or components to ensure that equipment meets minimum quality standards, that the installation is done properly, and that the monitoring systems are properly utilized.

(8) The department shall conduct a study regarding the causes of underground storage tank leaks and prepare a report making recommendations regarding upgrading underground storage tank system standards, establishing timetables for the replacement of equipment, and instituting any other practices or procedures which will minimize releases of regulated substances into the environment. The report shall be submitted by July 1, 1995 to the members of the legislature who are members of committees dealing with natural resource issues.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

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****** 324.21109 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21109 Additional safeguards; resolution; enactment or enforcement of certain ordinances prohibited.

Sec. 21109. (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21110 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21110 Prohibited conduct.

Sec. 21110. (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this part.

(2) A person shall not repair or test an underground storage tank system that is not registered under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21111 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21111 Deferments.

Sec. 21111. The following are deferred from regulation under this part until such time as the department determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems.

(e) Underground storage tank systems with field-constructed tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

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****** 324.21112 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21112 Violation; misdemeanor; penalty; civil fine.

Sec. 21112. (1) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(2) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is subject to a civil fine of not more than $5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this part and the rules promulgated under this part.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

****** 324.21113 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21113 Repeal of part.

Sec. 21113. This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546(3).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of powers and duties of the department of environmental quality under the aboveground storage tank program from department of environmental quality to bureau of fire services, department of licensing and regulatory affairs, see E.R.O. No. 2012-7, compiled at MCL 29.462.

Popular name: Act 451

Popular name: NREPA

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PART 213
LEAKING UNDERGROUND STORAGE TANKS

324.21301 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to meanings of words and phrases.

Popular name: Act 451

Popular name: NREPA

324.21301a Purpose and applicability of part.

Sec. 21301a. (1) This part is intended to provide remedies using a process and procedures separate and distinct from the process, procedures, and criteria established under part 201 for sites posing a threat to the public health, safety, or welfare, or to the environment, as a result of releases from underground storage tank systems, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, 1988 PA 478, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in this part only apply to violations of this part that occur after April 13, 1995.

(2) The liability provisions that are provided for in this part shall be given retroactive application.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21301b Actions governed by provisions in part; changes in corrective action; corrective

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actions by nonliable parties.

Sec. 21301b. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995.

(b) An administrative order that was issued on or before May 1, 1995.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(d) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(2) Notwithstanding subsection (1), upon request of a person who has not completed implementing corrective actions under this part, the department shall approve changes in corrective action to be consistent with sections 21304a, 21308a, 21309a, and 21311a.

(3) Notwithstanding any other provision of this part, a person that is not liable under this part may conduct corrective actions under this part in the same manner as a person that is liable under this part. Notwithstanding any other provision of this part, the department shall provide responses to nonliable parties conducting corrective actions for reports submitted under this part in the same manner that it provides responses to persons that are liable under this part.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21302 Definitions; A to M.

Sec. 21302. As used in this part:

(a) "Air" means ambient or indoor air at the point of exposure.

(b) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312.

(c) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a site. However, for purposes of a baseline environmental assessment, the all appropriate inquiry under 40 CFR 312.20(a) may be conducted within 45 days after the date of acquisition of a property and the components of an all appropriate inquiry under 40 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated within 45 days after the date of acquisition of a property.

(d) "Biota" means the plant and animal life in an area affected by a corrective action plan.

(e) "Capillary fringe" means the portion of the aquifer above an unconfined saturated zone in which groundwater is drawn upward by capillary force and can include the presence of LNAPL.

(f) "Consultant" means a person that meets the requirements set forth in section 21325.

(g) "Contamination" or "contaminated" means the presence of a regulated substance in soil, surface water, or groundwater or air that has been released from an underground storage tank system at a concentration exceeding the level set forth in the RCBA tier I screening levels established under section 20120a(1)(a) and (b).

(h) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of regulated substances released into the environment from an underground storage tank system that is necessary under this part to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources.

(i) "DNAPL" means a dense nonaqueous-phase liquid with a specific gravity greater than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. DNAPL encompasses all potential occurrences of DNAPL.

(j) "Grab sample" means a single sample or measurement taken at a specific time or over as short a period as feasible.

(k) "Groundwater" means water below the land surface in the zone of saturation and capillary fringe.

(*l*) "Groundwater not in an aquifer" means the saturated formation below the land surface that yields groundwater at an insignificant rate considering the local and regional hydrogeology and is not likely in hydraulic communication with groundwater in an aquifer. This includes water trapped or isolated in fill material in an underground storage tank or equivalent basin.

(m) "Heating oil" means petroleum that is no. 1, no. 2, no. 4-light, no. 4-heavy, no. 5-light, no. 5-heavy, and no. 6 technical grades of fuel oil; other residual fuel oils including navy special fuel oil and bunker c; and

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other fuels when used as substitutes for 1 of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(n) "LNAPL" means a light nonaqueous-phase liquid having a specific gravity less than 1 and composed of 1 or more organic compounds that are immiscible or sparingly soluble in water, and the term encompasses all potential occurrences of LNAPL.

(o) "Local unit of government" means a city, village, township, county, fire department, or local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(p) "Low flow sampling" means minimal drawdown groundwater sampling procedures as described in the United States environmental protection agency, office of research and development, office of solid waste and emergency response, EPA/540/S-95/504, December, 1995, EPA groundwater issue.

(q) "Migrating NAPL" means NAPL that is observed to spread or expand laterally or vertically or otherwise result in an increased volume of the NAPL extent, usually indicated by time series data or observation. Migrating NAPL does not include NAPL that appears in a well within the historical extent of the NAPL due to a fluctuating water table.

(r) "Mobile NAPL" means NAPL that exceeds residual saturation, and includes migrating NAPL, but not all mobile NAPL is migrating NAPL.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21303 Definitions; N to V.

Sec. 21303. As used in this part:

(a) "NAPL" means a nonaqueous-phase liquid or a nonaqueous-phase liquid solution composed of 1 or more organic compounds that are immiscible or sparingly soluble in water. NAPL includes both DNAPL and LNAPL.

(b) "Operator" means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system.

(c) "Owner" means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is or was located including, but not limited to, a trust, vendor, vendee, lessor, or lessee.

(d) "Property" means real estate that is contaminated by a release from an underground storage tank system.

(e) "Public highway" means a road or highway under the jurisdiction of the state transportation department, a county road commission, or a local unit of government.

(f) "Qualified underground storage tank consultant" means a person who meets the requirements established in section 21325.

(g) "RBCA" means the American Society for Testing and Materials (ASTM) document entitled standard guide for risk-based corrective action applied at petroleum release sites, designation E 1739-95 (reapproved 2010) E1; standard guide for risk-based corrective action designation E 2081-00 (reapproved 2010) E1; and standard guide for development of conceptual site models and remediation strategies for light nonaqueous-phase liquids released to the subsurface designation E 2531-06 E1, all of which are hereby incorporated by reference.

(h) "Regulated substance" means any of the following:

(*i*) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 USC 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e.

(*ii*) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(*iii*) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat 1685, 42 USC 7412.

(i) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching from an

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underground storage tank system into groundwater, surface water, or subsurface soils.

(j) "Residual NAPL saturation" means the range of NAPL saturations greater than zero NAPL saturation up to the NAPL saturation at which NAPL capillary pressure equals pore entry pressure and includes the maximum NAPL saturation, below which NAPL is discontinuous and immobile under the applied gradient.

(k) "Risk-based screening level" or "RBSL" means the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201.

(*l*) "Saturated zone" means a soil area where the soil pores are filled with groundwater and can include the presence of LNAPL.

(m) "Site" means a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed which satisfies the applicable RBSL or SSTL.

(n) "Surface water" means all of the following, but does not include groundwater or an enclosed sewer, other utility line, storm water retention basin, or drainage ditch:

(*i*) The Great Lakes and their connecting waters.

(*ii*) All inland lakes.

(*iii*) Rivers.

(*iv*) Streams.

(*v*) Impoundments.

(o) "Site-specific target level" or "SSTL" means an RBCA risk-based remedial action target level for contamination developed for a site under RBCA tier II and tier III evaluations.

(p) "Threat of release" or "threatened release" means any circumstance that may reasonably be anticipated to cause a release. Threat of release or threatened release does not include the ownership or operation of an underground storage tank system if the underground storage tank system is operated in accordance with part 211 and rules promulgated under that part.

(q) "Tier I", "tier II", and "tier III" mean those terms as they are used in RBCA.

(r) "Underground storage tank system" means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(*i*) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(*ii*) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(*iii*) A septic tank.

(*iv*) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 USC Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 USC Appx 2001 to 2015.

(*v*) A surface impoundment, pit, pond, or lagoon.

(*vi*) A storm water or wastewater collection system.

(*vii*) A flow-through process tank.

(*viii*) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(*ix*) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(*x*) Any pipes connected to a tank that is described in subdivisions (*i*) to (*ix*).

(*xi*) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 USC 6921 to 6939e, or a mixture of such hazardous waste and other regulated substances.

(*xii*) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 USC 1317 and 1342.

(*xiii*) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(*xiv*) An underground storage tank system that has a capacity of 110 gallons or less.

(*xv*) An underground storage tank system that contains a de minimis concentration of regulated substances.

(*xvi*) An emergency spill or overflow containment underground storage tank system that is expeditiously

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emptied after use.

(s) "Vadose zone" means the soil between the land surface and the top of the capillary fringe. Vadose zone is also known as an unsaturated zone or a zone of aeration.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 111, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21304 Liability of owner or operator not limited or removed; owner or operator as or employing consultant.

Sec. 21304. (1) Actions taken by a consultant pursuant to this part do not limit or remove the liability of an owner or operator that is liable under section 21323a except as specifically provided for in this part.

(2) Notwithstanding any other provision in this part, if an owner or operator that is liable under section 21323a is a consultant or employs a consultant, this part does not require the owner or operator that is liable under section 21323a to retain an outside consultant to perform the responsibilities required under this part. Those responsibilities may be performed by an owner or operator that is liable under section 21323a who is a consultant or by a consultant employed by the owner or operator that is liable under section 21323a.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304a Corrective action activities; conduct; manner; use of tier I risk-based screening levels for regulated substances; carcinogenic risk from regulated substance; applicable RBSL or SSTL for groundwater differing from certain standards; corrective action by owner or operator of underground storage tank.

Sec. 21304a. (1) Corrective action activities undertaken pursuant to this part shall be conducted in accordance with the process outlined in RBCA in a manner that is protective of the public health, safety, and welfare, and the environment. Corrective action activities that involve a discharge into air or groundwater as defined in section 21302 or surface water as defined in section 21303 shall be consistent with parts 31 and 55.

(2) The tier I risk-based screening levels for regulated substances are the unrestricted residential and nonresidential generic cleanup criteria developed by the department pursuant to part 201 and shall be utilized in accordance with the process outlined in RBCA as screening levels only.

(3) If a regulated substance poses a carcinogenic risk to humans, the tier I RBSLs derived for cancer risk shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the exposure assumptions and pathways established by the process in RBCA. If a regulated substance poses a risk of both cancer and an adverse health effect other than cancer, cleanup criteria shall be derived for cancer and each adverse health effect.

(4) If the applicable RBSL or SSTL for groundwater differs from either (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the SSTL shall be the more stringent of (a) or (b) unless the person that undertakes corrective actions under this part determines that compliance with (a) or (b) is not necessary because the use of the groundwater is reliably restricted pursuant to section 21310a.

(5) Corrective action at sites where a release has occurred or a threat of release exists from an underground storage tank system is regulated exclusively under this part. Notwithstanding any other provision of this part, an owner or operator that is liable under section 21323a may choose, in its sole discretion, to fulfill its corrective action obligations pursuant to part 201 in lieu of corrective actions pursuant to this part in either of the following situations:

(a) If a release or threat of release at a site is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to perform response activities pursuant to part 201 in lieu of corrective actions pursuant to this part.

(b) If a release from an underground storage tank system involves venting groundwater, the owner or operator that is liable under section 21323a may choose, in its sole discretion, to follow the procedures set forth in section 20120e in performing corrective action under this part related to venting groundwater to address the venting groundwater pursuant to part 201 in lieu of corrective actions addressing the venting

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groundwater pursuant to this part.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304b Removal or relocation of soil.

Sec. 21304b. (1) A person shall not remove soil, or allow soil to be removed, from a site to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation under parts 111 and 115.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of regulated substances in the soil exceed the tier I RBSLs established pursuant to section 21304a that apply to the location to which the soil will be moved or relocated, except if the soil is to be removed from the site for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restriction that would be required for the application of a criterion pursuant to section 21304a shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of regulated substances present at the location to which the contaminated soil will be removed. Contaminated soil shall not be moved to a location that is not a site unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) A person shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a corrective action plan was approved unless that person provides assurances that the same degree of control required for application of the criteria of section 21304a is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing corrective actions or utility construction if the corrective actions or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being relocated in a manner not addressed by this section, the person that owns or operates the site from which soil is being moved shall notify the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be removed.

(d) A summary of information or data on which the person is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 21310a, to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(6) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(7) This section does not apply to soil that is designated as an inert material pursuant to section 11507.

History: Add. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21304c Duty of owner or operator of property; basis; liability for corrective action activity costs and natural resource damages; applicability of subsection (1)(a) to (f).

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated shall do all of the following with respect to regulated substances at the property:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking corrective action necessary to mitigate unacceptable exposure to regulated substances, mitigate fire and explosion hazards due to regulated substances, and allow for the intended use of the property in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and

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the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resources use restrictions established or relied on in connection with the corrective action activities at the property.

(f) Not impede the effectiveness or integrity of any corrective action or land use or resource use restriction employed at the property in connection with corrective action activities.

(2) A person's obligations under this section shall be based upon the applicable RBSL or SSTL.

(3) A person that violates subsection (1) that is not otherwise liable under this part for the release at the property is liable for corrective action activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional corrective action activities unless the person is otherwise liable under this part for performance of additional corrective action activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform corrective action activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) and (f) does not apply to this state, a county road commission, or a local unit of government if it is not liable under section 21323a(3)(a), (b), (c), or (e) or to this state, a county road commission, or a local unit of government if it acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if this state or a local unit of government, unless exempt from liability under section 21323a(4)(b), acting as the owner or operator of property offers access to the property on a regular or continuous basis for a public purpose and invites the public to use the property for the public purpose, this state or the local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the public for the public purpose, and not the entire property. Public purpose includes, but is not limited to, activities such as a park, office building, or public works operation. Public purpose does not include a public highway or activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person that is exempt from liability under section 21323a(3)(c) or (d) except with regard to that person's activities at the property.

(7) Subsection (1)(a) to (f) applies to an owner or operator who is liable under section 21323a with respect to regulated substances present within a public highway above applicable RBSLs or SSTLs.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21304d Transfer of interest in real property in which notice required; certification of completed corrective action activity; disclosure.

Sec. 21304d. (1) If a person owns a parcel of real property and has knowledge or information or is on notice through a recorded instrument that the real property is a site, the person shall not transfer an interest in that real property unless the person provides written notice to the transferee that the real property is a site and of the general nature and extent of the release.

(2) A person that owns real property for which a notice required in subsection (1) has been recorded may, upon completion of all corrective action activities for the site as approved by the department, record with the register of deeds for the appropriate county a certification that all corrective action activity required in an approved final assessment report has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of corrective action that has been or is being implemented in compliance with section 21304a.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21305 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

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Compiler's note: The repealed section pertained to promulgation of administrative rules.

Popular name: Act 451

Popular name: NREPA

324.21306 Repealed. 1996, Act 116, Imd. Eff. Mar. 6, 1996.

Compiler's note: The repealed section pertained to de minimis spills, removal or disposal of contaminated soils, duties of consultants, and eligibility to receive funding.

Popular name: Act 451

Popular name: NREPA

324.21307 Report of release; initial response actions; duties of owner or operator liable under MCL 324.21323a.

Sec. 21307. (1) Upon confirmation of a release from an underground storage tank system, the owner or operator that is liable under section 21323a shall report the release to the department within 24 hours after discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator that is liable under section 21323a from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator that is liable under section 21323a shall immediately begin and expeditiously perform all of the following initial actions:

(a) Identify and mitigate immediate fire, explosion hazards, and acute vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Using the process outlined by RBCA regarding NAPL, take steps necessary and feasible under this part to address unacceptable immediate risks.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(3) Immediately following initiation of initial response actions under this section, the owner or operator that is liable under section 21323a shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional immediate fire and safety hazards posed by vapors or NAPL that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21307a Site closure report; activities requiring notification by owner or operator to department.

Sec. 21307a. (1) Following initiation of initial actions under section 21307, the owner or operator that is liable under section 21323a shall complete the requirements of this part and submit related reports or executive summaries detailed in this part to address the contamination at the site. At any time that sufficient corrective action has been undertaken to address contamination, the owner or operator that is liable under section 21323a shall complete and submit a site closure report pursuant to section 21312a and omit the remaining interim steps.

(2) In addition to the reporting requirements specified in this part, the owner or operator that is liable under section 21323a shall provide 48-hour notification to the department prior to initiating any of the following activities:

(a) Soil excavation.

(b) Well drilling, including monitoring well installation.

(c) Sampling of soil or groundwater.

(d) Construction of treatment systems.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

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Popular name: NREPA

324.21308 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to initial assessment of release.

Popular name: Act 451

Popular name: NREPA

324.21308a Initial assessment report; discovery of migrating or mobile NAPL; additional information; supporting documentation upon request.

Sec. 21308a. (1) Within 180 days after a release has been discovered, the owner or operator that is liable under section 21323a shall complete an initial assessment report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) Results of initial actions taken under section 21307(2).

(b) Site information and site characterization results. The following items shall be included as appropriate given the site conditions:

(*i*) The property address.

(*ii*) The name of the business, if applicable.

(*iii*) The name, address, and telephone number of a contact person for the owner or operator that is liable under section 21323a.

(*iv*) The time and date of release discovery.

(*v*) The time and date the release was reported to the department.

(*vi*) A site map that includes all of the following:

(A) The location of each underground storage tank in the leaking underground storage tank system.

(B) The location of any other known current or former underground storage tank system on the site.

(C) The location of fill ports, dispensers, and other pertinent system components for known current or former underground storage tank systems on the site.

(D) Soil and groundwater sample locations, if applicable.

(E) The locations of nearby buildings, roadways, paved areas, or other structures.

(*vii*) A description of how the release was discovered.

(*viii*) A list of regulated substances the underground storage tank system contained when the release occurred.

(*ix*) A list of the regulated substances the underground storage tank system contained in the past other than those listed in subparagraph (*viii*).

(*x*) The location of nearby surface waters and wetlands.

(*xi*) The location of nearby underground sewers and utility lines.

(*xii*) The component of the underground storage tank system from which the release occurred (e.g., piping, underground storage tank, overfill).

(*xiii*) Whether the underground storage tank system was emptied to prevent further release.

(*xiv*) A description of what other steps were taken to prevent further migration of the regulated substance into the soil or groundwater.

(*xv*) Whether toxic or explosive vapors or migrating or mobile NAPL was found and what steps were taken to evaluate those conditions and the current levels of toxic or explosive vapors or migrating or mobile NAPL in nearby structures.

(*xvi*) The extent to which all or part of the underground storage tank system or soil, or both, was removed.

(*xvii*) Data from analytical testing of soil and groundwater samples.

(*xviii*) A description of the mobile or migrating NAPL investigation and evaluation conducted pursuant to section 21307(2)(c) and, if the evaluation of NAPL concludes that NAPL is recoverable and removal is necessary under this part to abate an unacceptable risk pursuant to the provisions outlined in RBCA, a description of the removal, including all of the following:

(A) A description of the actions taken to remove any NAPL.

(B) The name of the person or persons responsible for implementing the NAPL removal measures.

(C) The estimated quantity, type, and thickness of NAPL observed or measured in wells, boreholes, and excavations.

(D) The type of NAPL recovery system used.

(E) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located.

(F) The type of treatment applied to, and the effluent quality expected from, any discharge.

(G) The steps that have been or are being taken to obtain necessary permits for any discharge.

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(H) The quantity and disposition of the recovered NAPL.

(*xix*) Identification of any other contamination on the site not resulting from the release and the source, if known.

(*xx*) An estimate of the horizontal and vertical extent of on-site and off-site soil contamination exceeding the applicable RBSL for tier I sites or the applicable SSTL for tier II or tier III sites.

(*xxi*) The depth to groundwater.

(*xxii*) An identification of potential migration and exposure pathways and receptors.

(*xxiii*) An estimate of the amount of soil in the vadose zone that is contaminated.

(*xxiv*) If the on-site assessment indicates that off-site soil or groundwater may be affected, report the steps that have been taken or will be taken including an implementation schedule to expeditiously secure access to off-site properties to complete the delineation of the extent of the release if the contamination exceeds the applicable RBSL or the applicable SSTL.

(*xxv*) Groundwater flow rate and direction.

(*xxvi*) Laboratory analytical data collected. The owner or operator may elect to obtain groundwater samples utilizing a grab sample technique for initial assessment and monitoring purposes that do not represent initial delineation of the limit of contamination or closure verification sampling.

(*xxvii*) The vertical distribution of contaminants that exceed the applicable RBSL or applicable SSTL.

(c) Site classification under section 21314a.

(d) Tier I or tier II evaluation according to the RBCA process.

(e) A work plan, including an implementation schedule for conducting a final assessment report under section 21311a, to determine the vertical and horizontal extent of the contamination that exceeds the applicable RBSL or applicable SSTL as necessary for preparation of the corrective action plan.

(2) If migrating or mobile NAPL is discovered at a site after the submittal of an initial assessment report pursuant to subsection (1), the owner or operator that is liable under section 21323a shall do both of the following:

(a) Perform initial actions identified in section 21307(2)(c).

(b) Submit to the department an amendment to the initial assessment report within 30 days of discovery of the migrating or mobile NAPL that describes response actions taken as a result of the migrating or mobile NAPL discovery.

(3) The department shall not require any additional information beyond that required under this section to be included in an initial assessment report. The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the initial assessment report upon request by the department.

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History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21309 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring report of corrective action and proposed schedule and removal and disposal of contaminated soil.

Popular name: Act 451

Popular name: NREPA

324.21309a Corrective action plan.

Sec. 21309a. (1) If initial actions under section 21307 have not resulted in completion of corrective action, an owner or operator that is liable under section 21323a shall prepare a corrective action plan to address contamination at the site. Corrective action plans submitted as part of a final assessment report shall use the process described in RBCA and shall be based upon the site information and characterization results of the initial assessment report.

(2) A corrective action plan shall include all of the following:

(a) A description of the corrective action to be implemented, including an explanation of how that action will meet the requirements of the tier I, II, or III evaluation in the RBCA process. The corrective action plan shall also include an analysis of the selection of indicator parameters to be used in evaluating the implementation of the corrective action plan, if indicator parameters are to be used. The corrective action plan shall include an analysis of the recoverability of the NAPL and whether the NAPL is mobile or migrating, and a description of ambient air quality monitoring activities to be undertaken during the corrective action if such activities are appropriate.

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(b) An operation and maintenance plan if any element of the corrective action requires operation and maintenance. The operation and maintenance plan shall include information that describes the proposed operation and maintenance actions.

(c) A monitoring plan if monitoring of environmental media or site activities or both is required to confirm the effectiveness and integrity of the remedy. The monitoring plan shall include all of the following:

(*i*) Location of monitoring points.

(*ii*) Environmental media to be monitored, including, but not limited to, soil, air, water, or biota.

(*iii*) Monitoring schedule.

(*iv*) Monitoring methodology, including sample collection procedures such as grab sampling procedures for monitoring groundwater, among other procedures.

(*v*) Substances to be monitored, including an explanation of the selection of any indicator parameters to be used.

(*vi*) Laboratory methodology, including the name of the laboratory responsible for analysis of monitoring samples, method detection limits, and practical quantitation levels. Raw data used to determine method detection limits shall be made available to the department on request.

(*vii*) Quality control/quality assurance plan.

(*viii*) Data presentation and evaluation plan.

(*ix*) How the monitoring data will be used to demonstrate effectiveness of corrective action activities.

(*x*) Other elements required by the department to determine the adequacy of the monitoring plan. Department requests for information pursuant to this subparagraph shall be limited to factors not adequately addressed by information required under subparagraphs (*i*) through (*ix*) and shall be accompanied by an explanation of the need for the additional information.

(d) An explanation of any land use or resource use restrictions, if the restrictions are required pursuant to section 21310a, including how those restrictions will be effective in preventing or controlling unacceptable exposures.

(e) A schedule for implementation of the corrective action.

(f) If the corrective action plan includes the operation of a mechanical soil or groundwater remediation system, or both, a financial assurance mechanism to pay for monitoring, operation, and maintenance necessary to assure the effectiveness and integrity of the corrective action remediation system.

(g) If provisions for operation and maintenance, monitoring, or financial assurance are included in the corrective action plan, and those provisions are not complied with, the corrective action plan is void from the time of lapse or violation until the lapse or violation is corrected.

(3) If a corrective action plan prepared under this section does not result in an unrestricted use of the property, the owner or operator that is liable under section 21323a shall provide notice to the public by means designed to reach those members of the public directly impacted by the release above a residential RBSL and the proposed corrective action. The notice shall include the name, address, and telephone number of a contact person. A copy of the notice and proof of providing the notice shall be submitted to the department. The department shall ensure that site release information and corrective action plans that do not result in an unrestricted use of property are made available to the public for inspection upon request.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21310 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to conditions requiring soil feasibility analysis and soil remedial corrective action plan.

Popular name: Act 451

Popular name: NREPA

324.21310a Notice of corrective action; institutional controls; restrictive covenants; alternative mechanisms; notice of land use restrictions.

Sec. 21310a. (1) If the corrective action activities at a site result in a final remedy that relies on a nonresidential RBSL or an SSTL, institutional controls shall be implemented as provided in this subsection. A notice of corrective action shall be recorded with the register of deeds for the county in which the site is located prior to submittal of a closure report under section 21312a. A notice shall be filed under this subsection only by the person that owns the property or with the express written permission of the person that owns the property. A notice of corrective action recorded under this subsection shall state the land use that

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was the basis of the corrective action. The notice shall state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the department shall be contacted regarding any proposed change in the land use. Additional requirements for monitoring or operation and maintenance shall not apply if contamination levels do not exceed the levels established in the tier I evaluation.

(2) If corrective action activities at a site rely on institutional controls other than as provided in subsection (1), the institutional controls shall be implemented as provided in this subsection. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the final assessment report pursuant to section 21311a, unless otherwise agreed to by the department. The restrictive covenant shall be filed only by the person that owns the property or with the express written permission of the person that owns the property. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions shall apply until regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The restrictive covenant shall include a survey and property description which define the areas addressed by the corrective action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant shall include provisions to accomplish all of the following:

(a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.

(b) Restrict activities that may result in exposure to regulated substances above levels established in the corrective action plan.

(c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the person that owns the property without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances described in subdivision (b).

(d) Grant to the department and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the corrective action plan, including, but not limited to, the right to take samples, inspect the operation of the corrective action measures, and inspect records.

(e) Allow this state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the corrective action plan.

(3) If the owner or operator that is liable under section 21323a determines that exposure to regulated substances may be restricted by a means other than a restrictive covenant in a manner that protects against exposure to regulated substances as defined by the RBSLs and SSTLs, the owner or operator that is liable under section 21323a may select a corrective action plan that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, any of the following:

(a) Compliance with an ordinance, state law, or rule that limits or prohibits the use of contaminated groundwater above the RBSLs or SSTLs identified in the corrective action plan, prohibits the raising of livestock, prohibits development in certain locations, or restricts property to certain uses. An ordinance under this subdivision shall be filed with the register of deeds on the affected property or shall be filed as an ordinance affecting multiple properties. An ordinance adopted after the effective date of the 2016 amendatory act that amended this section shall include a requirement that the local unit of government notify the department 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.

(b) A license or license agreement with the state transportation department if regulated substances are proposed to be left in place within a public highway owned or controlled by the state transportation department. The license or license agreement may include a financial mechanism in an amount calculated to reflect the reasonably estimated increased cost of any activity anticipated to be performed as described in the most recently adopted state 5-year program, that has the potential to disturb or expose the environmental contamination left in place within the public highway, including, but not limited to, 1 of the following:

(*i*) A bond executed by a surety authorized to do business in this state.

(*ii*) Insurance coverage, as evidenced by a proof of insurance.

(*iii*) Eligibility under the underground storage tank cleanup fund created in section 21506b.

(*iv*) A letter of credit.

(*v*) A corporate guarantee.

(*vi*) Self-insurance meeting a financial test approved by the state transportation department.

(c) If the state transportation department fails or refuses to grant a license or enter into a license agreement within 120 days after submission of a request to issue a license or enter into a license agreement, and for public highways owned or controlled by a county road commission or a local unit of government, reliance on

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the existence of a public highway, if the owner or operator that is liable under section 21323a does all of the following:

(*i*) Provides the department and the person that owns or operates the public highway with the following information related to the release and site:

(A) The site name, address, and facility identification number, and the name and contact information of the person relying on the alternative mechanism.

(B) Identification of the department district office with jurisdiction over the site.

(C) The name of the affected public highway and the nearest intersection.

(D) Identification of known or suspected contaminants.

(E) A statement that residual or mobile NAPL is or is not present at the affected public highway.

(F) The media affected, including depth of contaminated soil, depth of groundwater, and predominate groundwater flow direction.

(G) A scale drawing of the portion of the public highway subject to the alternate mechanism that depicts the area impacted by regulated substances and the location of utilities in the impacted area, including storm water systems and municipal separate storm water systems.

(H) Identification of all ownership and possessory or use property interests related to the public highway and whether they are affected by the contamination and whether they have received notification of the existing conditions as part of a corrective action plan or pursuant to the due care requirements under section 21304c.

(I) Identification of exposure risks from drinking water, direct contact, groundwater, soil excavation, or relocation.

(*ii*) Confirms that there are no current plans to relocate, vacate, or abandon the public highway.

(*iii*) Either provides a certification to the person that owns or operates the public highway that any contamination present as a result of the release from the underground storage tank system does not enter a storm sewer system or provides all information necessary to clearly identify the nature and extent of the contamination that enters or has the potential to enter the storm sewer system.

(4) A person that applies for a permit issued by a county road commission or a local unit of government to excavate, bore, drill, or perform any other intrusive activity within a public highway or right-of-way of a public highway shall identify whether the proposed work will take place within an area being relied upon as an alternative institutional control.

(5) Reliance on a public highway as an alternative mechanism under subsection (3)(b) does not affect an owner's or operator's liability under section 21323a or impose liability for corrective action or any other obligation on the state transportation department, a county road commission, or a local unit of government. Information provided pursuant to section 21310a(3) or (4) to the person that owns or operates a public highway does not create an estoppel, obligation, or liability on the person that owns or operates the public highway. The use of a public highway as an alternative mechanism does not limit or restrict any right or duty of the state transportation department, a county road commission, or a local unit of government to operate, maintain, repair, reconstruct, enlarge, relocate, abandon, vacate, or otherwise exercise its jurisdiction over any public highway or public highway right-of-way or any part thereof, or to permit any utilities or others to use any public highway or public highway right-of-way, or any part thereof.

(6) A person that implements corrective action activities that relies on land use restrictions shall provide notice of the land use restrictions that are part of the corrective action plan to the local unit of government in which the site is located within 30 days of filing of the land use restrictions with the county register of deeds.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21311 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to groundwater contamination and related reports.

Popular name: Act 451

Popular name: NREPA

324.21311a Final assessment report; information; providing supporting documentation upon request.

Sec. 21311a. (1) Within 365 days after a release has been discovered, an owner or operator that is liable under section 21323a shall complete a final assessment report that includes a corrective action plan developed

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under section 21309a and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A site assessment under the RBCA process, as necessary for determining site classification, and the extent of contamination relative to the applicable RBSLs or applicable SSTLs set forth in the corrective action plan.

(b) Tier II and tier III evaluation, as appropriate, under the RBCA process.

(c) A feasibility analysis. The following shall be included, as appropriate, given the site conditions and the applicable RBSL or applicable SSTL:

(*i*) On-site and off-site corrective action alternatives to remediate contaminated soil and groundwater for each cleanup type above the applicable RBSL or applicable SSTL, including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances if above the applicable RBSL or applicable SSTL.

(*ii*) An analysis of the recoverability and whether the NAPL is mobile or migrating.

(*iii*) The costs associated with each corrective action alternative including alternatives that permanently and significantly reduce the volume, toxicity, and mobility of the regulated substances that are above the applicable RBSL or applicable SSTL.

(*iv*) The effectiveness and feasibility of each corrective action alternative in meeting cleanup criteria that are above the applicable RBSL or applicable SSTL.

(*v*) The time necessary to implement and complete each corrective action alternative.

(*vi*) The preferred corrective action alternative based upon subparagraphs (*i*) through (*v*) and an implementation schedule for completion of the corrective action.

(d) A corrective action plan.

(e) A schedule for corrective action plan implementation.

(2) The owner or operator that is liable under section 21323a shall provide supporting documentation to the data and conclusions of the final assessment report upon request by the department. The department shall not require any additional information beyond that required under this section to be included in its final assessment report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21312 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to owner or operator of petroleum underground storage tank system, conditions, and corrective action.

Popular name: Act 451

Popular name: NREPA

324.21312a Closure report; information; confirmation of receipt by department; additional information.

Sec. 21312a. (1) Upon completion of the corrective action, the owner or operator that is liable under section 21323a shall complete a closure report and submit the report to the department on a form created pursuant to section 21316. The report shall include the following information:

(a) A summary of corrective action activities and documentation of the basis for concluding that corrective actions have been completed.

(b) Closure verification sampling results. Groundwater samples shall be collected utilizing a low-flow technique for closure verification or other method approved by the department.

(c) The person submitting a closure report shall include a signed affidavit attesting to the fact that the information upon which the closure report is based is complete and true to the best of that person's knowledge. The closure report shall also include a signed affidavit from the consultant who prepared the closure report attesting to the fact that the corrective actions detailed in the closure report comply with all applicable requirements under the applicable RBCA standard and that the information upon which the closure report is based is true and accurate to the best of that consultant's knowledge. In addition, the consultant shall attach a certificate of insurance demonstrating that the consultant has obtained at least all of the insurance required under section 21325.

(d) A person submitting a closure report shall maintain all documents and data prepared, acquired, or relied upon in connection with the closure report for not less than 6 years after the date on which the closure report was submitted. All documents and data required to be maintained under this section shall be made available to

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the department upon request.

(2) Within 60 days after receipt of a closure report under subsection (1), the department shall provide the owner or operator that is liable under section 21323a who submitted the closure report with a confirmation of the department's receipt of the report.

(3) The department shall not require any additional information beyond that required under this section to be included in a closure report.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 110, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21313 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to Type A or B cleanup.

Popular name: Act 451

Popular name: NREPA

324.21313a Failure to provide required submittal; penalty; computing period of time; extension of reporting deadline; contract provision for payment of fines; disposition of money collected; accrual of penalty.

Sec. 21313a. (1) Beginning on May 1, 2012, except as provided in subsection (6), and except for the confirmation provided in section 21312a(2), if a required submittal under section 21308a, 21311a, or 21312a(1) is not provided during the time required, the department may impose a penalty according to the following schedule:

(a) Not more than $100.00 per day for the first 7 days that the report is late.

(b) Not more than $500.00 per day for days 8 through 14 that the report is late.

(c) Not more than $1,000.00 per day for each day beyond day 14 that the report is late.

(2) Subject to subsection (6), for purposes of this section, in computing a period of time, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

(3) The department may, upon request, grant an extension to a reporting deadline provided in this part for good cause upon written request 15 days prior to the deadline.

(4) The owner or operator that is liable under section 21323a may by contract transfer the responsibility for paying fines under this section to a consultant retained by the owner or operator that is liable under section 21323a.

(5) The department shall forward all money collected pursuant to this section to the state treasurer for deposit in the emergency response fund created in section 21507.

(6) A penalty shall not begin to accrue under this section unless the department has first notified the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 112, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21314 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to retaining consultants.

Popular name: Act 451

Popular name: NREPA

324.21314a Classification of sites; corrective action; schedule.

Sec. 21314a. Sites shall be classified consistent with the process outlined in RBCA. If the department determines that no imminent risk to the public health, safety, or welfare or the environment exists at a site, the department may allow corrective action at these sites to be conducted on a schedule approved by the department.

History: Add. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

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324.21315 Audit; final assessment report or closure report.

Sec. 21315. (1) The department shall design and implement a program to selectively audit final assessment reports and closure reports submitted under this part. Upon receipt of a final assessment report or closure report, the department shall have 90 days to determine whether it will audit the report and inform the owner or operator that is liable under section 21323a of its intention to audit the submitted report within 7 days of the determination. If the department does not inform the owner or operator that is liable under section 21323a of its intention to audit the report within the required time limits, the department shall not audit the report. If the department determines that it will conduct an audit, the audit shall be completed within 180 days of the submission. The department shall inform the owner or operator that is liable under section 21323a in writing of the results of the audit within 14 days of the completion of the audit. All audits shall be conducted based on the standards, criteria, and procedures in effect at the time the final assessment report or closure report was submitted.

(2) The department shall have until January 27, 2013 to selectively audit final assessment reports or closure reports that were submitted on or after November 1, 2011 but not later than July 1, 2012.

(3) If the department conducts an audit, the results of the audit shall approve, approve with conditions, or deny the final assessment report or closure report or shall notify the owner or operator that is liable under section 21323a that the report does not contain sufficient information for the department to make a decision. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a report is approved with conditions, the department's approval shall state with specificity the conditions of the approval.

(4) If the department does not perform an audit and provide a written response in accordance with subsection (1) to a final assessment report or closure report submitted after June 15, 2012, the report is considered approved. An owner or operator that is liable under section 21323a may request written confirmation from the department that the report is considered approved under this section, and the department shall provide written confirmation within 14 days of the request.

(5) Any time frame required by this section may be extended by mutual agreement of the department and an owner or operator that is liable under section 21323a submitting a final assessment or closure report. An agreement extending a time frame shall be in writing.

(6) If an audit conducted under this section does not confirm that corrective action has been conducted in compliance with this part or does not confirm that applicable RBSLs or SSTLs have been met, the department shall include both of the following in the written response as required in subsection (1):

(a) The specific deficiencies and the section or sections of this part or rules applicable to this part or applicable RBCA standard that support the department's conclusion of noncompliance or that applicable RBSLs or SSTLs have not been met.

(b) Recommendations about corrective actions or documentation that may address the deficiencies identified under subsection (6)(a).

(7) If the department denies a final assessment report or closure report under this section, an owner or operator that is liable under section 21323a shall either revise and resubmit the report for approval, submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e and pay a fee in the amount of $300.00 in lieu of the $3,500.00 fee set forth in section 20114e(7), or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

(8) Notwithstanding section 21312a, after conducting an audit under this section, the department may issue a closure letter for any site that meets the applicable RBSL or SSTL pursuant to section 21304a.

(9) The department shall only audit a report required under this part 1 time. If the report does not contain sufficient information for the department to make a decision or the department's audit identifies deficiencies as described in subsection (6), the department may audit a revised report if sufficient information is provided for the department to make a decision or, to evaluate whether the identified deficiencies have been corrected, which shall be completed within 90 days of the revised report's submission to the department.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 1996, Act 116, Imd. Eff. Mar. 6, 1996;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21316 Use of forms.

Sec. 21316. The department may create and require the use of forms containing information specifically required under this part to assist in the reporting requirements provided in this part.

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History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21316a Delivery of regulated substance to underground storage tank as misdemeanor; penalty; notice of violation; placard; tampering with placard as misdemeanor; commencement of criminal actions.

Sec. 21316a. (1) A person shall not knowingly deliver a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2). A person that knowingly delivers a regulated substance to an underground storage tank system that has had a placard affixed to it under subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both. A person is considered to have knowledge if placards have been affixed to the underground storage tank system at the property and are visible at the time of the delivery.

(2) The department, upon discovery of the operation of an underground storage tank system in violation of this part, rules promulgated under this part, part 211, or rules promulgated under part 211, shall provide notification prohibiting delivery of regulated substances to the underground storage tank system by affixing a placard providing notice of the violation in plain view to the underground storage tank system. The department shall provide a minimum of 15 days' notice to the owner or operator that is liable under section 21323a prior to affixing a placard for violations of this part or rules promulgated under this part, unless the violation causes an imminent and substantial endangerment to the public health, safety, or welfare or the environment.

(3) A person shall not remove, deface, alter, or otherwise tamper with a placard affixed to an underground storage tank system pursuant to subsection (2). A person that knowingly removes, defaces, alters, or otherwise tampers with a placard affixed to an underground storage tank system pursuant to subsection (2) such that the notification is not discernible is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(4) The attorney general or, upon request by the department, county prosecuting attorney may commence criminal actions for violation of subsections (1) and (3) in the circuit court of the county where the violation occurred.

History: Add. 1995, Act 22, Eff. May 14, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21317-324.21319 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to type C cleanup, corrective action plans, and issuance of orders.

Popular name: Act 451

Popular name: NREPA

324.21319a Administrative order.

Sec. 21319a. (1) In accordance with this section, if the department determines that there may be an imminent risk to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require an owner or operator that is liable under section 21323a to take action as may be necessary to abate the danger or threat.

(2) The department may issue an administrative order to an owner or operator that is liable under section 21323a requiring that person to perform corrective actions relating to a site, or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to whom the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day during which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) For exemplary damages in an amount at least equal to the amount of any costs of corrective action incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

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(5) A person to whom an administrative order was issued under this section may appeal the administrative order pursuant to section 21333.

History: Add. 1995, Act 22, Eff. May 14, 1995;—Am. 2012, Act 112, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21320 Corrective actions by department.

Sec. 21320. If the department learns of a suspected or confirmed release from an underground storage tank system, the department may undertake corrective actions necessary to protect the public health, safety, or welfare or the environment at sites where persons that are liable are not financially viable or not readily identifiable, at sites where persons that are liable have not implemented corrective action necessary to abate an imminent and substantial endangerment, or to facilitate brownfield redevelopment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21321, 324.21322 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed sections pertained to failure to submit report within required time and liability imposed on owner or operator.

Popular name: Act 451

Popular name: NREPA

324.21323 Commencement of civil action by attorney general; return or retention of federal funds.

Sec. 21323. (1) The attorney general may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

(c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state.

(d) Declaratory judgment on liability for future corrective action costs.

(e) Subject to section 21313a, a civil fine of not more than $10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

(f) A civil fine of not more than $25,000.00 for each day of noncompliance with a corrective action order issued pursuant to this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order.

(g) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund.

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county where the release occurred or for the county where the defendant resides.

(3) The state may, when appropriate, return to the United States environmental protection agency any federal funds recovered under this part. The state may also retain any federal funds recovered under this part in a separate account for use in implementing this part, with such use subject to approval of the United States environmental protection agency.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995;—Am. 2012, Act 112, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323a Liability under part; burden of proof; compliance.

Sec. 21323a. (1) Notwithstanding any other provision of this act, and except as otherwise provided in this section and section 21323c, the following persons are liable under this part:

(a) The owner or operator if the owner or operator is responsible for an activity causing a release or threat of release.

(b) An owner or operator who became an owner or operator on or after March 6, 1996, unless the owner or

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operator complies with the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator provides a baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure.

(*iii*) If the owner or operator fails to meet the time frames in subparagraphs (*i*) and (*ii*), the owner or operator requests and receives from the department a determination that its failure to comply with the time frames was inconsequential.

(c) The estate or trust of a person described in subdivisions (a) and (b).

(2) Subject to section 21304c, an owner or operator who complies with subsection (1)(b) is not liable for contamination existing at the property on which an underground storage tank system is located at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination. Subsection (1)(b) does not alter a person's liability with regard to a subsequent release or threat of release from an underground storage tank system if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at property on which an underground storage tank system is located resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) This state, a county road commission, or a local unit of government if it acquired ownership or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, a transfer from a lender or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part; a county road commission or a local unit of government to which ownership or control of property is transferred by this state, by a county road commission, or by another local unit of government that is not liable under subsection (1); or this state, a county road commission, or a local unit of government if it acquired ownership or control of property by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) This state, a county road commission, or a local unit of government if it holds or acquires an easement interest in property, holds or acquires an interest in property by dedication in a plat, or by dedication pursuant to the public highways and private roads act, 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in property for a transportation or utility corridor, including sewers, pipes, and pipelines, or public rights-of-way.

(c) A person that holds an easement interest in property or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person that owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) This state, a county road commission, or a local unit of government if it leases property to a person and is not liable under this part for environmental contamination at the property.

(f) A person that acquires property as a result of the death of the prior owner or operator of the property, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(g) A person that did not know and had no reason to know that the property was contaminated. To establish that the person did not know and did not have a reason to know that the property was contaminated, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this section shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated by a regulated substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(h) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(i) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's regulated substance use unless the lessee is otherwise liable under this section.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) A lender that engages in or conducts a lawful marshaling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the property.

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(b) A person that owns or operates property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(c) A person that owns or operates property on which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person that is liable under this section.

(d) Any person for environmental contamination addressed in a closure report that is approved by the department or is considered approved under section 21315(4). Notwithstanding this subdivision, a person may be liable under this part for the following:

(*i*) A subsequent release not addressed in the closure report if the person is otherwise liable under this part for that release.

(*ii*) Environmental contamination that is not addressed in the closure report and for which the person is otherwise liable under this part.

(*iii*) If the closure report relies on land use or resource use restrictions, a person who desires to change those restrictions is responsible for any corrective action necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the closure report. However, if the closure report relies on an alternate mechanism as provided for in section 21310a and the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned, the owner or operator that is liable under section 21323a for the environmental contamination addressed in the closure report shall notify the department 30 days before the ordinance, state law, or rule is modified, lapses, or is revoked or the public highway is relocated, vacated, or abandoned. In such cases, the owner or operator is liable under this part for additional corrective action activities necessary to address any increased risk of exposure to the environmental contamination.

(*iv*) If the closure report relies on monitoring necessary to assure the effectiveness and integrity of the corrective action, an owner or operator that is liable under section 21323a for environmental contamination addressed in a closure report is liable under this part for additional corrective action activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the closure report.

(*v*) If the corrective actions that were the basis for the closure report fail to meet performance objectives that are identified in the closure report or section 21304a, an owner or operator that is liable under section 21323a for environmental contamination addressed in the closure report is liable under this part for corrective action necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the property is not liable under this part for costs or damages as a result of corrective action taken in response to a release or threat of release. For a lender, this subsection applies only to corrective action undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by this state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) An owner or operator who was in compliance with subsection (1)(b) prior to May 1, 2012 is considered to be in compliance with subsection (1)(b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21323b Joint and several liability; recovery of costs.

Sec. 21323b. (1) Except as provided in section 21323a(2), a person that is liable under section 21323a is jointly and severally liable for all of the following:

(a) All costs of corrective action lawfully incurred by the state relating to the selection and implementation of corrective action under this part.

(b) All costs of corrective action reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of corrective action recoverable under subsection (1) shall also include all costs of corrective action reasonably incurred by the state prior to the promulgation of rules relating to the selection and

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implementation of corrective action under this part. A person challenging the recovery of costs under this subsection has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section may include interest, attorney fees, witness fees, and the costs of litigation to the prevailing or substantially prevailing party. The interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake corrective action for a permitted release. Recovery by any person for corrective action costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a regulated substance or for corrective action or the costs of corrective action.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare or to the environment because of an actual or threatened release from an underground storage tank system, the attorney general may bring an action against any person that is liable under section 21323a or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

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324.21323c Liability of corrective action contractor; "corrective action contract" and "corrective action contractor" defined; liability if act or failure to act consistent with national contingency plan or directed by federal on-scene coordinator or director; damages; definitions; burden of proof.

Sec. 21323c. (1) Except as otherwise provided in this section, a person that is a corrective action contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the corrective action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a corrective action contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a corrective action while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the corrective action contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Corrective action contract" means a contract or agreement entered into by a corrective action contractor with 1 or more of the following:

(*i*) The department.

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(*ii*) The department of community health.

(*iii*) A person that is arranging for corrective action under this part.

(b) "Corrective action contractor" means all of the following:

(*i*) A person that enters into a corrective action contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person that is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a corrective action.

(*iii*) A qualified underground storage tank consultant.

(6) Notwithstanding any other provision of law, a person is not liable for corrective action costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person that is liable under section 21323a that is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person that is liable under section 21323a and that is a responsible party is liable for any corrective action costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan or the official designated by the lead agency to coordinate and direct corrective action under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, 33 USC 1321.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323d Basis for division of harm; action for contribution; reallocation of uncollectible amount; effect of consent order.

Sec. 21323d. (1) If 2 or more persons acting independently are liable under section 21323a and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit that person's liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 21323a for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person that is liable under section 21323a during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating corrective action costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the regulated substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

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(5) A person that has resolved that person's liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 21323a unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person that is not liable under this part, including a person that was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and that is otherwise in compliance with section 21304c, shall be considered to have resolved that person's liability to the state in an administratively approved settlement under the applicable federal law and shall by operation of law be granted contribution protection under federal law and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person that has resolved that person's liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 21323a that has not resolved that person's liability.

(8) A person that has resolved that person's liability to the state for some or all of a corrective action in an administrative or judicially approved consent order may seek contribution from any person that is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person that has resolved that person's liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323e Effect of indemnification, hold harmless, or similar agreement or conveyance.

Sec. 21323e. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person that is liable under section 21323a to the state for evaluation or corrective action costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323f Costs and damages; limitation.

Sec. 21323f. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of corrective action and fines, plus $50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a regulated substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323g Covenant not to sue; conditions; effect; factors; covenant not to sue concerning future liability; exception; provisions providing for future enforcement action.

Sec. 21323g. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by corrective action, whether that action is on or off the property on which an underground storage tank system is located, if each of the following is met:

(a) The covenant not to sue is in the public interest.

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(b) The covenant not to sue would expedite corrective action consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The corrective action has been approved by the department.

(2) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that corrective action has been completed in accordance with the requirements of this part at the property that is the subject of the covenant.

(3) In assessing the appropriateness of a covenant not to sue and any condition to be included in a covenant not to sue, the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the corrective action, in light of the other alternative corrective actions considered for the property concerned.

(b) The nature of the risks remaining at the property.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the corrective action provides a complete remedy for the property, including a reduction in the hazardous nature of the substances at the property.

(e) The extent to which the technology used in the corrective action is demonstrated to be effective.

(f) Whether corrective action will be carried out, in whole or in significant part, by persons that are liable under section 21323a.

(4) A covenant not to sue under this section is subject to the satisfactory performance by a person of that person's obligations under the agreement concerned.

(5) A covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (2) that corrective action has been completed at the property concerned.

(6) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (3) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (5) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the property.

(7) The state may include any provisions providing for future enforcement action that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, and welfare and the environment.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323h Proposal to redevelop or reuse contaminated property; covenant not to sue; conditions; assertion of claims; irrevocable right of entry to department, its contractors, or other persons performing corrective action.

Sec. 21323h. (1) The state may provide a person that proposes to redevelop or reuse property contaminated by a release from an underground storage tank system, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 21323a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of corrective action.

(c) The covenant not to sue would, when appropriate, expedite corrective action consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the property is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of corrective action.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the property.

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(e) The proposal to redevelop or reuse the property has economic development potential.

(2) A person that requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the property in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person that is liable under section 21323a for a release or threat of release at the property.

(c) Compliance with section 21304c.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a property and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the property, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any regulated substance resulting from the redevelopment or reuse of the property to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting corrective action.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing corrective action related to the release or threat of release addressed by the covenant not to sue and for monitoring compliance with the covenant not to sue.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323i Consent order; final settlement.

Sec. 21323i. (1) The department and the attorney general may enter into a consent order with a person that is liable under section 21323a or any group of persons that are liable under section 21323a to perform corrective action if the department and the attorney general determine that the persons that are liable under section 21323a will properly implement the corrective action and that the consent order is in the public interest, will expedite effective corrective action, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons that are liable under section 21323a of any portion of corrective action at the property. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the property concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other regulated substances at the property:

(*i*) The amount of the regulated substances contributed by that person to the property.

(*ii*) The toxic or other regulated effects of the substances contributed by that person to the property.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the property on or in which the underground storage tank system is or was located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any regulated substance at the property.

(*iii*) The person did not contribute to the release or threat of release of a regulated substance at the property through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a regulated substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323j Civil action.

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Sec. 21323j. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from an underground storage tank system or threat of release from an underground storage tank system, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 21323a for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare or the environment from a release or threatened release in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(b) A person that is liable under section 21323a for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that underground storage tank system on the property on which the underground storage tank system is located.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the general fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the underground storage tank system or the property on which the underground storage tank system is located or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

(8) All unpaid costs and damages for which a person is liable under this part constitute a lien in favor of the state upon a property that has been the subject of corrective action by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for corrective action at the property for which the person is responsible.

(9) If the attorney general determines that the lien provided in subsection (8) is insufficient to protect the interest of the state in recovering corrective action costs at a property, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the property owned by the person described in subsection (8), subject to corrective action that takes priority over all other liens and encumbrances that are or have been recorded on the property.

(b) A lien upon real or personal property or rights to real or personal property, other than the property which was the subject of corrective action, owned by the person described in subsection (8), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subsection:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

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(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(10) A petition submitted pursuant to subsection (9) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (3), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interest in the real property subject to corrective action. A lien shall not be granted under subsection (9) against the owner of the property if the owner is not liable under section 21323a.

(11) In addition to the lien provided in subsections (8) and (9), if the state incurs costs for corrective action that increases the market value of real property that is the location of a release or threatened release, the increase in the value caused by the state-funded corrective action, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(12) A lien provided in subsection (8), (9), or (11) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (9) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(13) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in this part.

(14) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (12).

(15) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (14), has made a determination that the person liable under section 21323a has completed all of the corrective action, the department shall execute and file with the notice of release of lien a document stating that all corrective action has been completed.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323k Access to property.

Sec. 21323k. (1) A person that is liable under section 21323a or a lender that has a security interest in all or a portion of a property on which contamination from a release of regulated substances from an underground storage tank system may file a petition in the circuit court of the county in which the property is located seeking access to the property in order to conduct corrective action. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the person that owns or operates the property for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the corrective action.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the person that owns or operates the property to which access is granted is not liable for either of the following:

(a) A release caused by the corrective action for which access is granted unless the person is otherwise liable under section 21323a.

(b) For conditions associated with the corrective action that may present a threat to public health or safety.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323*l* Limitation period for filing actions.

Sec. 21323*l*. The limitation period for filing actions under this part is as follows:

(a) For the recovery of corrective action costs and natural resources damages pursuant to section 21323b(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the corrective action at the property by the person seeking recovery, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of corrective action costs pursuant to section 21323b, at

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any time during the corrective action, if commenced not later than 3 years after the date of completion of all corrective action at the property.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323m Persons exempt from liability.

Sec. 21323m. (1) Except as provided in section 21323b(5), a person that has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of corrective action under part 17, part 31, or common law.

(2) A person who is exempt from liability under section 21323a is not liable for a claim for corrective action costs, fines or penalties, natural resources damages, or equitable relief under part 17, part 31, or common law resulting from the contamination existing on the site or migrating from the site on the earlier of the date of purchase, occupancy, foreclosure or transfer of ownership, or control of the site to the person. The liability protection afforded in this subsection does not extend to a violation of any permit issued under state law. This subsection does not alter a person's liability for violation of section 21304c.

(3) This section does not bar any of the following:

(a) Tort claims unrelated to performance of corrective action.

(b) Tort claims for damages which result from corrective action.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 21304c.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21323n Documentation of due care.

Sec. 21323n. (1) A person may submit to the department documentation of due care compliance regarding a site. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 21304c prepared by a qualified underground storage tank consultant, and other information required by the department.

(2) Within 45 business days after receipt of documentation of due care compliance under subsection (1) containing sufficient information for the department to make a decision, the department shall approve, approve with conditions, or deny the documentation of due care compliance. If the department does not approve the documentation of due care compliance, the department shall provide the person that submitted the documentation the reasons why the documentation of due care compliance was not approved.

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e or submit a petition to the department's office of administrative hearings for a contested case hearing pursuant to section 21332.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21324 Submission of false, misleading, or fraudulent information as felony; penalty; civil fine; retroactive application; "fraudulent" and "fraudulent practice" defined; investigation and commencement of action by attorney general or county prosecutor; subpoena; enforcement; order granting immunity; failure to comply with subpoena; prosecution under other laws not precluded; apportionment of fines.

Sec. 21324. (1) Beginning April 25, 1994, a person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification, proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

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(2) A person who makes or submits or causes to be made or submitted either directly or indirectly a statement, report, confirmation, certification proposal, or other information under this part knowing that the statement, report, confirmation, certification, proposal, or other information is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of $50,000.00 for each submission or fraudulent practice. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the fund for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application. For purposes of this subsection, a submission includes transmittal by any means and each such transmittal constitutes a separate submission.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Representing that services were done or work was provided that was not done or provided.

(b) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(c) Returning a load of contaminated soil to its original site for reasons other than remediation of the soil.

(d) Causing damage intentionally or as the result of gross negligence to an underground storage tank system, which damage results in a release at a site.

(e) Placing an underground storage tank system at a contaminated site where an underground storage tank system did not previously exist for the purpose of disguising the source of contamination.

(f) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(g) Submitting a false or misleading laboratory report or misrepresenting or falsifying any test result, analysis, or investigation.

(h) Conducting sampling, testing, monitoring, or excavation that is not justified by the site condition.

(i) Falsifying a signature on a statement, report, confirmation, certification, proposal, or other document provided under this part.

(j) Misrepresenting or falsifying the source of data regarding site conditions.

(k) Misrepresenting or falsifying the date upon which a release occurred.

(*l*) Falsely characterizing the contents of an underground storage tank system or reporting regulated substances or parameters other than the substance that was in the underground storage tank system.

(m) Failing to report subsequent suspected or confirmed releases from sites that have had a previously reported release.

(n) Falsifying the date on which an underground storage tank system or any of its components were removed from the ground and site.

(o) Any other act or omission of a false, fraudulent, or misleading nature undertaken to gain compliance or the appearance of compliance with this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any documents or records, however stored or embodied, or tangible object relevant to an investigation for violation of this part, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring them to appear and be examined under oath or to produce the documents, records, or objects for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) This section does not preclude prosecutions under the laws of this state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422 of the Michigan Compiled Laws.

(10) All civil fines collected pursuant to this section shall be apportioned in the following manner:

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(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by such office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department entitled to payment under this subsection, the money shall be deposited into the emergency response fund established in section 21507.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21325 Qualified underground tank consultant; requirements.

Sec. 21325. A person shall be considered a qualified underground storage tank consultant if the person meets all of the following requirements:

(a) Has experience in all phases of underground storage tank work, including RBCA, tank removal oversight, site assessment, soil removal, feasibility, design, remedial system installation, remediation management activities, and site closure and possesses or employs at least 1 of the following:

(*i*) A professional engineer license with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*ii*) A professional geologist certification or a similar approved designation such as a professional hydrologist or a certified groundwater professional, with 3 or more years of relevant corrective action experience, preferably involving underground storage tanks.

(*iii*) A person with a master's degree from an accredited institution of higher education in a discipline of engineering or science and 8 years of full-time relevant experience or a person with a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and 10 years of full-time relevant experience. This experience shall be documented with professional and personal references, past employment references and histories, and documentation that all requirements of the occupational safety and health act of 1970, Public Law 91-596, 84 Stat 1590, and regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and rules promulgated under that act have been met.

(*iv*) A person that was certified by the department as an underground storage tank professional pursuant to section 21543 on May 1, 2012.

(b) Has all of the following insurance policies written by carriers authorized to write such business, or approved as an eligible surplus lines insurer, by this state and which are placed with an insurer listed in a.m. best's with a rating of no less than B+ VII:

(*i*) Worker's compensation insurance.

(*ii*) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per occurrence.

(*iii*) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per occurrence, if not included under the professional liability errors and omissions insurance required under subparagraph (*ii*). The insurance requirement under this subparagraph is not required for consultants who do not perform contracting functions.

(*iv*) Commercial general liability insurance with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

(*v*) Automobile liability insurance with limits of not less than $1,000,000.00 per occurrence.

(c) Has demonstrated compliance with the occupational safety and health act of 1970, Public Law 91-596, 84 Stat 1590, and the regulations promulgated under that act, and the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act, and is able to demonstrate that all such rules and regulations have been complied with during the person's previous corrective action activity.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2016, Act 381, Eff. Mar. 29, 2017.

Compiler's note: Former MCL 324.21325, which pertained to rewards, was repealed by Act 22 of 1995, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

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324.21325a Department employees responsible for oversight; training; proficiency.

Sec. 21325a. Department employees who are responsible for the oversight of corrective action or the audits conducted under section 21315 shall be formally trained and demonstrate proficiency in RBCA.

History: Am. 2016, Act 381, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.21326 Furnishing information to department; right of entry; inspections and investigations; powers of attorney general.

Sec. 21326. (1) Upon request of the department for the purpose of conducting an investigation, taking corrective action, or enforcing this part, a person shall furnish the department with all available information about all of the following:

(a) The underground storage tank system and its associated equipment.

(b) The past or present contents of the underground storage tank system.

(c) Any releases and investigations of releases.

(2) The department has the right to enter at all reasonable times in or upon any private or public property for any of the following purposes:

(a) Inspecting an underground storage tank system.

(b) Obtaining samples of any substance from an underground storage tank system.

(c) Requiring and supervising the conduct of monitoring or testing of an underground storage tank system, its associated equipment, or contents.

(d) Conducting monitoring or testing of an underground storage tank system in cases where there is no identified responsible party.

(e) Conducting monitoring or testing, or taking samples of soils, air, surface water, or groundwater.

(f) Taking corrective action.

(g) Inspecting and copying any records related to an underground storage tank system.

(3) All inspections and investigations undertaken by the department under this section shall be commenced and completed with reasonable promptness.

(4) The attorney general, on behalf of the department, may do either of the following:

(a) Petition a court of appropriate jurisdiction for a warrant to authorize access to any private or public property to implement this part.

(b) Commence a civil action pursuant to section 21323 for an order authorizing the department to enter any private or public property as necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21327 Rules; prohibition.

Sec. 21327. (1) Beginning on the effective date of the 2012 amendatory act that amended this section, the department shall not promulgate rules to implement this part.

(2) A guideline, bulletin, interpretive statement, operational memorandum, or form with instructions published under this part shall not be given the force and effect of law by the department and is considered merely advisory. The department shall not rely upon a guideline, bulletin, interpretive statement, operational memorandum, or form with instructions to support the department's decision to act or refuse to act. A court shall not rely upon a guideline, bulletin, interpretive statement, operational memorandum, or form with instructions to uphold the department's decision to act or refusal to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 113, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.21328 Agreements.

Sec. 21328. The department may enter into an agreement with a local unit of government or a state or federal agency to aid in the implementation or enforcement of this part and to obtain financial assistance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

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324.21329 Coordination and integration.

Sec. 21329. The department shall coordinate and integrate the provisions of this part with appropriate state and federal law for purposes of administration and enforcement. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21330 Actions taken by state police.

Sec. 21330. This part does not prohibit the department of state police from taking action in any situation in which it is otherwise authorized by law to act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Popular name: Act 451

Popular name: NREPA

324.21331 Repealed. 1995, Act 22, Imd. Eff. Apr. 13, 1995.

Compiler's note: The repealed section pertained to repeal of part.

Popular name: Act 451

Popular name: NREPA

324.21332 Contested case hearing; petition; hearing.

Sec. 21332. (1) Subject to subsection (2), an owner or operator that is liable under section 21323a may petition the department for a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding any of the following:

(a) Corrective action proposed, commenced, or completed.

(b) The SSTLs proposed for a site.

(c) The imposition of penalties pursuant to section 21313a.

(d) The results of any audit performed under section 21315.

(e) A decision regarding the documentation of due care compliance under section 21323n.

(2) Upon receipt of a petition from an owner or operator that is liable under section 21323a pursuant to this section, the department shall conduct the hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. However, an issue that was addressed as part of the final decision of the director under section 20114e or that is being considered by the response activity review panel under section 20114e is not eligible for review as part of a contested case hearing under this section.

History: Add. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21333 Appeal of final agency decision.

Sec. 21333. An owner or operator that is liable under section 21323a may appeal a final agency decision to affix a placard under section 21316a(2) or issue an administrative order under section 21319a(2) to the circuit court for the county where the underground storage tank system is located or the Ingham county circuit court in the same manner as and according to the same procedures provided for appeals to the circuit court under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The court shall set aside the final agency decision if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

History: Add. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: NREPA

324.21334 Report to legislative committees.

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Sec. 21334. Not later than November 1, 2013 and not later than November 1 of each subsequent year, the department shall submit a report to the standing committees of the senate and house of representatives with jurisdiction primarily pertaining to natural resources and the environment that contains all of the following:

(a) The number of closure reports submitted and approved by the department and the number of closure reports that were approved by operation of law under this part.

(b) The number of closure reports that were submitted to the department and not approved under this part.

(c) The number of contested case hearings held pursuant to section 21332.

(d) The number of issues resolved by the response activity review panel under section 20114e.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

Popular name: Act 451

Popular name: NREPA

PART 215

UNDERGROUND STORAGE TANK CORRECTIVE ACTION FUNDING

324.21501 Meanings of words and phrases.

Sec. 21501. For purposes of this part, the words and phrases defined in sections 21502 and 21503 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.21502 Definitions; A to O.

Sec. 21502. As used in this part:

(a) "Administrator" means the administrator of the authority as provided for in section 21525.

(b) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls the person specified.

(c) "Approved claim" means a claim that is approved pursuant to section 21510.

(d) "Authority" means the underground storage tank authority created in section 21523.

(e) "Board of directors" or "board" means the board of directors of the authority.

(f) "Bond proceeds account" means the account within the fund to which proceeds of bonds or notes issued under this part have been credited.

(g) "Bonds or notes" means the bonds, notes, commercial paper, other obligations of indebtedness, or any combination of these, issued by the finance authority pursuant to this part.

(h) "Bulk transfer" means a transfer of refined petroleum or a refined petroleum product from, or purchase for resale by, a refiner, pipeline terminal operator, supplier, or marine terminal operator to or from another refiner, pipeline terminal operator, supplier, or marine terminal operator through pipeline tender or marine delivery, including pipeline movements of refined petroleum or a refined petroleum product from 1 or more marine vessel movements of refined petroleum or a refined petroleum product. Refined petroleum or a refined petroleum product in a refinery, pipeline, terminal, or marine vessel transporting refined petroleum or a refined petroleum product to a refinery or terminal is in the bulk transfer terminal system. Notwithstanding anything to the contrary in this subdivision, refined petroleum or a refined petroleum product transferred or purchased for resale by a refiner, pipeline terminal operator, supplier, or marine terminal operator must be delivered to or otherwise remain within the bulk transfer terminal system prior to removal across the rack in order to constitute a bulk transfer.

(i) "Bulk transfer terminal system" means the refined petroleum or refined petroleum product distribution system consisting of refineries, pipelines, marine vessels, and terminals and includes refined petroleum or refined petroleum product storage tanks and refined petroleum or refined petroleum product storage facilities that are part of a refinery, boat terminal transfer, or terminal owned, operated, or controlled by a refiner, marine terminal operator, or pipeline terminal operator.

(j) "Claim" means the submission by the owner or operator or his or her representative of documentation on an application requesting payment by the authority. A claim shall include, at a minimum, a completed and signed claim form and the name, address, and telephone number of the owner or operator.

(k) "Claims limit" means $1,000,000.00 per release. Two or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be subject to 1

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claims limit. Any claim that takes place over 2 or more claim periods shall be subject to 1 claims limit.

(*l*) "Claim period" means a 1-year period commencing on October 1 of each year and ending on September 30 the following year.

(m) "Claim period aggregate limit" means the following aggregate claims limit for all releases discovered during a claim period:

(*i*) For owners, operators, and affiliates of 1 to 100 refined petroleum underground storage tanks, $1,000,000.00.

(*ii*) For owners, operators, and affiliates of more than 100 refined petroleum underground storage tanks, $2,000,000.00.

(n) "Controls" means the possession or the contingent or noncontingent right to acquire possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or interests, by contract, other than a commercial contract for goods or nonmanagement services, by pledge of securities, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(o) "Corrective action" means that term as it is defined in section 21302.

(p) "Deductible amount" means the amount of corrective action costs or indemnification costs that are required to be paid by an owner or operator as provided in section 21510a.

(q) "Department" means the department of environmental quality.

(r) "Eligible person" means an owner or operator who meets the eligibility requirements under this part to submit a claim.

(s) "Excluded liquid" means that term as defined in 26 CFR 48.4081-1.

(t) "Finance authority" means the Michigan finance authority created by Executive Reorganization Order No. 2010-2, MCL 12.194.

(u) "Financial responsibility requirements" means the financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from a refined petroleum underground storage tank system that the owner or operator of a refined petroleum underground storage tank system must demonstrate under part 211 and the rules promulgated under that part.

(v) "Fund" means the underground storage tank cleanup fund created in section 21506b and includes the bond proceeds account established within the fund.

(w) "Indemnification" means indemnification of an owner or operator for a legally enforceable judgment entered against the owner or operator by a third party, or a legally enforceable settlement entered between the owner or operator and a third party, compensating that third party for bodily injury or property damage, or both, caused by an accidental release as those terms are defined in R 29.2163 of the Michigan Administrative Code.

(x) "Location" means a parcel of property where refined petroleum underground storage tank systems are registered pursuant to part 211.

(y) "Marine terminal operator" means a person that stores refined petroleum or a refined petroleum product at a boat terminal transfer.

(z) "Operator" means that term as it is defined in section 21303 or a person to whom an approved claim has been assigned or transferred.

(aa) "Owner" means that term as it is defined in section 21303.

(bb) "Oxygenate" means an organic compound containing oxygen and having properties as a fuel that are compatible with petroleum, including, but not limited to, ethanol, methanol, or methyl tertiary butyl ether (MTBE).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21503 Definitions; P to W.

Sec. 21503. As used in this part:

(a) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) "Pipeline terminal operator" means a person that receives and stores refined petroleum or a refined petroleum product in tanks and other equipment used in receiving and storing refined petroleum or a refined petroleum product from interstate and intrastate pipelines, pending wholesale bulk reshipment.

(c) "Qualifying expenditures" means an expenditure for a specific activity that does not exceed the

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allowable payment for that activity as detailed on the schedule of costs.

(d) "Rack" means a mechanism for delivering refined petroleum or a refined petroleum product from a refiner, a pipeline terminal operator, or a marine terminal operator into a railroad tank car, a transport truck, a tank wagon, or the fuel supply tank of a marine vessel.

(e) "Refined petroleum" means aviation gasoline, middle distillates, jet fuel, kerosene, gasoline, residual oils, and any oxygenates that have been blended with any of these. Refined petroleum includes refined petroleum products and transmix. Refined petroleum does not include excluded liquids.

(f) "Refined petroleum fund" means the refined petroleum fund established under section 21506a.

(g) "Refined petroleum underground storage tank" means an underground storage tank system used for the storage of refined petroleum.

(h) "Refiner" means a person that meets both of the following:

(*i*) Manufactures or produces refined petroleum or a refined petroleum product at a refinery.

(*ii*) Is a taxable fuel registrant that is a refiner for purposes of 26 CFR 48.4081-1.

(i) "Refinery" means a facility used by a refiner to produce refined petroleum or a refined petroleum product from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons by any process involving substantially more than the blending of refined petroleum and from which refined petroleum or a refined petroleum product may be removed by pipeline or marine vessel or at a rack.

(j) "Regulated financial institution" means a state or nationally chartered bank, savings and loan association or savings bank, credit union, or other state or federally chartered lending institution or a regulated affiliate or regulated subsidiary of any of these entities.

(k) "Regulatory fee" means the environmental protection regulatory fee imposed under section 21508.

(*l*) "Release" means that term as it is defined in section 21303.

(m) "Removal" or "removed" means a physical transfer other than by evaporation, loss, or destruction of refined petroleum or a refined petroleum product from a refiner, pipeline terminal operator, or marine terminal operator.

(n) "Schedule of costs" means the list of allowable reimbursement amounts that may be paid on a claim, as established in section 21510b.

(o) "Site" means that term as it is defined in section 21303.

(p) "Supplier" means a supplier or permissive supplier licensed under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(q) "Tank wagon" means a straight truck having 1 or more compartments other than the fuel supply tank designed or used to carry fuel.

(r) "Terminal" means a refined petroleum or refined petroleum products storage and distribution facility that meets all of the following requirements:

(*i*) Is registered as a qualified terminal by the internal revenue service.

(*ii*) Is supplied by a pipeline or a marine vessel.

(*iii*) Has a rack from which refined petroleum or refined petroleum products may be removed.

(s) "Transmix" means the mixed product that results from the buffer or interface of 2 different products in a pipeline shipment, or a mixture of 2 different products within a refinery or terminal that results in an off-grade mixture.

(t) "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting refined petroleum or a refined petroleum product over the public roads or highways.

(u) "Two-party exchange" means a transaction, including a book transfer, in which refined petroleum or a refined petroleum product is transferred from 1 supplier to another supplier and to which all of the following apply:

(*i*) The transaction includes a transfer of refined petroleum or a refined petroleum product from the person that holds the original inventory position for the refined petroleum or refined petroleum product in storage tanks as reflected in the records of the refiner, pipeline terminal operator, or marine terminal operator.

(*ii*) The exchange transaction is completed before removal across the rack by the receiving supplier.

(*iii*) The refiner, pipeline terminal operator, or marine terminal operator in its books and records treats the receiving exchange party as the supplier that removes the refined petroleum or refined petroleum product across a rack for purposes of reporting the transaction to the department under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(v) "Underground storage tank system" means that term as it is defined in section 21303.

(w) "Work invoice" means a list of goods or services for costs of corrective action related to a claim, including a statement of the amount due.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2006, Act 318, Imd. Eff. July 20,

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2006;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21504 Objectives of part.

Sec. 21504. The objectives of this part are to fund corrective actions to address releases from refined petroleum underground storage tank systems, to assist owners and operators of refined petroleum underground storage tank systems in meeting their financial responsibility requirements pursuant to part 211, and to achieve compliance with part 213.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21505 Legislative findings.

Sec. 21505. The legislature finds that releases from underground storage tanks are a significant cause of contamination of the natural resources, water resources, and groundwater in this state. The purpose of this part and of the authority created by this part is to preserve and protect the water resources of the state and to prevent, abate, or control the pollution of water resources and groundwater, to protect and preserve the public health, safety, and welfare, and to assist in the financing of corrective actions due to releases from refined petroleum underground storage tank systems.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21506 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to Michigan underground storage tank financial assurance fund.

324.21506a Refined petroleum fund; creation; deposit of money or other assets; investment; money remaining at close of fiscal year; expenditures; purposes.

Sec. 21506a. (1) The refined petroleum fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the refined petroleum fund. The state treasurer shall direct the investment of the refined petroleum fund. The state treasurer shall credit to the refined petroleum fund interest and earnings from refined petroleum fund investments.

(3) Money in the refined petroleum fund at the close of the fiscal year remains in the refined petroleum fund and does not lapse to the general fund.

(4) Money from the refined petroleum fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) Corrective actions performed by the department pursuant to section 21320.

(b) The legacy release program created in section 21519a.

(c) The reasonable costs of the department in administering the refined petroleum fund and implementing part 213.

(d) Not more than $5,000,000.00 annually for petroleum product inspection programs under both of the following:

(*i*) The weights and measures act, 1964 PA 283, MCL 290.601 to 290.635.

(*ii*) The motor fuels quality act, 1984 PA 44, MCL 290.641 to 290.650d.

(e) Not more than $3,000,000.00 annually for the bureau of fire services and office of the state fire marshal, storage tank division, in the department of licensing and regulatory affairs.

(f) Reimbursement by the authority to local units of government and county road commissions for the costs of corrective action to manage, relocate, or dispose of any media contaminated by regulated substances left in place within a public highway pursuant to section 21310a if all of the following occur:

(*i*) The local unit of government or county road commission has submitted to the authority a claim for reimbursement on a form created by the authority.

(*ii*) The claim for reimbursement is for reasonable and necessary eligible corrective action costs determined by the administrator pursuant to section 21515(2) to (10).

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(*iii*) The amount of reimbursement is not more than $200,000.00 per claim.

(g) Not more than $5,000,000.00 annually for the department to provide grants and loans in accordance with part 196 to facilitate brownfield redevelopment at part 213 properties. Money shall not be provided under this subsection to fund the performance of response activities at a part 213 property to address contamination that is solely attributable to a release regulated under part 201.

(h) The permanent closure of an underground storage tank system by the department if the underground storage tank system meets the conditions that require permanent closure under R 29.2153 of the Michigan Administrative Code or the department determines it is necessary to protect public health, safety, welfare, or the environment.

History: Add. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 318, Imd. Eff. July 20, 2006;—Am. 2007, Act 67, Imd. Eff. Sept. 28, 2007;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 467, Eff. Mar. 29, 2017;—Am. 2017, Act 134, Eff. Jan. 24, 2018.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Popular name: Act 451

Popular name: NREPA

324.21506b Underground storage tank cleanup fund; creation; bond proceeds account; receipt of money or other assets; investment; money remaining at close of fiscal year; authority as administrator; expenditures.

Sec. 21506b. (1) The underground storage tank cleanup fund is created within the state treasury. The state treasurer shall establish a bond proceeds account within the fund and may establish procedures for accounting for deposits and expenditures from the bond proceeds account.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The authority shall be the administrator of the fund for auditing purposes.

(5) The authority and the finance authority shall expend money from the fund, upon appropriation, only for the following purposes:

(a) As a first priority, to pay principal and interest due on bonds or notes issued by the finance authority pursuant to this part, plus any amount necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution, indenture, or other agreement of the finance authority.

(b) For the reasonable administrative cost of implementing this part incurred by the department, the department of treasury, the department of attorney general, and the finance authority. Administrative costs include the actual and necessary expenses incurred by the finance authority and its members in carrying out the duties imposed by this part. Total administrative costs expended under this subdivision shall not exceed 7% of the fund's projected revenues in any year. Costs incurred by the finance authority for the issuance of bonds or notes which may also be payable from the proceeds of the bonds or notes shall not be considered administrative costs.

(c) To pay approved claims as provided for in this part.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21507 Repealed. 1995, Act 252, Eff. Dec. 22, 1998.

Compiler's note: The repealed section pertained to creation, investment, and disposition of the emergency response fund.

Popular name: Act 451

Popular name: NREPA

324.21508 Environmental protection regulatory fee; imposition; precollection; collection; exemption; deposit of fees; audit, enforcement, collection, and assessment of fees by

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department of treasury.

Sec. 21508. (1) An environmental protection regulatory fee is imposed on all refined petroleum products sold for resale in this state or consumption in this state. The regulatory fee shall be charged for capacity utilization of refined petroleum underground storage tanks measured on a per gallon basis. The regulatory fee shall be charged against all refined petroleum products sold for resale in this state or consumption in this state so as to not exclude any products that may be stored in a refined petroleum underground storage tank at any point after the petroleum is refined. The regulatory fee shall be 1 cent per gallon for each gallon of refined petroleum sold for resale in this state or consumption in this state, with the per gallon charge being a direct measure of capacity utilization of a refined petroleum underground storage tank system. The regulatory fee shall not be imposed on a bulk transfer of or a 2-party exchange involving refined petroleum or refined petroleum products.

(2) The department of treasury shall precollect regulatory fees from persons who refine petroleum in this state for resale in this state or consumption in this state and persons who import refined petroleum into this state for resale in this state or consumption in this state. The department of treasury shall collect regulatory fees that can be collected at the same time as the sales tax under section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a. The remainder of the regulatory fees shall be collected in the manner determined by the state treasurer.

(3) A public utility with more than 500,000 customers in this state is exempt from any fee or assessment imposed under this part if that fee or assessment is imposed on petroleum used by that public utility for the generation of steam or electricity.

(4) All regulatory fees collected pursuant to this part during each state fiscal year shall be deposited as follows:

(a) The first $20,000,000.00 that is collected shall be deposited into the fund.

(b) Following the deposit under subdivision (a), all money collected shall be deposited into the refined petroleum fund.

(5) The department of treasury may audit, enforce, collect, and assess the fee imposed by this part in the same manner and subject to the same requirements as revenues collected pursuant to 1941 PA 122, MCL 205.1 to 205.31.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017;—Am. 2016, Act 467, Eff. Mar. 29, 2017.

Compiler's note: Enacting section 1 of Act 390 of 2004 provides:

"Enacting section 1. The provisions of this amendatory act relating to the extension and collection of the regulatory fee provided for under this part and the obligation to pay the fee shall be applied retroactively. The requirement to impose and collect the regulatory fee and the obligation to pay the fee shall not be considered to have ceased at any time since the date the requirement and obligation were originally enacted into law. The requirement that this enacting section be applied retroactively extends to any regulatory fee imposed or collected even if it is alleged or determined that sufficient regulatory fees were collected to pay in full bonds or notes issued by the Michigan underground storage tank financial assurance authority.

Subsection 2 of MCL 324.21550, as amended by 2012 PA 113, and which repeals this section, provides:

"(2) The authority's obligation to pay off any bonds or notes issued pursuant to this part shall survive the repeal of section 21508."

Popular name: Act 451

Popular name: NREPA

324.21509 Calculation and payment of regulatory fees; collection of regulatory fees under product exchange agreement; definition.

Sec. 21509. (1) Notwithstanding any other provision in this part, regulatory fees shall be calculated and paid upon gross or metered gallons with respect to all "light" petroleum products. With respect only to "heavy" petroleum products (No. 4, No. 5, No. 6 residual oils), regulatory fees shall be calculated and paid upon net or temperature-corrected gallons.

(2) Notwithstanding any other provision in this part, until January 1, 2015, if a person receives refined petroleum products in this state for resale in this state or consumption in this state pursuant to a product exchange agreement, the department of treasury shall collect the regulatory fees from that person. As used in this subsection, "product exchange agreement" means an agreement between buyers and sellers of refined petroleum products in which refined petroleum products in bulk quantity are made available to a person solely in consideration of that person making available a like volume of refined petroleum products to the other party at some other location.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

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324.21510 Eligibility of owner or operator to receive money from authority for corrective action or indemnification.

Sec. 21510. (1) An owner or operator is eligible to receive money from the authority for corrective action or indemnification due to a release from a refined petroleum underground storage tank system only if all of the following requirements are satisfied and the owner or operator otherwise complies with this part:

(a) The release from which the corrective action or indemnification arose was discovered and reported on or after December 30, 2014.

(b) The refined petroleum underground storage tank from which the release occurred was, at the time of discovery of the release, and is presently, in compliance with the registration and fee requirements of part 211.

(c) The owner or operator reported the release within 24 hours after its discovery as required by part 211 and the rules promulgated under that part.

(d) The owner or operator is not the United States government.

(e) The claim is not for a release from a refined petroleum underground storage tank closed prior to January 1, 1974, in compliance with the fire prevention code, 1941 PA 207, MCL 29.1 to 29.33, and the rules promulgated under that act.

(f) The owner or operator was in compliance with the financial responsibility requirements of part 211 and the rules promulgated under that part at the time of the discovery of the release or releases for which the claim is filed.

(g) The owner or operator is otherwise eligible to receive money from the authority under this part.

(h) The total amount of expenditures, including the deductible amount, does not exceed the claims limit or the claim period aggregate limit applicable to the claim.

(2) The owner or operator may receive money from the authority for corrective action or indemnification due to a release that originates from an aboveground piping and dispensing portion of a refined petroleum underground storage tank system if all of the following requirements are satisfied:

(a) The owner or operator is otherwise in compliance with this part and the rules promulgated under this part.

(b) The release is sudden and immediate.

(c) The release is of a quantity exceeding 25 gallons and is released into groundwater, surface water, or soils.

(d) The owner or operator reported the release to the department within 24 hours after its discovery.

(3) Either the owner or the operator may receive money from the authority under this part for an occurrence, but not both.

(4) An owner or operator that is a public utility with more than 500,000 customers in this state is ineligible to receive money from the authority for corrective action or indemnification associated with a release from a refined petroleum underground storage tank system used to supply refined petroleum for the generation of steam electricity.

(5) If an owner or operator has received money from the authority under this part for a release at a location, the owner and operator are not eligible to receive money from the authority for a subsequent release at the same location unless the owner or operator has done either or both of the following:

(a) Discovered the subsequent release pursuant to corrective action being taken on a confirmed release and included this subsequent release as part of the corrective action for the confirmed release.

(b) Upgraded, replaced, removed, or properly closed in place all refined petroleum underground storage tank systems at the location of the release so as to meet the requirements of part 211 and the rules promulgated under that part.

(6) An owner or operator that discovers a subsequent release at the same location as an initial release pursuant to subsection (5)(a) may receive money from the authority to perform corrective action on the subsequent release, if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. However, the subsequent release shall be considered as part of the claim for the initial release for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(h).

(7) An owner or operator that discovers a subsequent release at the same location as an initial release following compliance with subsection (5)(b) may receive money from the authority to perform corrective action on the subsequent release, if there have been not more than 2 releases at the location, and if the owner or operator otherwise complies with the requirements of this part and the rules promulgated under this part. The subsequent release shall be considered a separate claim for purposes of determining the total amount of expenditures for corrective action and indemnification under subsection (1)(h).

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(8) An owner or operator that seeks to receive money from the authority for corrective action shall submit to the administrator the cleanup fund claim submittal form created by the authority containing the information required by the administrator to determine compliance with this part. The administrator shall determine whether the claim complies with this part and shall notify the owner or operator. The administrator may consult with the department of licensing and regulatory affairs to make the determination required in this subsection.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 12, Imd. Eff. Mar. 31, 1995;—Am. 1995, Act 252, Eff. Jan. 8, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21510a Responsibility of owner or operator for deductible amount.

Sec. 21510a. (1) An owner or operator is responsible for a deductible amount as follows:

(a) If the owner or operator or its affiliate owns or operates fewer than 8 refined petroleum underground storage tanks, $2,000.00 per claim.

(b) If the owner or operator or its affiliate owns or operates 8 or more refined petroleum underground storage tanks, $10,000.00 per claim.

(c) The deductible amount under subdivisions (a) and (b) is retroactive to all claims filed for releases discovered and reported on or after December 30, 2014.

(2) The deductible amount applies to each claim. However, 2 or more claims arising out of the same, interrelated, associated, repeated, or continuous releases or a series of related releases shall be considered a single claim and are subject to 1 deductible amount. Any claim that takes place over 2 or more claim periods is subject to 1 deductible amount.

(3) An owner or operator that submits a work invoice under section 21515 is responsible for the deductible amount described in subsection (1). The expenses toward meeting the deductible amount shall be documented and shall comply with the following:

(a) Expenses for items listed in the schedule of costs shall be at or below the allowable reimbursement amount listed in the schedule of costs.

(b) Expenses for items that are not listed in the schedule of costs shall be reasonable and necessary considering conditions at the site based upon a competitive bidding process established by the authority.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21510b Itemized corrective actions; schedule of costs.

Sec. 21510b. (1) The authority shall establish a schedule of costs that itemizes corrective actions that are generally conducted at a site and lists an allowable reimbursement amount that may be paid for each corrective action as part of a claim under this part. If the authority determines that costs for particular corrective actions vary in different regions of the state, the authority may establish allowable reimbursement amounts that reflect regional differences.

(2) The authority shall annually review and update the schedule of costs as necessary or appropriate.

(3) The department shall post the schedule of costs and any updates to the schedule of costs on the department's website.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21510c Approval of claim; prohibitions.

Sec. 21510c. A claim shall not be approved by the authority for any of the following:

(a) A release that was expected or intended by an owner or operator, or an employee of an owner or operator.

(b) Punitive, exemplary, or multiplied damages, fines, taxes, penalties, assessments, punitive or statutory assessments, or any civil, administrative, or criminal fines, sanctions, or penalties.

(c) A claim made by an owner or operator against any other person that is also an owner or operator of the refined petroleum underground storage tank system.

(d) A release caused by, based upon, resulting from, or attributable to the owner's or operator's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, administrative

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complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

(e) A release arising from the ownership, maintenance, use, or entrustment to others of any aircraft, auto, rolling stock, or watercraft, including loading and unloading.

(f) Costs, charges, or expenses incurred by the owner or operator for goods supplied by the owner or operator or services performed by the staff or employees of the owner or operator, or its parent, subsidiary, or affiliate, unless the costs, charges, or expenses are incurred with the prior written approval of the authority.

(g) A release arising from any consequence, whether direct or indirect, of war, invasion, act of a foreign enemy, act of terrorists, hostilities, whether war has been declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.

(h) Costs arising out of the reconstruction, repair, replacement, upgrading of a refined petroleum underground storage tank system, or any other improvements and any site enhancements or routine maintenance on, within, or under a location.

(i) Costs arising out of the removing, replacing, or recycling of a refined petroleum underground storage tank system or its contents.

(j) Costs, charges, or expenses incurred to investigate or verify that a confirmed release has taken place.

(k) Costs related to the injury of an employee of the owner or operator or its parent, subsidiary, or affiliate arising out of and in the course of employment by the owner or operator or its parent, subsidiary, or affiliate or performing duties related to the conduct of the business of the owner or operator or its parent, subsidiary, or affiliate by a spouse, child, parent, brother, or sister of that employee. This subdivision applies whether the owner or operator may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(*l*) Any obligation of the owner or operator under worker's compensation, unemployment compensation, or disability benefits law or similar law.

(m) Any liability or claim for liability of others assumed by the owner or operator under any contract or agreement, unless the owner or operator would have been liable in the absence of the contract or agreement.

(n) A release on, within, under, or emanating from a location if the release commenced subsequent to the time the location was sold, given away, or abandoned.

(o) Costs that have been or will be submitted to or that have been paid pursuant to an insurance policy or policies.

(p) Costs arising from corrective actions performed in excess of the corrective actions required to obtain a restricted closure based on then current land use.

(q) Costs incurred after the closure date of the release or releases for which the claim was filed except for costs for monitoring well abandonment or remediation system decommissioning, or both, performed within 1 year of the closure date.

History: Add. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21510d Reliance of owner or operator on fund to meet financial responsibility requirements; submission of request for determination; notice.

Sec. 21510d. If an owner or operator intends to rely on the fund to meet financial responsibility requirements, the owner or operator shall submit to the authority a request for a determination that the owner or operator would be eligible for funding under this part in the event of a release from a refined petroleum underground storage tank system. Upon receipt of a request under this subsection, the authority shall make a determination and provide notice of that determination, in writing, to the owner or operator. The notice may contain conditions for maintenance of that eligibility. A determination under this section is based upon a demonstration of all of the following:

(a) The owner or operator is not ineligible for funding under section 21510(4) and (5).

(b) The refined petroleum underground storage tank or tanks are presently in compliance with the registration and fee requirements of part 211.

(c) The owner or operator is not the United States government.

(d) The owner or operator has financial responsibility for the deductible amount. In order to demonstrate that the owner or operator has financial responsibility for the deductible amount under this section and section 21510(1)(f), the owner or operator may rely upon any financial assurance mechanism listed in 40 CFR 280.95 to 280.107 or either of the following:

(*i*) A financial test of self-insurance. To pass the financial test of self-insurance, the owner or operator must

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submit, on a form developed by the authority, financial information certified as accurate by the chief financial officer or comparable position that demonstrates a tangible net worth of at least 3 times the deductible amount required under this part.

(*ii*) A deposit account in the amount of the deductible amount required under this part in a financial institution as defined in section 1202 of the banking code of 1999, 1999 PA 276, MCL 487.11202, if access to the deposit account is restricted by a deposit account control agreement or similar restriction as approved by the authority that requires the approval of the administrator for a withdrawal from the deposit account.

History: Add. 2016, Act 380, Eff. Mar. 22, 2017;—Am. 2017, Act 134, Eff. Jan. 24, 2018.

Popular name: Act 451

Popular name: NREPA

324.21511 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to eligibility of financial institution, land contract vendor, or local unit of government to receive money from fund for corrective action or indemnification.

324.21512 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to approval of expenditures on behalf of owner or operator.

324.21513 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to duties of fund administrator.

324.21514 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to payment of co-payment amount by owner or operator.

324.21515 Receiving money from authority for corrective action; procedures.

Sec. 21515. (1) To receive money from the authority for corrective action, an owner or operator that has received notice from the administrator that its claim has been approved pursuant to section 21510(8) shall follow the procedures outlined in this section and shall submit work invoices to the administrator containing information required by the administrator relevant to determining compliance with this part.

(2) Within 45 days of receipt of work invoices submitted pursuant to subsection (1) using forms created by the authority, the administrator shall make all of the following determinations:

(a) Whether the owner or operator is eligible to receive funding under this part.

(b) Whether the work performed or proposed to be performed is consistent with part 213, and whether those activities are consistent with achieving site closure.

(c) Whether the owner or operator has paid the deductible amount.

(d) Whether the corrective action performed is reasonable and necessary considering conditions at the site of the release.

(e) Whether the cost of performing the corrective action work is at or below the allowable reimbursement amount in the schedule of costs or, if the corrective action work is not a listed item, whether the cost is reasonable and necessary, and whether the cost was based upon a competitive bidding process established by the authority.

(3) The administrator may consult with the department and the department of licensing and regulatory affairs to make the determination required in subsection (2).

(4) If the administrator determines under subsection (2) that the work invoice is reasonable and necessary considering conditions at the site of the release and reasonable in terms of cost and the owner or operator is eligible for funding under this part, the administrator shall approve the work invoice and notify the owner or operator that submitted the work invoice of the approval. If the administrator determines that the work described on the work invoices submitted was not reasonable and necessary or the cost of the work is not reasonable, or that the owner or operator is not eligible for funding under this part, the administrator shall deny the work invoice or any portion of the work invoice submitted and give notice of the denial to the owner or operator that submitted the work invoice.

(5) The owner or operator may submit work invoices to the administrator that are related to a claim only after initial approval of the claim under section 21510(8) and if the aggregate amount of work invoices in the submission is $5,000.00 or more. This limitation does not apply to the final work invoice submission related to the approved claim.

(6) If the administrator determines that a work invoice does not meet the requirements of subsection (2) or (5), the administrator shall deny reimbursement for the work invoice and give written notice of the denial to the owner or operator who submitted the work invoice.

(7) The administrator shall approve a reimbursement for a work invoice that was submitted by an owner or

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operator for corrective action taken if the work invoice meets the requirements of this part for an approved claim and an approved work invoice.

(8) Except as provided in subsection (9) and section 21519, the authority shall make a joint payment to the owner or operator and the contractor that performed the work listed in the approved work invoices within 45 days after the date of the administrator's approval under subsection (4) if sufficient money exists in the fund. Once payment has been made under this section, the authority is not liable for any claim on the basis of that payment.

(9) The authority may withhold partial payment of money on payment vouchers if there is reasonable cause to suspect that there are violations of section 21548 or if necessary to assure acceptable completion of the proposed work.

(10) The authority shall prepare and make available to owners and operators standardized claim and work invoice forms.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 269, Imd. Eff. Jan. 8, 1996;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2012, Act 113, Imd. Eff. May 1, 2012;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21516 Assignment or transfer of approved claim; notice.

Sec. 21516. (1) An owner or operator with a claim approved pursuant to section 21510 for which corrective action is in progress who sells or transfers the property that is the subject of the approved claim to another person may assign or transfer the approved claim to that other person. The person to whom the assignment or transfer is made is eligible to receive money from the authority as an owner or operator for the release which is the subject of the approved claim. Allowable, outstanding approved or paid work invoices of the owner or operator making the assignment or transfer may be counted toward the deductible amount of the person to whom the assignment or transfer is made.

(2) An owner or operator assigning or transferring an approved claim pursuant to this section shall notify the administrator of the proposed assignment or transfer at least 10 days before the effective date of the assignment or transfer.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21517 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to responsibilities of owner or operator and compliance with certain requirements.

324.21518 Receiving money from authority for indemnification; request for indemnification; approval by attorney general; records; payment.

Sec. 21518. (1) To receive money from the authority for indemnification, the owner or operator shall submit to the administrator a request for indemnification containing the information required by the administrator, including a copy of the judgment obtained by a third party from a court of law against the owner or operator or the settlement entered into between the owner or operator and the third party, all documentation supporting the reasonableness of and justification for the judgment or settlement, and work invoices which conform to the requirements of this part. If the administrator determines that the owner or operator is eligible for funding under this part, is eligible for the amount requested, has paid the deductible amount, and has not exceeded the allowable amount of expenditure provided in section 21510(1)(i), and that the work invoices are payable under this part, the administrator shall forward a copy of the request for indemnification along with all supporting documentation to the attorney general. The attorney general shall approve the request for indemnification if there is a legally enforceable judgment against, or settlement with, the owner or operator that was caused by an accidental release and that is reasonable and consistent with the purposes of this part. The attorney general may raise as a defense to the request any rights or defenses that were or are available to the owner or operator and, in the case of a judgment, that were not heard and ruled upon by the court. If a request for indemnification is approved by the attorney general, the authority shall pay the indemnification amount.

(2) The administrator shall keep records of all approved requests for indemnification.

(3) The authority shall make a payment to an owner or operator for an approved indemnification request within 30 days if sufficient money is available to make the payment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

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Popular name: Act 451

Popular name: NREPA

324.21519 Order of payment; insufficient money available; liability of authority and state.

Sec. 21519. (1) The authority shall make payments on claims in the order in which they are received. However, if there is insufficient money available to make payments on all approved claims, the authority shall give notice to each owner that is eligible to submit a claim under this part advising the owners of the financial situation and the authority shall prioritize payments based upon the risks at the site to the public health, safety, or welfare or the environment. Payments on claims that are not funded shall be paid if revenues subsequently become available.

(2) The authority and the state are not liable for work invoices or requests for indemnification if revenues of the authority are insufficient to meet these claims.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21519a Legacy release program; establishment; administration; reimbursement; conditions; request for reimbursement; form; approval by authority; "eligible person" defined.

Sec. 21519a. (1) The department shall establish and the authority shall administer a legacy release program as provided in this section to reimburse eligible persons for costs of corrective actions for certain historic releases from refined petroleum underground storage tank systems. An eligible person may be reimbursed for corrective action costs incurred if the eligible person demonstrates all of the following:

(a) The release from which the corrective action or indemnification arose was discovered and reported prior to December 30, 2014.

(b) The release upon which the request for reimbursement is based has not been closed pursuant to part 213 prior to December 30, 2014.

(c) Any refined petroleum underground storage tank systems that are operating at the location from which the release occurred are currently in compliance with the registration requirements of part 211.

(d) The request for reimbursement does not include reimbursement for money that was reimbursed from any other source, including insurance policies.

(e) A claim submitted to the legacy release program shall not be approved by the authority for any of the prohibitions listed under section 21510c.

(f) The request for reimbursement is for corrective action performed on or after December 30, 2014.

(2) An eligible person that seeks to be reimbursed under the legacy release program established under this section shall submit to the authority a request for reimbursement on a form provided by the authority containing the documentation required by the authority.

(3) The authority shall approve a request for reimbursement under this section only as follows:

(a) The amount approved for reimbursement shall be 50% of the aggregate indemnification and corrective action costs incurred, but not more than 50% of the reasonable and necessary eligible costs as determined by the administrator pursuant to section 21515(2) to (10).

(b) The total amount approved for reimbursement shall not exceed a total of $50,000.00 for all releases from refined petroleum underground storage tank systems at a single location.

(c) An owner or operator may request a review of a denied claim or work invoice per section 21521.

(4) As used in this section, "eligible person" means the owner or operator of a refined petroleum underground storage tank system at the time of the reporting of the release.

History: Add. 2017, Act 134, Eff. Jan. 24, 2018.

Popular name: Act 451

Popular name: NREPA

324.21520 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to establishment of audit program to monitor compliance.

324.21521 Denial of claim, invoice, request for indemnification, or request for eligibility determination; review; negotiated resolution; appeal.

Sec. 21521. (1) If the administrator denies a claim, work invoice, request for indemnification, or request for an eligibility determination under section 21510(8), the owner or operator who submitted the claim, work invoice, request for indemnification, or request for an eligibility determination under section 21510(8) may,

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within 14 days following the denial, request review by the board. However, if the administrator believes the dispute may be able to be resolved without the board's review, the administrator may contact the owner or operator regarding the issues in dispute and may negotiate a resolution of the dispute prior to the board's review. The board shall conduct a review of the denial to determine whether the claim, work invoice, or request for indemnification is payable under this part.

(2) A person who is denied approval by the board after review under subsection (1) may appeal the decision directly to the circuit court.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Popular name: Act 451

Popular name: NREPA

324.21522 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to appointment, terms, and duties of board of directors of Michigan underground storage tank financial assurance authority.

324.21523 Underground storage tank authority; creation; handling of funds.

Sec. 21523. The underground storage tank authority is created as a body corporate within the department and shall exercise its prescribed statutory power, financial duties, and financial functions independently of the director of the department or any other department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

Popular name: Act 451

Popular name: NREPA

324.21524 Authority; appointment, terms, and duties of members; vacancy; conduct of business; meetings open to public; quorum; voting; designation of representative; election of chairperson and other officers.

Sec. 21524. (1) The authority shall be governed by a board of directors consisting of the director of the department and 6 residents of the state appointed by the governor with the advice and consent of the senate as follows:

(a) An individual representing petroleum refiners.

(b) An individual representing independent petroleum marketers.

(c) An individual from a statewide motor fuel retail association.

(d) An individual from a statewide business association that includes owners or operators of refined petroleum underground storage tanks.

(e) An individual from a statewide environmental organization.

(f) A member of the general public.

(2) The 6 appointed members of the board shall serve terms of 3 years. However, in making the initial appointments, the governor shall designate 2 appointed members to serve for 3 years, 2 appointed members to serve for 2 years, and 2 appointed members to serve for 1 year.

(3) Upon appointment to the board of directors under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board of directors shall enter office and exercise the duties of the office to which he or she is appointed.

(4) A vacancy on the board of directors shall be filled in the same manner as the original appointment. A vacancy shall be filled for the balance of the unexpired term. A member of the board of directors shall hold office until a successor is appointed and qualified.

(5) Members of the board of directors and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330, and 1968 PA 318, MCL 15.301 to 15.310, as applicable. A member of the board of directors or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board of directors or an officer, employee, or agent of the authority, when acting in good faith, may rely upon any of the following:

(a) The opinion of counsel for the authority.

(b) The report of an independent appraiser selected with reasonable care by the board of directors.

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(c) Financial statements of the authority represented to the member of the board of directors, officer, employee, or agent to be correct by the officer of authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountant to fairly reflect the financial condition of the authority.

(6) The board of directors shall organize and make its own policies and procedures. The board of directors shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by 1976 PA 267, MCL 15.261 to 15.275. Four members of the board of directors constitute a quorum for the transaction of business. An action of the board of directors shall be by a majority of the votes cast. The director of the department may designate a representative from his or her department to serve as a voting member of the board of directors for 1 or more meetings.

(7) The board of directors shall elect a chairperson from among its members and may elect any other officers the board of directors considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

Popular name: Act 451

Popular name: NREPA

324.21525 Appointment of administrator; employment of experts, other officers, agents, or employees; contract with department; report; audit.

Sec. 21525. (1) The board shall appoint an administrator of the authority and may delegate to the administrator responsibilities for acting on behalf of the authority. The authority may employ on a permanent or temporary basis legal and technical experts, and other officers, agents, or employees, to be paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director of the department. The authority may delegate to 1 or more members, officers, agents, or employees any of the powers or duties of the authority as the authority considers proper.

(2) The authority may contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

(3) The authority shall annually file with the legislature a written report on its activities of the last year. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and money expended with proceeds of bonds or notes issued by the finance authority under this part.

(4) The accounts of the authority are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted accounting principles.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

Popular name: Act 451

Popular name: NREPA

324.21526 Board of directors; powers.

Sec. 21526. Except as otherwise provided in this part, the board of directors may do all things necessary or convenient to implement this part and the purposes, objectives, and powers delegated to the board of directors by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(d) With the prior consent of the director of the department, solicit and accept gifts, grants, loans, and other aid from any person or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(e) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(f) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice, payable out of any money of the authority.

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(g) Indemnify and procure insurance indemnifying members of the board of directors from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(h) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014;—Am. 2016, Act 380, Eff. Mar. 22, 2017.

Compiler's note: For transfer of powers and duties of Michigan underground storage tank financial assurance authority, and its board of directors, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

For abolishment of board of directors of Michigan underground storage tank financial assurance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

Popular name: Act 451

Popular name: NREPA

324.21527 Assessment; bonds or notes; issuance; indebtedness, liability, or obligations of state not created; payment; expenses.

Sec. 21527. (1) The authority shall assess the potential demand for payment of claims under this part and shall provide the results of the assessment to the finance authority. Upon review of the results of the assessment, if the finance authority determines that it is prudent to do so, the finance authority may issue bonds or notes.

(2) The finance authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the fund under section 21508. Bonds or notes of the finance authority are not a debt or liability of the state, do not create or constitute any indebtedness, liability, or obligation of the state, and do not constitute a pledge of the faith and credit of the state. All finance authority bonds and notes are payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or from funds of the finance authority pledged for such payment and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(3) All expenses incurred in implementing this part are payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the finance authority to incur any indebtedness or liability on behalf of or payable by the state.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21528 Bonds or notes; issuance; amount; purpose; payment; provisions; validity of signatures; sale; bonds or notes subject to other acts.

Sec. 21528. (1) The finance authority may issue from time to time bonds or notes in principal amounts the finance authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment of approved claims under this part.

(b) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the finance authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(c) The establishment or increase of reserves to secure or to pay finance authority bonds or notes or interest on those bonds or notes.

(d) The payment of interest on the bonds or notes for a period determined by the finance authority.

(e) The payment of all other costs or expenses of the finance authority incident to and necessary or convenient to implement its purposes and powers.

(2) The bonds or notes of the finance authority are not a general obligation of the finance authority but are payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the finance authority:

(a) Shall be authorized by resolution of the finance authority.

(b) Shall bear the date or dates of issuance.

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(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 20 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the finance authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(*l*) May be transferable.

(m) Shall be in the form, denomination or denominations, and with such other provisions and terms as is determined necessary or beneficial by the finance authority.

(4) If a member of the board of directors or any officer of the finance authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that bond or note, the signature continues to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the finance authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the finance authority determines. A finance authority bond or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the finance authority is not required to be filed under the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2009, Act 98, Imd. Eff. Sept. 24, 2009;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21529 Bonds or notes; issuance; amounts; purpose; application of proceeds to purchase or retirement at maturity or redemption; investment of escrowed proceeds; use by authority; refunded bonds or notes considered as paid; termination of obligation.

Sec. 21529. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and, pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded. After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner authorized under this part.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded are considered paid when there has been deposited in escrow money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest become due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded are terminated except as to the rights to the money or investment obligations deposited in trust.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21530 Bonds or notes; assurance of timely payments; costs of issuance.

Sec. 21530. (1) The authority may authorize and approve an insurance contract, an agreement for a line of

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credit, a letter of credit, a commitment to purchase bonds or notes, an agreement to remarket bonds or notes, an agreement to manage payment, revenue or interest rate exposure, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the bonds or notes, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, agreements to manage payment, revenue or interest rate exposure, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21531 Members of board of directors, executive director, or other officer; powers.

Sec. 21531. Within limitations that are contained in the issuance or authorization resolution of the finance authority, the finance authority may authorize a member of the board of directors, the executive director, or any other officer of the finance authority to do 1 or more of the following:

(a) Sell and deliver and receive payment for bonds or notes.

(b) Refund bonds or notes by the delivery of new bonds or notes whether or not the bonds or notes to be refunded are mature or subject to redemption.

(c) Deliver bonds or notes, partly to refund bonds or notes and partly for any other authorized purpose.

(d) Buy issued bonds or notes and resell those bonds or notes.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the finance authority.

(g) Approve the terms of an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to provide security to assure timely payment of a bond or note or an agreement to manage payment, revenue, or interest rate exposure.

(h) Execute any power, duty, function, or responsibility of the finance authority.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21532 Contract with holders of bonds or notes; provisions.

Sec. 21532. A resolution authorizing bonds or notes may provide for all or any portion of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose of all or any part of the fund or authority revenues or assets to which its right then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional bonds or notes may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.

(g) A provision to vest in a trustee, or a secured party, property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise that the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights, powers, and duties of

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the trustee.

(h) A provision to provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(*i*) By mandamus or other suit, action, or proceeding to enforce the rights of the bondholders or noteholders, and require the authority to implement any other agreements with the holders of those bonds or notes and to perform the authority's duties under this part.

(*ii*) Bring suit upon the bonds or notes.

(*iii*) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the bonds or notes.

(*iv*) By action, suit, or proceeding, enjoin any act or thing that may be unlawful or in violation of the rights of the holders of the bonds or notes.

(*v*) Declare the bonds or notes due and payable, and if all defaults are made good, then, as permitted by the resolution, to annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21533 Pledge as valid and binding; lien.

Sec. 21533. A pledge made by the authority is valid and binding from the time the pledge is made. The money or property pledged by the authority is immediately subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created is required to be recorded to establish and perfect a lien or security interest in the pledged property.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21534 Disposition of proceeds.

Sec. 21534. The proceeds of bonds or notes issued pursuant to this part shall be deposited into the fund or bond proceeds account as authorized or designated by resolution indenture or other agreement of the authority.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21535 Personal liability.

Sec. 21535. A member of the authority, any person executing bonds or notes issued under this part, or any person executing any agreement on behalf of the authority is not liable personally on the bonds or notes by reason of their issuance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21536 Holders of bonds or notes; rights and remedies not limited, restricted, or impaired.

Sec. 21536. The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

History: 1994, Act 451, Eff. Mar. 30, 1995.

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Popular name: Act 451

Popular name: NREPA

324.21537 Persons authorized to invest funds; authority bonds or notes as security for public deposits.

Sec. 21537. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part, and authority bonds or notes shall be authorized security for public deposits.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21538 Property and income of authority; bonds or notes as exempt from tax.

Sec. 21538. (1) Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is for a public purpose.

(2) The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state.

(3) Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21539 Construction of part.

Sec. 21539. This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21540 Rules.

Sec. 21540. The authority may promulgate rules as necessary to implement sections 21523 to 21539.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.21541 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

The repealed section pertained to creation of Michigan underground storage tank financial assurance policy board.

Popular name: Act 451

Popular name: NREPA

324.21542 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: For abolishment of the Michigan underground storage tank financial assurance policy board to the department of environmental quality and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-4, compiled at MCL 324.99906.

The repealed section pertained to list of qualified underground storage tank consultants.

Popular name: Act 451

Popular name: NREPA

324.21543 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

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Compiler's note: The repealed section pertained to certification of individual as underground storage tank professional.

Popular name: Act 451

Popular name: NREPA

324.21544 Rules.

Sec. 21544. The department and the department of treasury may promulgate rules necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 324.21501 et seq. of the Michigan Administrative Code.

324.21545 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to promulgation of administrative rules.

324.21546 Liability; constitutionality of part.

Sec. 21546. (1) This part does not create any liability on behalf of the state. This part shall not be construed as making the state the guarantor of the fund.

(2) This part does not relieve any person who may be eligible to submit a claim to the authority from any liability that he or she may incur as the owner or operator of a refined petroleum underground storage tank system. The state is not assuming the liability of an owner or operator eligible for funding under this part; it is only providing assistance to such owners or operators in meeting the financial responsibility requirements.

(3) If all bonds or notes of the finance authority payable from the fund have been fully paid or provided for and if any provision of this part is found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, this whole part shall be considered unconstitutional and invalid.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21547 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to availability and cost of environmental impairment insurance.

324.21548 Knowledge of false, misleading, or fraudulent request for payment as felony or subject to civil fine; retroactive application; "fraudulent" or "fraudulent practice" defined; action brought by attorney general or county prosecutor; money owed as claim and lien; prosecutions under other laws not precluded; apportionment of fines.

Sec. 21548. (1) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, application, claim, bid, work invoice, or other request for payment or indemnification is false or misleading is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $50,000.00, or both. In addition to any penalty imposed under this subsection, a person convicted under this subsection shall pay restitution to the authority for the amount received in violation of this subsection.

(2) A person who makes or submits or causes to be made or submitted either directly or indirectly any statement, report, application, claim, bid, work invoice, or other request for payment or indemnification under this part knowing that the statement, report, affidavit, application, claim, bid, work invoice, or other request for payment or indemnification is false, misleading, or fraudulent, or who commits a fraudulent practice, is subject to a civil fine of not more than $50,000.00 or twice the amount submitted, whichever is greater. In addition to any civil fine imposed under this subsection, a person found responsible under this subsection shall pay restitution to the authority for the amount received in violation of this subsection. The legislature intends that this subsection be given retroactive application.

(3) As used in subsection (2), "fraudulent" or "fraudulent practice" includes, but is not limited to, the following:

(a) Submitting a work invoice for the excavation, hauling, disposal, or provision of soil, sand, or backfill for an amount greater than the legal capacity of the carrying vehicle or greater than was actually carried, excavated, disposed, or provided.

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(b) Submitting paperwork for services or work provided that was not in fact provided or that was not directly provided by the individual indicated on the paperwork.

(c) Contaminating an otherwise clean resource or site with contaminated soil or product from a contaminated resource or site.

(d) Returning any load of contaminated soil to its original site for reasons other than remediation of the soil.

(e) Causing damage intentionally or as the result of gross negligence to a refined petroleum underground storage tank system, which damage results in a release at a site.

(f) Placing a refined petroleum underground storage tank system at a contaminated site where no refined petroleum underground storage tank system previously existed for purposes of disguising the source of contamination or to obtain funding under this part.

(g) Submitting a work invoice for the excavation of soil from a site that was removed for reasons other than removal of the refined petroleum underground storage tank system or remediation.

(h) Any intentional act or act of gross negligence that causes or allows contamination to spread at a site.

(i) Registration of a nonexistent refined petroleum underground storage tank system with the department.

(j) Loaning to an owner or operator the deductible amount and then submitting or causing to be submitted inflated claims or invoices designed to recoup the deductible amount.

(k) Confirming a release without simultaneously providing notice to the owner or operator.

(*l*) Inflating bills or work invoices, or both, by adding charges for work that was not performed.

(m) Submitting a false or misleading laboratory report.

(n) Submitting bills or work invoices, or both, for sampling, testing, monitoring, or excavation that are not justified by the site condition.

(o) Falsely characterizing the contents of a refined petroleum underground storage tank system for purposes of obtaining funding under this part.

(p) Submitting or causing to be submitted bills or work invoices by or from a person who did not directly provide the service.

(q) Characterizing legal services as consulting services for purposes of obtaining funding under this part.

(r) Misrepresenting or concealing the identity, credentials, affiliation, or qualifications of principals or persons seeking, either directly or indirectly, funding or approval for participation under this part.

(s) Falsifying a signature on a claim application or a work invoice.

(t) Failing to accurately disclose the actual amount and carrier of unencumbered insurance coverage available for new environmental impairment or professional liability claims.

(u) Any other act or omission of a false, fraudulent, or misleading nature undertaken in order to obtain funding under this part.

(4) The attorney general or county prosecutor may conduct an investigation of an alleged violation of this section and bring an action for a violation of this section.

(5) If the attorney general or county prosecutor has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or records, however stored or embodied, or tangible object which is relevant to an investigation of a violation or attempted violation of this part or a crime or attempted crime against the fund, the attorney general or county prosecutor may, before bringing any action, make an ex parte request to a magistrate for issuance of a subpoena requiring that person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both. Service may be accomplished by any means described in the Michigan court rules. Requests made by the attorney general may be brought in Ingham county.

(6) If a person objects to or otherwise fails to comply with a subpoena served under subsection (5), an action may be brought in district court to enforce the demand. Actions filed by the attorney general may be brought in Ingham county.

(7) The attorney general or county prosecutor may apply to the district court for an order granting immunity to any person who refuses to provide or objects to providing information, documents, records, or objects sought pursuant to this section. If the judge is satisfied that it is in the interest of justice that immunity be granted, he or she shall enter an order granting immunity to the person and requiring the person to appear and be examined under oath or to produce the document, records, or object for inspection and copying, or both.

(8) A person who fails to comply with a subpoena issued pursuant to subsection (5) or a requirement to appear and be examined pursuant to subsection (7) is subject to a civil fine of not more than $25,000.00 for each day of continued noncompliance.

(9) In addition to any civil fines or criminal penalties imposed under this part or the criminal laws of this state, the person found responsible shall repay any money obtained directly or indirectly under this part.

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Money owed pursuant to this section constitutes a claim and lien by the authority upon any real or personal property owned either directly or indirectly by the person. This lien shall attach regardless of whether the person is insolvent and may not be extinguished or avoided by bankruptcy. The lien imposed by this section has the force and effect of a first in time and right judgment lien.

(10) Subsection (1) does not preclude prosecutions under other laws of the state including, but not limited to, section 157a, 218, 248, 249, 280, or 422 of the Michigan penal code, 1931 PA 328, MCL 750.157a, 750.218, 750.248, 750.249, 750.280, and 750.422.

(11) All civil fines collected pursuant to this section shall be apportioned in the following manner:

(a) Fifty percent shall be deposited in the general fund and shall be used by the department to fund fraud investigations under this part.

(b) Twenty-five percent shall be paid to the office of the county prosecutor or attorney general, whichever office brought the action.

(c) Twenty-five percent shall be paid to a local police department or sheriff's office, or a city or county health department, if investigation by that office or department led to the bringing of the action. If more than 1 office or department is eligible for payment under this subsection, division of payment shall be on an equal basis. If there is not a local office or department that is entitled to payment under this subdivision, the money shall be forwarded to the state treasurer for deposit into the refined petroleum fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 181, Imd. Eff. May 3, 1996;—Am. 2004, Act 390, Imd. Eff. Oct. 12, 2004;—Am. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Popular name: Act 451

Popular name: NREPA

324.21549 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to providing information contributing to fine or conviction.

324.21550 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to repeal of MCL 324.21508 and the authority's obligation to pay off bonds or notes.

324.21551 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to payment for interest subsidies, work invoices, and requests for indemnification.

324.21552 Repealed. 2006, Act 318, Eff. Dec. 31, 2006.

Compiler's note: The repealed section pertained to the refined petroleum cleanup advisory council.

Popular name: Act 451

Popular name: NREPA

324.21553 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to establishment of refined petroleum product cleanup initial program.

324.21554 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to establishment of temporary reimbursement program.

324.21555 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to administration and implementation of temporary reimbursement program.

324.21556 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to first round precertification applications.

324.21557 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to second round precertification applications.

324.21558 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to performance of corrective actions by eligible person and compliance with certain requirements.

324.21559 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to receipt of money under temporary reimbursement fund for corrective actions.

324.21560 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to assignment or transfer of approved precertification application.

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324.21561 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to denial of precertification application or work invoice.

324.21562 Repealed. 2012, Act 113, Imd. Eff. May 1, 2012.

Compiler's note: For abolishment of the temporary reimbursement program advisory board and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-3, compiled at MCL 324.99905.

The repealed section pertained to creation of temporary reimbursement program advisory board.

Popular name: Act 451

Popular name: NREPA

324.21563 Repealed. 2014, Act 416, Imd. Eff. Dec. 30, 2014.

Compiler's note: The repealed section pertained to cessation of temporary reimbursement program.

ARTICLE III

NATURAL RESOURCES MANAGEMENT

CHAPTER 1

HABITAT PROTECTION

INLAND WATERS

PART 301

INLAND LAKES AND STREAMS

324.30101 Definitions.

Sec. 30101. As used in this part:

(a) "Bottomland" means the land area of an inland lake or stream that lies below the ordinary high-water mark and that may or may not be covered by water.

(b) "Bulkhead line" means a line that is established pursuant to this part beyond which dredging, filling, or construction of any kind is not allowed without a permit.

(c) "Dam" means an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water.

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

(e) "Expand" means to occupy a larger area of an inland lake or stream than authorized by a permit issued under this part for marina mooring structures and watercraft moored at the marina.

(f) "Fund" means the land and water management permit fee fund created in section 30113.

(g) "Height of the dam" means the difference in elevation measured vertically between the natural bed of an inland lake or stream at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the lowest point of the top of the dam, whichever is less.

(h) "Impoundment" means water held back by a dam, dike, floodgate, or other barrier.

(i) "Inland lake or stream" means either of the following:

(*i*) An artificial or natural lake, pond, or impoundment that is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

(*ii*) A natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit Rivers.

Inland lake or stream does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

(j) "Marina" means a facility that is owned or operated by a person, extends into or over an inland lake or stream, and offers service to the public or members of the marina for docking, loading, or other servicing of recreational watercraft.

(k) "Minor offense" means either of the following violations of this part if the project involved in the offense is a minor project or the department determines that restoration of the affected property is not required:

(*i*) The failure to obtain a permit under this part.

(*ii*) A violation of a permit issued under this part.

(*l*) "Mooring structures" means structures used to moor watercraft, including, but not limited to, docks,

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piers, pilings, mooring anchors, lines and buoys, and boat hoists.

(m) "Ordinary high-water mark" means the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.

(n) "Project" means an activity that requires a permit pursuant to section 30102.

(o) "Property owners' association" means any group of organized property owners publishing a directory of their membership, the majority of which are riparian owners and are located on the inland lake or stream that is affected by the proposed project.

(p) "Reconfigure" means to, without expanding the marina, do either of the following:

(*i*) Change the location of the dock or docks and other mooring structures at the marina to occupy an area of the inland lake or stream that was not previously authorized by a permit issued under this part.

(*ii*) Decrease the distance available for ingress and egress to an outside slip as described in section 30106a.

(q) "Riparian interest area" means that portion of an inland lake or stream over which a riparian owner has an ownership interest.

(r) "Riparian owner" means a person who has riparian rights.

(s) "Riparian rights" means those rights which are associated with the ownership of the bank or shore of an inland lake or stream.

(t) "Seasonal structure" includes any type of dock, boat hoist, ramp, raft, or other recreational structure that is placed into an inland lake or stream and removed at the end of the boating season.

(u) "Seawall" means a vertically sloped wall constructed to break the force of waves and retain soil for the purpose of shore protection.

(v) "Structure" includes a wharf, dock, pier, seawall, dam, weir, stream deflector, breakwater, groin, jetty, sewer, pipeline, cable, and bridge.

(w) "Upland" means the land area that lies above the ordinary high-water mark.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2006, Act 275, Imd. Eff. July 7, 2006;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2014, Act 351, Eff. Jan. 16, 2015;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.30101a Applicability of powers and duties of department to "navigable waters" and "waters of the United States" as defined in federal law.

Sec. 30101a. For the purposes of this part, the powers, duties, functions, and responsibilities exercised by the department because of federal approval of Michigan's permit program under section 404(g) and (h) of the federal water pollution control act, 33 USC 1344, apply only to "navigable waters" and "waters of the United States" as defined under section 502(7) of the federal water pollution control act, 33 USC 1362, and further refined by federally promulgated rules and court decisions that have the full effect and force of federal law. Determining whether additional regulation is necessary to protect Michigan waters beyond the scope of federal law is the responsibility of the Michigan legislature based on its determination of what is in the best interest of the citizens of this state.

History: Add. 2013, Act 98, Imd. Eff. July 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.30102 Operations prohibited without permit; exception.

Sec. 30102. (1) Except as provided in this part, a person without a permit from the department shall not do any of the following:

(a) Dredge or fill bottomland.

(b) Construct, enlarge, extend, remove, or place a structure on bottomland.

(c) Construct, reconfigure, or expand a marina.

(d) Create, enlarge, or diminish an inland lake or stream.

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(e) Structurally interfere with the natural flow of an inland lake or stream.

(f) Construct, dredge, commence, extend, or enlarge an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection with an existing inland lake or stream, or where any part of the artificial waterway is located within 500 feet of the ordinary high-water mark of an existing inland lake or stream.

(g) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar water with an existing inland lake or stream for navigation or any other purpose.

(2) A person shall not remove submerged logs from rivers or streams for the purpose of submerged log recovery. This subsection does not prohibit the department from issuing a permit under this part for other purposes, including removing logjams or removing logs that interfere with navigation of the river or stream.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.30103 Exceptions; "water withdrawal" and "agricultural drain" defined.

Sec. 30103. (1) A permit is not required under this part for any of the following:

(a) Any fill or structure existing before April 1, 1966, in waters covered by former 1965 PA 291, and any fill or structures existing before January 9, 1973, in waters covered for the first time by former 1972 PA 346.

(b) A seasonal structure placed on bottomland to facilitate private noncommercial recreational use of the water if it does not unreasonably interfere with the use of the water by others entitled to use the water or interfere with water flow.

(c) Reasonable sanding of beaches to the existing water's edge by the riparian owner or a person authorized by the riparian owner.

(d) Maintenance of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(*i*) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(*ii*) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(e) Maintenance and operation of a waste collection or treatment facility either ordered to be constructed or approved for operation under a state or a federal water pollution control law and this part. For purposes of this subdivision, "operation" includes dredging, filling, or construction and placement of structures in the waste collection or treatment facility in compliance with this act.

(f) Construction and maintenance of minor drainage structures and facilities that are identified by rule promulgated by the department under section 30110. Before a rule is promulgated pursuant to this subsection, the rule must be approved by the majority of a committee consisting of the director of the department, the director of the department of agriculture and rural development, and the director of the state transportation department or their designated representatives. The rules shall be reviewed at least annually.

(g) Maintenance of a drain that either was legally established and constructed before January 1, 1973, pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under section 30110, or was constructed or modified under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, and includes, but is not limited to, the following activities if performed with best management practices:

(*i*) Excavation of accumulated sediments back to original contours.

(*ii*) Reshaping of the side slopes.

(*iii*) Bank stabilization where reasonably necessary to prevent erosion. Materials used for stabilization must be compatible with existing bank or bed materials.

(*iv*) Armoring, lining, or piping if a previously armored, lined, or piped section is being repaired and all work occurs within the footprint of the previous work.

(*v*) Replacement of existing control structures, if the original function of the drain is not changed and the original approximate capacity of the drain is not increased.

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(*vi*) Repair of stabilization structures.

(*vii*) Culvert replacement, including culvert extensions of not more than 24 additional feet per culvert.

(*viii*) Emergency reconstruction of recently damaged parts of the drain. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(h) Projects constructed under the watershed protection and flood prevention act, 16 USC 1001 to 1012.

(i) Construction and maintenance of privately owned cooling or storage ponds used in connection with a public utility except at the interface with public waters.

(j) Maintenance of a structure constructed under a permit issued pursuant to this part and identified by rule promulgated under section 30110, if the maintenance is in place and in kind with no design or materials modification.

(k) A water withdrawal.

(*l*) Annual installation of a seasonal dock or docks, pilings, mooring buoys, or other mooring structures previously authorized by and in accordance with a permit issued under this part.

(m) Controlled access of livestock to streams for watering or crossing if constructed in accordance with applicable practice standards set by the United States Department of Agriculture, Natural Resources Conservation Service.

(n) Temporary drawdowns of impoundments at hydroelectric projects licensed by the federal energy regulatory commission (FERC) and subject to FERC's authority if both of the following apply:

(*i*) The FERC licensee has consulted this state during the drawdown plan development and this state's concerns have been addressed in the drawdown plan as FERC considers appropriate.

(*ii*) Adverse environmental impacts, including stream flow, aquatic resources, and timing, have been avoided and minimized to the extent practical.

(o) Removal, by the riparian owner or a person authorized by the riparian owner, of plants that are an aquatic nuisance as defined in section 3301, if the removal is accomplished by hand-pulling without using a powered or mechanized tool and all plant fragments are removed from the water and properly disposed of on land above the ordinary high-water mark as defined in section 30101.

(p) Raking of lake bottomlands by the riparian owner or a person authorized by the riparian owner. To minimize effects on the lake bottomlands, the areas raked shall be unvegetated before raking and predominantly composed of sand or pebbles, and the raking shall be performed without using a powered or mechanized tool. For the purposes of this subdivision, the pulling of a nonpowered, nonmechanized tool with a boat is not the use of a powered or mechanized tool.

(2) As used in this section, "water withdrawal" means the removal of water from its source for any purpose.

(3) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2014, Act 253, Imd. Eff. June 30, 2014;—Am. 2018, Act 163, Eff. Aug. 21, 2018.

Popular name: Act 451

Administrative rules: R 281.811 et seq. of the Michigan Administrative Code.

Popular name: NREPA

324.30104 Application for permit; fees; refund.

Sec. 30104. (1) A person shall not undertake a project subject to this part except as authorized by a permit issued by the department pursuant to part 13. An application for a permit must include any information that may be required by the department. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(2) Except as provided in subsections (3) and (4), until October 1, 2025, an application for a permit must be accompanied by an application fee based on an administrative cost in accordance with the following schedule:

(a) For an initial permit for a seasonal drawdown or associated reflooding, or both, of a dam or impoundment for the purpose of weed control that is issued for the first time after October 9, 1995, a fee of

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$500.00, but for subsequent permits for the same purpose a fee of $50.00.

(b) For activities included in a minor project category established under section 30105(7), a fee of $100.00.

(c) For activities included in a general permit category established under section 30105(8), a fee of $50.00.

(d) For construction or expansion of a marina, a fee as follows:

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

(*ii*) $100.00 for a new marina with 1-10 proposed marina slips.

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

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

(*v*) $1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(e) For major projects other than a project described in subdivision (d)(*v*), involving any of the following, a fee of $2,000.00:

(*i*) Dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand.

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

(*iii*) Seawalls, bulkheads, or revetments of 500 feet or more.

(*iv*) Filling or draining of 1 acre or more of wetland contiguous to a lake or stream.

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

(*vi*) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.

(*vii*) New commercial docks or wharves of 300 feet or more in length.

(*viii*) Stream enclosures 100 feet or more in length.

(*ix*) Stream relocations 500 feet or more in length.

(*x*) New golf courses.

(*xi*) Subdivisions.

(*xii*) Condominiums.

(f) For the removal of submerged logs from bottomland of an inland lake, a $500.00 fee.

(g) For all other projects not listed in subdivisions (a) to (f), a fee of $500.00.

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

(a) Section 3104.

(b) Part 303.

(c) Part 323.

(d) Part 325.

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

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

(5) If the department denies an application for a permit under this part, the department shall promptly refund the application fee paid under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 1996, Act 97, Imd. Eff. Feb. 28, 1996;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 275, Imd. Eff. July 7, 2006;—Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2009, Act 139, Imd. Eff. Nov. 4, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011;—Am. 2013, Act 13, Imd. Eff. Mar. 27, 2013;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

324.30104b Applicability of MCL 324.30306b to proposed project or proposed permit application.

Sec. 30104b. Section 30306b applies to a proposed project or a proposed permit application under this part.

History: Add. 2006, Act 592, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 179, Imd. Eff. Sept. 30, 2010;—Am. 2015, Act 76, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

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324.30105 Pending applications; posting on website; public hearing; review of application; statement; final inspection and certification; notice of hearing; conditional permit in emergency; provisions applicable to minor project; issuance of general permits; minor project category; general permit for activities in drains; definitions.

Sec. 30105. (1) The department shall post on its website all of the following under this part:

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

(2) The department may hold a public hearing on pending applications.

(3) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the county where the project is to be located, to the local conservation district, to the watershed council established under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104. Each copy of the application shall be accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant the application without a public hearing where the project is located. The department may hold a public hearing upon the written request of the applicant or a riparian owner or a governmental unit or other person that is entitled to receive a copy of the application pursuant to this subsection.

(4) After completion of a project for which an application is approved, the department may cause a final inspection to be made and certify to the applicant that the applicant has complied with the department's permit requirements.

(5) At least 10 days' notice of a hearing to be held under this section shall be given by publication in a newspaper circulated in the county where the project is to be located, to the person requesting the hearing, and to the governmental units and other persons that are entitled to receive a copy of the application pursuant to subsection (3).

(6) In an emergency, the department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (3).

(7) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities and projects that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30104 for an activity or project within a minor project category without providing notices pursuant to subsection (3). The department shall develop a minor project category under this subsection for repair or replacement of a failed seawall. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(8) The department, after notice and an opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for projects that are similar in nature, that will cause only minimal adverse environmental effects when performed separately, and that will only have minimal cumulative adverse effects on the environment. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to subsection (3) but shall not hold a public hearing and shall not typically require a site inspection. A general permit issued under this subsection shall not be valid for more than 5 years. Among the activities the department may consider for general permit eligibility under this subsection are the following:

(a) The removal of qualifying small dams.

(b) The maintenance or repair of an existing pipeline, if the pipeline is maintained or repaired in a manner to ensure that any adverse effects on the inland lake or stream will be minimized.

(9) The department may issue, deny, or impose conditions on project activities authorized under a minor project category or a general permit if the conditions are designed to remove an impairment to the inland lake or stream, to mitigate the effects of the project, or to otherwise improve water quality. The department may also establish a reasonable time when the proposed project is to be completed or terminated.

(10) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse environmental effects, the department may require that the application be processed according to subsection (3) and reviewed for compliance with section 30106.

(11) The department shall develop by December 31, 2013 and maintain a general permit for activities in

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drains legally established pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630. The general permit is subject to all of the following:

(a) The general permit shall cover installation and replacement of culverts, clear span bridges, and end sections; culvert extensions; drain realignments; installation of bank stabilization structures and grade stabilization structures; spoil placement; and other common drain activities that use best management practices.

(b) A drain commissioner or drainage board may submit an application for an authorization under the general permit on a countywide basis. The department of agriculture and rural development may submit an application for an authorization under the general permit on behalf of an intercounty drainage board on a drainage-district-wide basis.

(c) The department shall grant or deny an authorization under the general permit by March 1 if the drain commissioner or drainage board applies for the authorization by the preceding January 20. An authorization under the general permit is valid until March 30 of the year after the year in which the authorization is granted.

(d) By December 31 of each year, the drain commissioner or drainage board shall submit a report to the department that includes the names of the drains on which activities were performed under the general permit during that calendar year, the locations and nature of the activities, and plans and other documentation demonstrating that those activities met the general permit requirements.

(e) A drain commissioner or drainage board is not eligible to be granted a new authorization under the general permit if significant violations of the general permit under a previous authorization granted to that drain commissioner or drainage board have not been corrected.

(12) As used in this section:

(a) "Failed seawall" means a seawall that has deteriorated to the point that it no longer effectively breaks the force of waves or retains soil for the purpose of shore protection and meets either or both of the following:

(*i*) The seawall is currently breaking the force of waves and retaining soil across a minimum of 50% of its length and there is evidence of a previous seawall along the other 50% of its length.

(*ii*) The seawall was breaking the force of waves and retaining soil but was damaged by a single catastrophic event which occurred within the 2 years prior to the repair or replacement of the seawall.

(b) "Qualifying small dam" means a dam that meets all of the following conditions:

(*i*) The height of the dam is less than 2 feet.

(*ii*) The impoundment from the dam covers less than 2 acres.

(*iii*) The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.

(*iv*) The dam is not serving as a sea lamprey barrier.

(*v*) There are no threatened or endangered species that have been identified in the area that will be affected by the project.

(*vi*) There are no known areas of contaminated sediments in the area that will be affected by the project.

(*vii*) The department has received written permission for the removal of the dam from all riparian property owners adjacent to the dam's impoundment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 275, Imd. Eff. July 7, 2006;—Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2014, Act 351, Eff. Jan. 16, 2015.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 281.811 et seq. of the Michigan Administrative Code.

324.30106 Prerequisite to issuance of permit; specification in permit.

Sec. 30106. The department shall issue a permit if it finds that the structure or project will not adversely affect the public trust or riparian rights. In passing upon an application, the department shall consider the possible effects of the proposed action upon the inland lake or stream and upon waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife,

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aesthetics, local government, agriculture, commerce, and industry. The department shall not grant a permit if the proposed project or structure will unlawfully impair or destroy any of the waters or other natural resources of the state. This part does not modify the rights and responsibilities of any riparian owner to the use of his or her riparian water. A permit shall specify that a project completed in accordance with this part shall not cause unlawful pollution as defined by part 31.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30106a Construction, expansion, or reconfiguration of marina; issuance of permit; conditions; definitions.

Sec. 30106a. (1) The department shall issue a permit to construct, expand, or reconfigure a marina if the department determines that the marina meets the conditions of section 30106 and all of the following conditions:

(a) The marina extends from riparian property of the applicant.

(b) The marina does not unreasonably interfere with navigation.

(c) The marina is located and designed to be operated consistently with the correlative rights of other riparians, including the rights of adjacent riparians.

(2) In order to be designed consistently with the correlative rights of other riparians as required under subsection (1), the marina shall be configured so that all boat mooring under any wind condition will occur solely within the marina's riparian interest area. Additionally, boat mooring and ingress and egress for an outside slip shall require a minimum maneuvering distance of 1.5 times the length of the slip. This minimum distance shall be measured from the end of the slip or, for broadside moorage, the outside beam of a watercraft moored at the slip, to the boundary of the marina's riparian interest area.

(3) In order to support the determinations under this section, the department may require the applicant to do either of the following:

(a) Submit a riparian interest area estimate survey, sealed by a licensed surveyor. In making its determination on the need for a riparian interest area estimate survey, the department shall consider factors such as the shape of the water body, the location of the marina on the water body, how much frontage is available to locate the marina, and the dock and mooring configurations.

(b) Obtain an easement from any affected adjacent riparian owner authorizing an incursion and record the easement with the register of deeds for the county in which the marina is located.

(4) The owner or operator of a marina existing on the effective date of the amendatory act that added this section that has not been authorized by a permit issued under this part shall obtain a permit under this section before expanding or reconfiguring the marina, or by January 1, 2012, whichever comes first. The owner or operator of a marina existing on the effective date of the amendatory act that added this section that has been authorized by a construction permit under this part does not need to obtain a new construction permit except to expand or reconfigure.

(5) As used in this section:

(a) "Marina's riparian interest area" means the riparian interest area of an applicant for a permit under subsection (1) and any adjacent area for which the applicant has secured written authorization from the riparian owner whose interest is or may be affected.

(b) "Outside slip" means a slip that is accessed from a location between the boundary of the marina's riparian interest area and the mooring structure.

(c) "Slip length" means the longer of either of the following:

(*i*) The total length of all mooring structures, including the docks and pilings.

(*ii*) The total length of the vessel moored in the slip, including, but not limited to, outboard engines, boat hoists, bowsprits, and swim platforms.

History: Add. 2009, Act 139, Imd. Eff. Nov. 4, 2009.

Popular name: Act 451

Compiler's note: NREPA

324.30106b Dredging or placing dredged spoils on bottomland; permit; conditions.

Sec. 30106b. A permit under this part to dredge or place dredged spoils on bottomland is subject to both of the following:

(a) The permit shall be valid for a period of 5 years.

(b) During the term of the permit, the department shall not require additional environmental studies or surveys unless an act of God results in significant geological or ecological changes to the permitted area.

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History: Add. 2013, Act 87, Imd. Eff. June 28, 2013.

Popular name: Act 451

Popular name: NREPA

324.30107 Duration, terms, and revocation of permit; hearing; modification or revocation of general permit.

Sec. 30107. (1) A permit is effective until revoked for cause but not beyond its term and may be subject to renewal. A permit may specify the term and conditions under which the work is to be carried out. A permit may be revoked after a hearing for violation of any of its provisions, any provision of this part, any rule promulgated under this part, or any misrepresentation in application.

(2) A general permit may be modified or revoked if, after opportunity for a public hearing, the department determines that the activities authorized by the general permit have more than a minimal adverse impact on the environment on an individual or cumulative basis, or the activities generally would be more appropriately processed according to section 30105(3) and reviewed for compliance with section 30106.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.30108 Bulkhead line; establishment; application; jurisdiction; duties.

Sec. 30108. The department may establish by permit a bulkhead line on its own application or on the application of a local unit of government. The application shall be filed as provided in section 30104(1) with public notice and hearings as provided in section 30105. Upon acceptance of the bulkhead line by the affected units of government, the area landward of the bulkhead line shall after that acceptance be under the jurisdiction of those units of government as to the placement of structures and fills in the waters unless jurisdiction is returned to the state. In establishing a bulkhead line, the department shall provide for local requirements and ensure the public trust in the adjacent waters against unreasonable interferences.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30109 Ordinary high-water mark agreement with riparian owner; agreement as proof of location; fee.

Sec. 30109. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written agreement with the riparian owner establishing the location of the ordinary high-water mark for his or her property. In the absence of substantially changed conditions, the agreement is conclusive proof of the location in all matters between this state and the riparian owner and his or her successors in interest. Until October 1, 2025, the service fee provided for in this section is $500.00. The department shall forward service fees collected under this section to the state treasurer for deposit into the fund.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

324.30110 Rules; promulgation and enforcement; hearing; review; proceeding by riparian owner.

Sec. 30110. (1) The department may promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, he or she may request a formal hearing on the matter involved. The hearing shall be conducted by the commission in accordance with the provisions for contested cases in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A determination, action, or inaction by the commission following the hearing is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969.

(4) This section does not limit the right of a riparian owner to institute proceedings in any circuit court of the state against any person when necessary to protect his or her rights.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

Administrative rules: R 281.811 et seq. of the Michigan Administrative Code.

324.30111 Rights of riparian owner as to water frontage and exposed bottomland.

Sec. 30111. This part does not deprive a riparian owner of rights associated with his or her ownership of water frontage. A riparian owner among other rights controls any temporarily or periodically exposed bottomland to the water's edge, wherever it may be at any time, and holds the land secure against trespass in the same manner as his or her upland subject to the public trust to the ordinary high-water mark.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30111b Public road end; prohibited use; violation as misdemeanor; fine; civil action; definitions.

Sec. 30111b. (1) A public road end shall not be used for any of the following unless a recorded deed, recorded easement, or other recorded dedication expressly provides otherwise:

(a) Construction, installation, maintenance, or use of boat hoists or boat anchorage devices.

(b) Mooring or docking of a vessel between 12 midnight and sunrise.

(c) Any activity that obstructs ingress to or egress from the inland lake or stream.

(2) A public road end shall not be used for the construction, installation, maintenance, or use of a dock or wharf other than a single seasonal public dock or wharf that is authorized by the local unit of government, subject to any permit required under this part. This subsection does not prohibit any use that is expressly authorized by a recorded deed, recorded easement, or other recorded dedication. This subsection does not permit any use that exceeds the uses authorized by a recorded deed, recorded easement, other recorded dedication, or a court order.

(3) A local unit of government may prohibit a use of a public road end if that use violates this section.

(4) A person who violates subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than $500.00. Each 24-hour period in which a violation exists represents a separate violation of this section. A peace officer may issue an appearance ticket as authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates subsection (1) or (2).

(5) This section does not prohibit a person or agency from commencing a civil action for conduct that violates this section.

(6) As used in this section:

(a) "Local unit of government" means a township, city, or village in which the public road end is located.

(b) "Public road end" means the terminus at an inland lake or stream of a road that is lawfully open for use by the public.

History: Add. 2012, Act 56, Imd. Eff. Mar. 22, 2012;—Am. 2014, Act 168, Imd. Eff. June 12, 2014.

Popular name: Act 451

Popular name: NREPA

****** 324.30111d.added THIS ADDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

324.30111d.added Issuance of written emergency order; violation of Part 301.

Sec. 30111d. (1) The director of the department may issue a written emergency order that requires any person that the department determines to be in violation of this part to take emergency action necessary to prevent significant harm to public health, safety, welfare, property, or natural resources or the public trust in natural resources. The emergency action may include, but is not limited to, immediate repair or removal of a structure or fill owned by the person and located on bottomlands. This subsection does not expand the department's authority under part 315 as limited by section 31506(2)(a). If a person fails to comply with an order under this subsection, or is unavailable or unable to be contacted, the department may take the action necessary and may recover the costs incurred from that person in a civil action in a court of competent jurisdiction. The director of the department may modify an emergency order. The director of the department may terminate an emergency order upon a determination in writing that all necessary emergency actions have been completed and that an emergency no longer exists.

(2) Within 15 days after the director of the department issues an emergency order to a person under subsection (1), the department shall provide the person with an opportunity for a hearing pursuant to chapter 4

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of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288. At the hearing, the director of the department shall determine, based on information and fact, if the emergency order must be continued, modified, suspended, or terminated as necessary for or consistent with the protection of public health, safety, welfare, property, or natural resources or the public trust in natural resources.

(3) Before taking action to recover costs incurred under subsection (1), the department shall consider any evidence, provided by the person liable for the costs, that the person is unable to pay the costs.

History: Add. 2024, Act 102, Eff. (sine die).

Popular name: Act 451

Popular name: NREPA

324.30112 Civil action; commencement by department; fine; violation as misdemeanor; penalty; civil sanction as appropriate to violation.

Sec. 30112. (1) The department may commence a civil action in the circuit court of the county in which a violation occurs to enforce compliance with this part, to restrain violation of this part or any action contrary to an order of the department denying a permit, to enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or after denial of a permit by the department, or to order the restoration of the affected area to its prior condition.

(2) In a civil action commenced under this part, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than $5,000.00 per day for each day of violation.

(3) Except as provided in subsection (4), a person who violates this part or a permit issued under this part is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00 per day for each day of violation.

(4) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g.

(5) A person who knowingly makes a false statement, representation, or certification in an application for a permit or in a notice or report required by a permit, or a person who knowingly renders inaccurate any monitoring device or method required to be maintained by a permit, is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00 per day for each day of violation.

(6) Any civil sanction assessed, sought, or agreed to by the department shall be appropriate to the violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

324.30113 Land and water management permit fee fund.

Sec. 30113. (1) The land and water management permit fee fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer shall annually present to the department an accounting of the amount of money in the fund. The department shall be the administrator of the fund for auditing purposes.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to implement this part and the following:

(a) Sections 3104, 3107, and 3108.

(b) Part 303.

(c) Part 315.

(d) Part 323.

(e) Part 325.

(f) Part 339.

(g) Part 353.

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

(5) The department shall annually report to the legislature how money in the fund was expended during the previous fiscal year.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995;—Am. 2004, Act 246, Eff. Oct. 1, 2004;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006;—Am. 2014, Act 253, Imd. Eff.

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June 30, 2014.

Popular name: Act 451

Popular name: NREPA

PART 303
WETLANDS PROTECTION

***** *324.30301 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.)* *****

324.30301 Definitions; technical wetland delineation standards.

Sec. 30301. (1) As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Director" means the director of the department.

(c) "Exceptional wetland" means wetland that provides physical or biological functions essential to the natural resources of this state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.

(d) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

(e) "Hydric soil" means a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(f) "Landscape level wetland assessment" means the use of aerial photographs, maps, and other remotely sensed information to predict and evaluate wetland characteristics and functions in the context of all of the following:

(*i*) The wetland's landscape position and hydrologic characteristics.

(*ii*) The surrounding landscape.

(*iii*) The historic extent and condition of the wetland.

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

(h) "Nationwide permit" means a nationwide permit issued by the United States Army Corps of Engineers under 72 FR 11091 to 11198 (March 12, 2007), including all general conditions, regional conditions, and conditions imposed by this state pursuant to a water quality certification under section 401 of title IV of the federal water pollution control act, 33 USC 1341, or a coastal zone management consistency determination under section 307 of the coastal zone management act of 1972, 16 USC 1456.

(i) "Ordinary high-water mark" means the ordinary high-water mark as specified in section 32502.

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

(k) "Rapid wetland assessment" means a method for generally assessing the functions, values, and condition of individual wetlands based on existing data and field indicators.

(*l*) "Rare and imperiled wetland" means any of the following:

(*i*) Great Lakes marsh.

(*ii*) Southern wet meadow.

(*iii*) Inland salt marsh.

(*iv*) Coastal plain marsh.

(*v*) Interdunal wetland.

(*vi*) Lakeplain wet prairie.

(*vii*) Lakeplain wet-mesic prairie.

(*viii*) Coastal fen.

(*ix*) Wet-mesic prairie.

(*x*) Wet prairie.

(*xi*) Prairie fen.

(*xii*) Northern fen.

(*xiii*) Patterned fen.

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(*xiv*) Poor fen.

(*xv*) Muskeg.

(*xvi*) Relict conifer swamp.

(*xvii*) Southern floodplain forest.

(m) "Water dependent" means requiring access or proximity to or siting within an aquatic site to fulfill its basic purpose.

(n) "Wetland" means a land or water feature, commonly referred to as a bog, swamp, or marsh, inundated or saturated by water at a frequency and duration sufficient to support, and that under normal circumstances does support, hydric soils and a predominance of wetland vegetation or aquatic life. A land or water feature is not a wetland unless it meets any of the following:

(*i*) Is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

(*ii*) Is contiguous to the Great Lakes, Lake St. Clair, an inland lake or pond, or a stream. As used in this subparagraph, "pond" does not include a farm or stock pond constructed consistent with the exemption under section 30305(2)(g).

(*iii*) Is more than 5 acres in size.

(*iv*) Has the documented presence of an endangered or threatened species under part 365 or the endangered species act of 1973, Public Law 93-205.

(*v*) Is a rare and imperiled wetland.

(2) In 2019 and every 5 years thereafter, the department of natural resources may make recommendations to the legislature for changes in the list of rare and imperiled wetlands to reflect the status of each type of wetland to be included on the list as rare and imperiled throughout this state.

(3) As used in section 30312f:

(a) "Altered or degraded wetland" means wetland that meets any of the following criteria:

(*i*) Has been partially or fully drained, such as by ditching, tiling, or pumping.

(*ii*) Has been partially or fully filled by direct placement of material in the wetland or significant sedimentation.

(*iii*) Invasive plant species dominate in a majority of the vegetated surface area of the wetland.

(*iv*) Has undergone land use conversion or alteration to vegetation, soil, or hydrology that currently affects the wetland functions and services.

(b) "Former wetland" means land that was wetland but that has been modified to the point that it no longer has the hydrologic characteristics of wetland.

(c) "Net increase in wetland functions and services" means an increase in 1 or more wetland functions and services with not more than a minimal decrease in other wetland functions and services.

(d) "Voluntary wetland restoration project", subject to subdivision (e), means any of the following:

(*i*) Activities that are voluntarily undertaken to restore, reestablish, rehabilitate, or enhance altered or degraded wetland or former wetland and that result in a net increase in wetland functions and services.

(*ii*) Activities to maintain or manage sites where activities described in subparagraph (*i*) have taken place, including sites restored before October 1, 1980, the effective date of former 1979 PA 203.

(e) Voluntary wetland restoration project does not include an activity undertaken to fulfill, currently or in the future, a federal, state, or local wetland permit mitigation requirement.

(f) "Wetland functions and services" means any of the following:

(*i*) Wetland hydrology that approximates the predisturbance condition or that emulates the natural condition of the wetland.

(*ii*) Fish and wildlife habitat quality or quantity.

(*iii*) Plant community quality, characterized by native vegetation types and diversity.

(*iv*) Water- and soil-related functions of the wetland, such as nutrient removal, sediment retention, flood control, or groundwater recharge.

(*v*) Recreational use of the wetland, including, but not limited to, fishing, hunting, trapping, and birdwatching.

(4) The department and local units of government shall apply the technical wetland delineation standards set forth in the United States Army Corps of Engineers January, 1987, Wetland Delineation Manual, technical report Y-87-1, and appropriate regional United States Army Corps of Engineers supplements, in identifying wetland boundaries under this part, including, but not limited to, section 30307.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2018, Act 562, Eff. Mar. 28, 2019;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information

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resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30302 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30302 Legislative findings; criteria to be considered in administration of part.

Sec. 30302. (1) The legislature finds that:

(a) Wetland conservation is a matter of state concern since a wetland of 1 county may be affected by acts on a river, lake, stream, or wetland of other counties.

(b) A loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland:

(*i*) Flood and storm control by the hydrologic absorption and storage capacity of the wetland.

(*ii*) Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

(*iii*) Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.

(*iv*) Pollution treatment by serving as a biological and chemical oxidation basin.

(*v*) Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

(*vi*) Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

(c) Wetlands are valuable as an agricultural resource for the production of food and fiber, including certain crops which may only be grown on sites developed from wetland.

(d) That the extraction and processing of nonfuel minerals may necessitate the use of wetland, if it is determined pursuant to section 30311 that the proposed activity is dependent upon being located in the wetland and that a prudent and feasible alternative does not exist.

(2) In the administration of this part, the department shall consider the criteria provided in subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30303 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30303 Studies regarding wetland resources; contracts; study as public record for distribution at cost; identification of land suitable for cranberry production activities.

Sec. 30303. (1) The department may enter into an agreement to make contracts with the federal government, other state agencies, local units of government, private agencies, or persons for the purposes of making studies for the efficient preservation, management, protection, and use of wetland resources. A study

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shall be available as a public record for distribution at cost as provided in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(2) Within 180 days after the effective date of the 2009 amendatory act that added this subsection, the commission of agriculture in consultation with the department of environmental quality shall identify at least 2,500 acres of land suitable for cranberry production activities. Priority shall be given to upland sites, sites that have been drained for agricultural use and are no longer wetland, and sites that have been drained for agricultural use and continue to be wetland. The department and the department of agriculture shall make available to the public a map of the areas identified as provided in this section. The map is for informational purposes and does not constitute a regulatory determination for purposes of this part.

(3) After 2,000 acres of sites identified under subsection (2) have been developed for cranberry production activities, at least an additional 2,500 acres shall be identified as provided in subsection (2).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30303b Repealed. 2009, Act 120, Eff. Oct. 1, 2012.

Compiler's note: The repealed section pertained to implementation of pilot program to facilitate role of local units of government, conservation districts, nonprofit organizations, and wetland professionals seeking assistance with certain proposed projects.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30303d Repealed. 2009, Act 120, Eff. Oct. 1, 2012.

Compiler's note: The repealed section pertained to pilot program for development of wetland mitigation banks, participants, and report.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30304 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30304 Prohibited activities.

Sec. 30304. Except as otherwise provided in this part or by a permit issued by the department under this part and pursuant to part 13, a person shall not do any of the following:

(a) Deposit or permit the placing of fill material in a wetland.

(b) Dredge, remove, or permit the removal of soil or minerals from a wetland.

(c) Construct, operate, or maintain any use or development in a wetland.

(d) Drain surface water from a wetland.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30304b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE*

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*ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30304b Issuance of state programmatic general permits; agreement with United States army corps of engineers; applicability of subsections (2) and (3).

Sec. 30304b. (1) The department shall pursue an agreement with the United States army corps of engineers for the corps to issue state programmatic general permits under section 404(e) of title IV of the federal water pollution control act, 33 USC 1344, for activities regulated under this part in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344.

(2) This subsection applies beginning January 1, 2011. This subsection applies to an application for a permit under this part only if the application is for an activity or use in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344, and if the corps has not issued a state programmatic general permit for the activity or use. In such a case, if requested by the applicant in the application, all of the following apply:

(a) The department shall approve or deny the application for a permit under this part not more than 30 days after the corps grants or denies an application for a permit for the project under section 404(a) of title IV of the federal water pollution control act, 33 USC 1344, or by the end of the processing period otherwise provided for in section 1301, whichever is later. If a project proposed in a permit application processed under this subsection also requires authorization under 1 or more of parts 31, 301, 315, 323, 325, or 353, the requirements of this subdivision also apply to the department's decision under that part or parts.

(b) Subject to subsection (3), if the corps grants a permit for the project, the department shall grant a permit under this part without conditions or limitations other than those imposed by the corps unless any of the following apply:

(*i*) The wetland is a rare and imperiled wetland.

(*ii*) The wetland is regionally significant for the protection of fisheries, wildlife, or migratory birds.

(*iii*) The site is described in section 30309(a), (e), or (g).

(*iv*) The proposed project involves a use or activity not regulated under section 404(a) of title IV of the federal water pollution control act, 33 USC 1344.

(3) The department shall inform the applicant in writing of the basis for a finding that the requirements of subsection (2)(b)(*i*), (*ii*), (*iii*), or (*iv*) are met and the specific reasons why denial of the permit or the imposition of additional conditions or limitations on the permit is consistent with this part and rules promulgated under this part.

(4) Subsections (2)(b) and (3) apply only to the department's decision under this part notwithstanding that the project proposed in the application also requires authorization under 1 or more of parts 31, 301, 315, 323, 325, and 353.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30305 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30305 Activities not requiring permit under part; uses allowed without permit; farming operation in wetland not requiring permit; incidental creation of wetland; area created as result of commercial excavation; activities not subject to regulation; subsection (6) inapplicable to certain lands; "agricultural drain" defined.

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

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

(a) Fishing, trapping, or hunting.

(b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals, including fencing and post placement if the fence is designed to control livestock, does not exceed 11 feet in height, and utilizes an amount of material that does not exceed that of a woven wire fence utilizing 6-inch vertical spacing and posts.

(e) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. All of the following apply for the purposes of this subdivision:

(*i*) Beginning October 1, 2013, to be allowed in a wetland without a permit, these activities shall be part of an established ongoing farming, ranching, horticultural, or silvicultural operation. Farming and silvicultural activities on areas lying fallow as part of a conventional rotational cycle are part of an established ongoing operation, unless modifications to the hydrological regime or mechanized land clearing are necessary to resume operation. Activities that bring into farming, ranching, horticultural, or silvicultural use an area not in any of these uses, or that convert an area from a forested or silvicultural use to a farming, ranching, or horticultural use, are not part of an established ongoing operation.

(*ii*) Minor drainage does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland, or conversion from 1 wetland use to another. Minor drainage does not include the construction of a canal, ditch, dike, or other waterway or structure that drains or otherwise significantly modifies a stream, lake, or wetland.

(*iii*) Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this section without a permit from the department.

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

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

(h) Maintenance of an agricultural drain, regardless of outlet, if all of the following requirements are met:

(*i*) The maintenance includes only activities that maintain the location, depth, and bottom width of the drain as constructed or modified at any time before July 1, 2014.

(*ii*) The maintenance is performed by the landowner or pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(*iii*) The maintenance does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(i) Maintenance of a drain that was legally established and constructed pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, if the drain was constructed before January 1, 1973 or under a permit issued pursuant to this part. As used in this subdivision, "maintenance of a drain" means the physical preservation of the location, depth, and bottom width of a drain and appurtenant structures to restore the function and approximate capacity of the drain as constructed or modified at any time before July 1, 2014, including the placement of spoils removed from the drain in locations along that drain where spoils have been previously placed. Maintenance of a drain under this subdivision does not include any modification that results in additional wetland drainage or conversion of a wetland to a use to which it was not previously subject.

(j) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to ensure that any adverse effect on the wetland will be minimized. Borrow material for road construction or maintenance shall be taken from upland sources if feasible. In determining whether an alternative will minimize any adverse effect on the wetland, the department shall consider cost, existing technology, and logistics in light of overall project purposes.

(k) Maintenance of public streets, highways, or roads that meets all of the following requirements:

(*i*) Does not include any modification that changes the original location or footprint.

(*ii*) Is done in a manner that minimizes any adverse effect on the wetland.

(*l*) Maintenance or repair of utility lines and associated support structures that meets all of the following requirements:

(*i*) Is done in a manner that minimizes any adverse effect on the wetland.

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(*ii*) Does not include any modification to the character, scope, or size of the originally constructed design.

(*iii*) Does not convert a wetland area to a use to which it was not previously subject.

For the purposes of this subdivision and subdivision (m), "utility line" means any pipe or pipeline used for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone or telegraph messages, or radio or television communication.

(m) Installation of utility lines having a diameter of 6 inches or less using directional drilling or boring, or knifing-in, and the placement of poles with minimal (less than 1 cubic yard) structure support, if the utility lines and poles are installed in a manner that minimizes any adverse effect on the wetland. Directional drilling or boring under this subdivision shall meet all of the following requirements:

(*i*) The top of the utility line is at least 4 feet below the soil surface of the wetland. However, if the presence of rock prevents the placement of the utility line at the depth otherwise required by this subparagraph, the bottom of the utility line is not placed higher than the top of the rock.

(*ii*) The entry and exit holes are located a sufficient distance from the wetland to ensure that disturbance of the wetland does not occur.

(*iii*) The operation does not result in the eruption or release of any drilling fluids up through the ground and into the wetland and there is an adequate plan to respond to any release of drilling mud or other fill material.

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

(o) Placement of biological residuals from activities, including the cutting of woody vegetation or the in-place grinding of tree stumps, performed under this section within a wetland, if all the biological residuals originate within that wetland.

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

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

(a) Excavation as part of commercial sand, gravel, or mineral mining, if the area was not a wetland before excavation. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(*i*) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(*ii*) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

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

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

(d) Construction of drains in upland for the sole purpose of removing excess soil moisture from upland areas that are primarily in agricultural use.

(e) Construction of roadside ditches in upland for the sole purpose of removing excess soil moisture from upland.

(f) An agricultural soil and water conservation practice designed, constructed, and maintained for the purpose of enhancing water quality.

(5) An area that becomes contiguous to a water body created as a result of commercial excavation for sand, gravel, or mineral mining is not subject to regulation under this part solely because it is contiguous to the created water body. This exemption from regulation applies until the property on which the wetland is located meets both of the following requirements:

(a) Is no longer used for excavation as part of commercial sand, gravel, or mineral mining.

(b) Is being used for another purpose unrelated to excavation as part of commercial sand, gravel, or mineral mining.

(6) Except as provided in subsection (7), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(7) Subsection (6) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in

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1899 PA 175.

(8) As used in this part, "agricultural drain" means a human-made conveyance of water that meets all of the following requirements:

(a) Does not have continuous flow.

(b) Flows primarily as a result of precipitation-induced surface runoff or groundwater drained through subsurface drainage systems.

(c) Serves agricultural production.

(d) Was constructed before January 1, 1973, or was constructed in compliance with this part or former 1979 PA 203.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 550, Imd. Eff. Jan. 15, 1997;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** *324.30305b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.)* *****

324.30305b Cranberry beds.

Sec. 30305b. (1) The department shall consider construction of cranberry beds, including associated dikes and water control structures associated with dikes, such as headgates, weirs, and drop inlet structures, to be a water dependent activity.

(2) The following activities associated with cranberry operations are not considered to be water dependent:

(a) The construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries.

(b) The construction of secondary support facilities for shipping, storage, packaging, parking, and similar purposes.

(3) The demonstration by an applicant under section 30311 that there is no feasible and prudent alternative to the construction of cranberry beds, including dikes and water control structures associated with dikes, is not subject to either of the following presumptions:

(a) That feasible and prudent alternatives that do not involve a wetland are available.

(b) That a feasible and prudent alternative that does not affect a wetland will have less adverse effects on the aquatic ecosystem.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** *324.30306 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.)* *****

324.30306 Permit for use or development listed in MCL 324.30304; filing, form, and contents of application; proposed use or development as single permit application; fee; work done in violation of permit requirement; fee refund; conditional permit.

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

(a) The person's name and address.

(b) The location of the wetland.

(c) A description of the wetland.

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

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

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

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

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

(a) For a project in a category of activities for which a general permit is issued under section 30312(2), a fee of $50.00.

(b) For activities included in a minor project category established under section 30312(1), a fee of $100.00.

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

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

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

(*iii*) A new golf course affecting wetland.

(*iv*) A subdivision affecting wetland.

(*v*) A condominium affecting wetland.

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

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

(a) Section 3104.

(b) Part 301.

(c) Part 323.

(d) Part 325.

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

(5) If work has been done in violation of a permit requirement under this part, the department shall consider accepting and may accept an application for a permit if the application is accompanied by a fee equal to twice the application fee otherwise required under this section.

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

(7) The department may issue a conditional permit before the expiration of the 20-day period referred to in section 30307 if emergency conditions warrant a project to protect property or the public health, safety, or welfare.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1998, Act 228, Imd. Eff. July 3, 1998;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30306b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40*

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*CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30306b Preapplication meeting; fee; withdrawal of request; refund of fee; duration of written agreement.

Sec. 30306b. (1) If a preapplication meeting is requested in writing by the landowner or another person who is authorized in writing by the landowner, the department shall meet with the person or his or her representatives to review a proposed project or a proposed permit application in its entirety. The preapplication meeting shall take place at the department's district office for the district that includes the project site or at the project site itself, as specified in the request.

(2) Except as provided in this subsection, the request shall be accompanied by a fee. The fee for a preapplication meeting at the district office is $150.00. The fee for a preapplication meeting at the project site is $250.00 for the first acre or portion of an acre of project area, plus $50.00 for each acre or portion of an acre in excess of the first acre, but not to exceed a fee of $1,000.00. However, both of the following apply:

(a) If the location of the project is a single family residential lot that is less than 1 acre in size, there is no fee for a preapplication meeting at the district office, and the fee for a preapplication meeting at the project site is $100.00.

(b) There is no fee for a preapplication meeting for cranberry and blueberry production activities, whether at the district office or project site.

(3) If the person withdraws the request at least 24 hours before the preapplication meeting, the department may agree with the person to reschedule the meeting or shall promptly refund the fee and need not meet as provided in this section. Otherwise, if, after agreeing to the time and place for a preapplication meeting, the person requesting the meeting is not represented at the meeting, the person shall forfeit the fee for the meeting. If, after agreeing to the time and place for a preapplication meeting, the department is not represented at the meeting, the department shall refund the fee and send a representative to a rescheduled meeting to be held within 10 days after the first scheduled meeting date.

(4) Any written agreement provided by the department as a result of the preapplication meeting regarding the need to obtain a permit is binding on the department for 2 years after the date of the agreement.

History: Add. 2006, Act 435, Imd. Eff. Oct. 5, 2006;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2010, Act 180, Imd. Eff. Sept. 30, 2010;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30307 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30307 Hearing; location; notice; approval or disapproval of permit application; appeal; legal action; website and electronic notification of pending permit applications, public notices, and public hearing schedules; effect of ordinance regulating wetlands; review of permit application by local unit of government; effect of failure to approve or disapprove within time period; recommendations; notice of permit issuance.

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

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department determines that the permit application is of significant impact so as to warrant a public hearing.

(2) The action taken by the department on a permit application under this part or part 13 may be appealed pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after exhaustion of administrative remedies, bring appropriate legal action in a court of competent jurisdiction.

(3) The department shall post on its website, and shall have a process to provide electronic mail notification of, all of the following under this part:

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

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

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

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

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

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

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

(6) A local unit of government that adopts an ordinance regulating wetlands shall use an application form supplied by the department, and each person applying for a permit shall make application directly to the local unit of government. Upon receipt, the local unit of government shall forward a copy of each application along with any state fees that may have been submitted under section 30306 to the department. The department shall begin reviewing the application as provided in this part. The local unit of government shall review the application pursuant to its ordinance and shall modify, approve, or deny the application within 90 days after receipt. If a local unit of government does not approve or disapprove the permit application within the time period provided by this subsection, the permit application shall be considered approved, and the local unit of government shall be considered to have made the determinations as listed in section 30311. The denial of a permit shall be accompanied by a written statement of all reasons for denial. The failure to supply complete information with a permit application may be reason for denial of a permit. If requested, the department shall inform a person whether or not a local unit of government has an ordinance regulating wetlands. If the department receives an application with respect to a wetland located in a local unit of government that has an ordinance regulating wetlands, the department immediately shall forward the application to the local unit of government, which shall modify, deny, or approve the application under this subsection. The local unit of government shall notify the department of its decision. The department shall proceed as provided in this part.

(7) If a local unit of government does not have an ordinance regulating wetlands, the department shall promptly send a copy of the permit application to the local unit of government where the wetland is located. The local unit of government may review the application; may hold a hearing on the application; may recommend approval, modification, or denial of the application to the department or may notify the department that the local unit of government declines to make a recommendation. The recommendation of the local unit of government, if any, shall be made and returned to the department within 45 days after the local unit of government's receipt of the permit application.

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 103, Imd. Eff. June 23, 1995;—Am. 1998, Act 228, Imd. Eff. July 3, 1998;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 430, Imd. Eff. Oct. 5, 2006;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30308 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE*

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*EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30308 Adoption of wetlands ordinance by local unit of government; availability of wetland inventory; completion of inventory map; notice; enforceable presumptions not created; processing wetland use applications.

Sec. 30308. (1) Prior to the effective date of an ordinance authorized under section 30307(4), a local unit of government that wishes to adopt such an ordinance shall complete and make available to the public at a reasonable cost an inventory of all wetland within the local unit of government, except that a local unit of government located in a county that has a population of less than 100,000 is not required to include public lands on its map. A local unit of government shall make a draft of the inventory map available to the public, shall provide for public notice and comment opportunity prior to finalizing the inventory map, and shall respond in writing to written comments received by the local unit of government regarding the contents of the inventory. A local unit of government that has a wetland ordinance on December 18, 1992 has until June 18, 1994 to complete an inventory map and to otherwise comply with this part, or the local unit of government shall not continue to enforce that ordinance. Upon completion of an inventory map or upon a subsequent amendment of an inventory map, the local unit of government shall notify each record owner of property on the property tax roll of the local unit of government that the inventory maps exist or have been amended, where the maps may be reviewed, that the owner's property may be designated as a wetland on the inventory map, and that the local unit of government has an ordinance regulating wetland. The notice shall also inform the property owner that the inventory map does not necessarily include all of the wetlands within the local unit of government that may be subject to the wetland ordinance. The notice may be given by including the required information with the annual notice of the property owner's property tax assessment. A wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not a wetland.

(2) A local unit of government that adopts a wetland ordinance shall process wetland use applications in a manner that ensures that the same entity makes decisions on site plans, plats, and related matters, and wetland determinations, and that the applicant is not required to submit to a hearing on the application before more than 1 local unit of government decision making body. This requirement does not apply to either of the following:

(a) A preliminary review by a planning department, planning consultant, or planning commission, prior to submittal to the decision making body if required by an ordinance.

(b) An appeal process that is provided for appeal to the legislative body or other body designated to hear appeals.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30309 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30309 Regulation by local unit of government of wetland less than 2 acres; permit application; determination.

Sec. 30309. A local unit of government that has adopted an ordinance under section 30307(4) that regulates wetland within its jurisdiction that is less than 2 acres in size shall comply with this section. Upon application for a wetland use permit in a wetland that is less than 2 acres in size, the local unit of government shall approve the permit unless the local unit of government determines that the wetland is essential to the preservation of the natural resources of the local unit of government and provides these findings, in writing, to the permit applicant stating the reasons for this determination. In making this determination, the local unit of government must find that 1 or more of the following exist at the particular site:

(a) The site supports state or federal endangered or threatened plants, fish, or wildlife appearing on a list specified in section 36505.

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(b) The site represents what is identified as a locally rare or unique ecosystem.

(c) The site supports plants or animals of an identified local importance.

(d) The site provides groundwater recharge documented by a public agency.

(e) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.

(f) The site provides wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

(g) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.

(h) The site provides pollution treatment by serving as a biological and chemical oxidation basin.

(i) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

(j) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30310 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) *******

324.30310 Regulation by local unit of government of wetland less than 2 acres; revaluation for assessment purposes; protest and appeal; judicial review; right to initiate proceedings not limited by section.

Sec. 30310. (1) A local unit of government that adopts an ordinance authorized under section 30307(4) shall include in the ordinance a provision that allows a landowner to request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction if a permit is denied by a local unit of government for a proposed wetland use. A landowner who is aggrieved by a determination, action, or inaction under this subsection may protest and appeal that determination, action, or inaction pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) If a permit applicant is aggrieved by a determination, action, or inaction by the local unit of government regarding the issuance of a permit, that person may seek judicial review in the same manner as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person when necessary to protect the wetland owner's rights.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30311 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30311 Permit for activity listed in MCL 324.30304; approval conditioned on certain determinations; criteria; findings of necessity; criteria for determining unacceptable disruption to aquatic resources; additional showing; feasible and prudent alternatives; determination of unreasonable costs.

Sec. 30311. (1) A permit for an activity listed in section 30304 shall not be approved unless the department determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

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(2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national and state concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

(a) The relative extent of the public and private need for the proposed activity.

(b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.

(c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.

(d) The probable effects of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed.

(e) The probable effects on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.

(f) The size of the wetland being considered.

(g) The amount of remaining wetland in the general area.

(h) Proximity to any waterway.

(i) Economic value, both public and private, of the proposed land change to the general area.

(3) In considering a permit application, the department shall give serious consideration to findings of necessity for the proposed activity which have been made by other state agencies.

(4) A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in section 30302 and subsection (2) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:

(a) The proposed activity is primarily dependent upon being located in the wetland.

(b) A feasible and prudent alternative does not exist.

(5) If it is otherwise a feasible and prudent alternative, a property not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered. If all of the following requirements are met, there is a rebuttable presumption that alternatives located on property not presently owned by the applicant are not feasible and prudent:

(a) The activity is described in section 30304(a) or (b).

(b) The activity will affect not more than 2 acres of wetland.

(c) The activity is undertaken for the construction or expansion of a single-family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a small business facility.

(d) The activity is not covered by a general permit.

(6) Consideration of feasible and prudent alternatives regarding the size of a proposed structure shall be based on the footprint of the structure and not the square footage of the structure.

(7) The choice of and extent of the proposed activity within a proposed structure shall not be considered in determining feasible and prudent alternatives.

(8) An alternative that entails higher costs, as described in R 281.922a(11) of the Michigan administrative code, is not feasible and prudent if those higher costs are unreasonable. In determining whether such costs are unreasonable, the department shall consider both of the following:

(a) The relation of the increased cost to the overall scope and cost of the project.

(b) Whether the projected cost is substantially greater than the costs normally associated with the particular type of project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

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****** 324.30311a THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30311a Guideline, bulletin, interpretive statement, or form with instructions; effect.

Sec. 30311a. A guideline, bulletin, interpretive statement, or form with instructions under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or form with instructions under this part is not legally binding on the public or the regulated community and shall not be cited by the department for compliance and enforcement purposes.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30311b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30311b Permit; validity; duration; conditions.

Sec. 30311b. (1) A permit issued under this part shall not be valid for more than 5 years.

(2) The department may establish a reasonable time when the construction, development, or use authorized under any permit issued under this part is to be completed or terminated.

(3) The department may impose on any permit or authorization under a general permit under this part conditions designed to do any of the following:

(a) Remove or reduce an impairment to wetland benefits, as set forth in section 30302, that would otherwise result from the project.

(b) Improve the water quality that would otherwise result from the project.

(c) Remove or reduce the effect of a discharge of fill material.

(4) The department may impose a condition on an authorization under a general permit under subsection (3) only after consultation with the applicant or applicant's agent.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30311d THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

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324.30311d Compensatory wetland mitigation; methods; submission of mitigation plan; financial assurance.

Sec. 30311d. (1) The department may impose as a condition on any permit, other than a general permit, under this part a requirement for compensatory wetland mitigation. The department may approve 1 or more of the following methods of compensatory wetland mitigation:

(a) The acquisition of approved credits from a wetland mitigation bank. The department shall not require a permit applicant to provide compensatory wetland mitigation under subdivision (b), (c), or (d) if the applicant prefers and qualifies to use approved credits from the wetland mitigation bank to provide required compensatory wetland mitigation under this subdivision.

(b) The restoration of previously existing wetland. The restoration of previously existing wetland is preferred over the creation of new wetland where none previously existed.

(c) The creation of new wetlands, if the permit applicant demonstrates that ecological conditions necessary for establishment of a self-sustaining wetland ecosystem exist or will be created.

(d) The preservation of exceptional wetlands.

(2) If compensatory wetland mitigation under subsection (1)(b), (c), or (d) is required, a permit applicant shall submit a mitigation plan to the department for approval. In approving a compensatory mitigation plan, the department shall consider how the location and type of wetland mitigation supports the sustainability or improvement of aquatic resources in the watershed where the activity is permitted. The permit applicant shall provide for permanent protection of the wetland mitigation site. The department may accept a conservation easement to protect wetland mitigation and associated upland.

(3) If a permittee carries out compensatory wetland mitigation under subsection (1)(b), (c), or (d) in cooperation with public agencies, private organizations, or other parties, the permittee remains responsible for the compensatory wetland mitigation to the extent otherwise provided by law.

(4) The department may require financial assurance to ensure that compensatory wetland mitigation is accomplished as specified. To ensure that wetland benefits are replaced by compensatory wetland mitigation, the department may release financial assurance only after the permit applicant or mitigation bank sponsor has completed monitoring of the mitigation site and demonstrated compliance with performance standards in accordance with a schedule in the permit or mitigation banking agreement.

(5) If compensatory wetland mitigation is required, in setting the mitigation ratio the department shall consider the method of compensatory mitigation, the likelihood of success, differences between the functions lost at the impacted site and the functions expected to be produced by the compensatory mitigation project, temporary losses of aquatic resource functions, the difficulty of restoring or establishing the desired aquatic resource type and functions, and the distance between the affected aquatic resource and the mitigation site.

(6) For agricultural activities, a permit applicant may provide for protection and restoration of the impacted site under a conservation easement with the department as part of mitigation requirements. A permit applicant may make a payment into the stewardship fund, if established under subsection (7), as part of mitigation requirements, as an alternative to providing financial assurances required under subsection (4).

(7) The department may establish a stewardship fund in the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes. The department shall expend money from the fund, upon appropriation, only to develop mitigation for impacted sites or as an alternative to financial assurance required under subsection (4).

(8) By 1 year after the effective date of the amendatory act that added this subsection, the department shall submit to the office of regulatory reform for informal review revised administrative rules on mitigation that do all of the following:

(a) Reduce the preference for on-site mitigation.

(b) Allow flexibility in mitigation ratios for uses of wetlands.

(c) Allow a reduction of mitigation ratios when approved credits from a wetland mitigation bank are used.

(d) Allow consideration of additional ecologically beneficial features.

(e) Allow any excess mitigation for any project to be credited to another project at a later date.

(9) The department shall submit revised administrative rules that encourage the development of wetland mitigation banks to the office of regulatory reform for informal review within 1 year after the effective date of the amendatory act that added this subsection. The rules shall do all of the following:

(a) Enlarge mitigation bank service areas. However, a service area shall be located within the same watershed or ecoregion as the permitted project or activity, ensure no net loss of the wetland resources, and

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protect the predominant wetland functions of the service area. The department shall consider enlarging the size of ecoregions for mitigation bank service areas.

(b) Allow earlier release of credits if the benefits of a mitigation bank have been properly established and the credits are revocable or covered by a financial assurance.

(c) Allow wetland preservation to be used in areas where wetland restoration opportunities do not exist, if an unacceptable disruption of the aquatic resources will not result.

(10) The department shall establish a wetland mitigation bank funding program under part 52 that provides grants and loans to eligible municipalities for the purposes of establishing mitigation banks.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30312 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30312 Minor project categories of activities; general permit for category of activities; notice and public hearing; determinations; requirements and standards; duration of general permit; determination of more than minimal adverse effects; coordination of general permit and minor project categories; conversion to blueberry farming or certain other agriculture.

Sec. 30312. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30306 for an activity within a minor project category without holding a public hearing or providing notice pursuant to section 30307(1) or (3). A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. A general permit shall not be valid for more than 5 years, but may be reissued.

(3) Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 30307(3) but shall not hold a public hearing and shall not typically require a site inspection. The department shall issue an authorization under a general permit if the conditions of the general permit and the requirements of section 30311 are met. However, in determining whether to issue an authorization under a general permit, the department shall not consider off-site alternatives to be feasible and prudent alternatives.

(4) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse effects on aquatic resources, including high-value aquatic habitats, the department may require that the application be processed under section 30307.

(5) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 and may develop and maintain new general permit and minor project categories consistent with

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nationwide permits, as appropriate. The department may alter the scope of the activities covered under general permit and minor project categories corresponding to nationwide permits if any adverse environmental effects will be minimal.

(6) The department shall develop by October 1, 2013 and maintain a general permit for alteration of wetland for blueberry farming that includes minimal drainage and earth moving if all of the following requirements are met:

(a) The wetland will be restored when farming activities in the wetland cease.

(b) The farmed wetland is placed under conservation easement protection until the wetland is restored when farming activities cease.

(c) Activities that convert the wetland to a nonwetland are prohibited.

(d) Roads, ditches, reservoirs, pump houses, and secondary support facilities for shipping, storage, packaging, parking, and similar purposes are prohibited unless authorized under section 30305.

(7) By December 31, 2013, the department shall propose new general permits or minor project categories for conversion of wetland to blueberry farming or other agriculture that includes more than minimal drainage or earth moving.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 98, Imd. Eff. July 2, 2013.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30312b Repealed. 2009, Act 120, Eff. Oct. 1, 2012.

Compiler's note: The repealed section pertained to new or existing general permits or minor project categories equivalent to certain nationwide permits.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30312d THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30312d Blueberry production assistance program.

Sec. 30312d. The department shall develop a blueberry production assistance program to provide wetland delineation and preapplication services and assistance with avoidance and minimization. The department shall coordinate this program with the department of agriculture and rural development. The department shall also provide education and outreach on wetland regulations and agricultural activities and assist interested parties with the development of wetland mitigation banks for the purpose of providing required compensatory mitigation for agricultural impacts.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 561, Eff. Apr. 27, 2019.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

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Popular name: NREPA

Popular name: Wetland Protection Act

324.30312f Voluntary wetland restoration program; permit applications; exceptions; eligible applicants; review and approval process; joint agency restoration committee; qualified activities; applicability to former wetlands.

Sec. 30312f. (1) The legislature finds that voluntary restoration of altered or degraded wetland or former wetland by qualified agencies and organizations helps to restore lost wetland functions and services, and is therefore valuable to the people of this state. Accordingly, the department shall develop a program to facilitate voluntary wetland restoration projects in coordination with state, federal, tribal, and nongovernmental agencies and organizations specializing in wetland restoration and conservation. The program shall include, but not be limited to, enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net increase in wetland functions and services. The department shall convene these agencies and organizations at least quarterly to review the program, suggest and develop improvements, and provide training and guidance in voluntary wetland restoration.

(2) The department and the department of natural resources shall develop and lead a voluntary wetland restoration group to simplify and streamline the permit process for voluntary wetland restoration projects with the intent of giving greater credence and flexibility to agencies and organizations specializing in wetland restoration and conservation. The voluntary wetland restoration group shall consist of designated staff from the department and the department of natural resources, working in collaboration on the review of permit applications. The group shall, after seeking input from agencies and organizations specializing in wetland restoration and conservation, develop voluntary wetland restoration permit applications and guidelines to implement a voluntary wetland restoration permit program consistent with this section.

(3) A permit is not required for voluntary wetland restoration activities that meet any of the following:

(a) The section 30305(2)(f) exemption for maintenance or operation of serviceable structures. Operation of serviceable structures as used in section 30305(2)(f) includes management of water levels using serviceable structures.

(b) The section 30305(2)(n) exemption for operation or maintenance of serviceable dikes and levees.

(4) There is no fee for a preapplication meeting under section 30306b with the voluntary wetland restoration group for a voluntary wetland restoration project conducted with a person described in subsection (5). The purpose of such a preapplication meeting is an outcome-based assessment of a project made by evaluating overall net increases in wetland functions and services and acreage. Such a preapplication meeting may include, but is not limited to, any of the following:

(a) Presentation of project outcomes related to net increases in wetland functions and services and project purposes and justifications.

(b) Suggestions that will minimize permitting delays, including information needed for permit application review.

(c) Options for maximizing net increases in wetland functions and services while minimizing other impacts.

(d) Coordination with the United States Environmental Protection Agency, United States Army Corps of Engineers, and United States Fish and Wildlife Service, if applicable.

(5) Any of the following persons may apply for a permit under this part, including authorization to proceed under a general permit, for a voluntary wetland restoration project:

(a) A state or federal agency, including the department of natural resources, the United States Fish and Wildlife Service, the United States Forest Service, or the United States Department of Agriculture, Natural Resources Conservation Service.

(b) A tribal agency.

(c) A nongovernmental organization whose stated primary mission, purpose, or programs include wetland conservation.

(d) A person that is in partnership through a written agreement with an entity described in subdivision (a), (b), or (c).

(6) Voluntary wetland restoration applications shall be processed subject to all of the following:

(a) Not more than 30 days after submission of an application for a permit for a voluntary wetland restoration project, the voluntary wetland restoration group shall review the application and do 1 of the following:

(*i*) Notify the applicant of the status of the application.

(*ii*) Recommend issuance of a permit to the department.

(*iii*) If the application is not administratively complete, request additional information from the applicant to

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make the application administratively complete as provided in part 13.

(b) If the department has not made a permit decision within 60 days after an application for a permit is considered administratively complete, at the request of the applicant, any conflict shall be mediated by the joint agency restoration committee created under subsection (9).

(c) The department, voluntary wetland restoration group, and the joint agency restoration committee shall expedite permit review for voluntary wetland restoration projects to the extent possible.

(d) Except for sections 1313 to 1317, part 13 applies to a voluntary wetland restoration permit application. Applicable time periods under part 13 and this section run concurrently.

(7) In reviewing a permit application for a voluntary wetland restoration project, the voluntary wetland restoration group shall evaluate the net increase in wetland functions and services from the project. An applicant shall provide justification for the asserted net increase in wetland functions and services based on federal or state agency programmatic authority, published research, case studies, ecological reference, demonstration projects, or federal, regional, or statewide wetland or wildlife restoration and management plans.

(8) The department shall issue a permit for a voluntary wetland restoration project if the project contributes to a net increase in wetland functions and services and meets the requirements of this part and section 404 of title IV of the federal water pollution control act, 33 USC 1344.

(9) The department shall create a joint agency restoration committee comprised of the directors or their designees of the department, the department of natural resources, and the office of the Great Lakes to mediate permit conflicts regarding voluntary wetland restoration projects and make a recommendation to the department. The department shall give serious consideration to recommendations of the joint agency restoration committee in its permit decision. The applicant may further request review under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The department shall not require compensatory mitigation for voluntary wetland restoration project activities that result in a net increase in wetland functions and services.

(11) The department, in cooperation with the department of natural resources and voluntary wetland restoration agencies and organizations, shall develop new or modified general permit or minor project categories for voluntary wetland restoration projects that address the scope and intent of this section.

(12) A voluntary wetland restoration project may include, but is not limited to, any of the following activities in altered or degraded wetland or previously restored wetland if the activity results in a net increase in wetland functions and services:

(a) The removal of accumulated sediments.

(b) The installation, removal, and maintenance of water control structures, dikes, and berms; as well as discharges of dredged or fill material to restore appropriate grade configuration after water control structures, dikes, and berms are removed.

(c) The installation of water supply devices.

(d) The removal of existing drainage structures, such as drain tiles, and the filling, blocking, grading, or reshaping of drainage ditches to restore wetland hydrology.

(e) The installation of structures or fills necessary to restore or enhance wetland hydrology.

(f) The construction of open water areas.

(g) Activities needed to establish or reestablish native vegetation, including plowing or disking for seedbed preparation and the planting of appropriate species.

(h) The reestablishment of submerged aquatic vegetation.

(i) Mechanized land clearing or other activities to remove nonnative or invasive vegetation.

(j) The installation of nesting structures and islands, micro and macro topography reestablishment, dredging, soil manipulation, controlling, disking, and other activities related to a specific wetland habitat or species conservation practices.

(k) The installation and removal of temporary coffer dams, soil mats, and other devices used during voluntary wetland restoration construction activities.

(*l*) Construction of ancillary facilities that increase recreational access, such as a parking lot or boat ramp. However, such ancillary facilities and their use, alone, do not constitute an increase in wetland functions and services.

(13) All of the following apply to a voluntary wetland restoration project:

(a) A change in wetland plant communities that occurs when wetland hydrology is more fully restored during voluntary wetland restoration activities is not considered a conversion to another aquatic habitat type.

(b) The placement of fill in an area of altered or degraded wetland is not considered a loss of wetland if that area continues to sustain the characteristics of wetland as described in section 30301(1)(m).

(c) Voluntary wetland restoration projects or activities are not considered a major discharge as defined in

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the memorandum of agreement between the United States Environmental Protection Agency and the department under section 404 of title IV of the federal water pollution control act, 33 USC 1344, upon approval by the United States Environmental Protection Agency of an amendment to the memorandum so providing.

(14) Former wetland is not regulated under this part unless the wetland was modified in violation of this part or former 1979 PA 203.

History: Add. 2018, Act 561, Eff. Apr. 27, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30313 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30313 Grounds for revocation or modification of general permit; grounds for termination or modification for cause of general permit.

Sec. 30313. (1) A general permit may be revoked or modified if, after opportunity for a public hearing or a contested case hearing under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the department determines that the activities authorized by the general permit have an adverse impact on the environment or the activities would be more appropriately authorized by an individual permit.

(2) A permit may be terminated or modified for cause, including:

(a) A violation of a condition of the permit.

(b) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts.

(c) A change in a condition that requires a temporary or permanent change in the activity.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30313b THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30313b Minor permit revisions.

Sec. 30313b. (1) The department may make minor revisions in a permit issued under this part if all of the following apply:

(a) The project is in compliance with the permit and this part.

(b) The minor revisions are requested by the permittee in writing.

(c) The request is accompanied by a fee of $250.00.

(d) If the request is for a transfer of the permit, the request is accompanied by a written agreement between the current and new owners or operators containing a specific date for transfer of responsibility, coverage, and liability under the permit.

(2) The department shall approve or deny the request within 20 business days. However, if the only minor revision requested is a transfer under subsection (4)(a), the department shall approve or deny the request within 10 business days. If the department fails to approve or deny the request within the time required by this subsection, the department shall refund the fee.

(3) If the department determines that none of the changes requested are minor revisions, the department shall retain the fee but the permittee may apply the fee toward a new permit for a project at that site.

(4) As used in this section, "minor revision" means either of the following with respect to a permit issued under this part:

(a) A transfer.

(b) A revision that does not increase the overall impact of a project on wetlands and that is within the scope

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of the project as described in the original permit.

History: Add. 2006, Act 431, Imd. Eff. Oct. 5, 2006.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30314 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30314 Information required to obtain compliance with part; conditions for entering on premises.

Sec. 30314. (1) The department shall require the holder of a permit to provide information the department reasonably requires to obtain compliance with this part.

(2) The department may enter on, upon, or through the premises on which an activity listed in section 30304 is located or on which information required to be maintained under subsection (1) is located under any of the following circumstances, as applicable:

(a) Upon obtaining a search warrant, an administrative warrant issued by the director of the department, or the consent of the person who owns or controls the premises.

(b) If there is an imminent threat to the public health or environment.

(c) Upon reasonable cause, if the wetland is a water of the United States as that term is used in section 502(7) of the federal water pollution control act, 33 USC 1362.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30315 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30315 Violation; order requiring compliance; civil action.

Sec. 30315. (1) If, on the basis of information available to the department, the department finds that a person is in violation of this part or a condition set forth in a permit issued under section 30311 or 30312, the department shall issue an order requiring the person to comply with the prohibitions or conditions or the department shall request the attorney general to bring a civil action under section 30316(1).

(2) An order issued under subsection (1) shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the department determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30316 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30316 Civil action; commencement; request; venue; jurisdiction; violations; civil fines and penalties; restoration of wetland; award of attorney fees.

Sec. 30316. (1) The attorney general may commence a civil action for appropriate relief, including

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injunctive relief upon request of the department under section 30315(1). An action under this subsection may be brought in the circuit court for the county of Ingham or for a county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance with this part. In addition to any other relief granted under this section, the court may impose a civil fine of not more than $10,000.00 per day of violation. A person who violates an order of the court is subject to a civil fine not to exceed $10,000.00 for each day of violation.

(2) A person who violates this part is guilty of a misdemeanor punishable by a fine of not more than $2,500.00.

(3) A person who willfully or recklessly violates a condition or limitation in a permit issued by the department under this part, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor punishable by a fine of not less than $2,500.00 or more than $25,000.00 per day of violation or by imprisonment for not more than 1 year, or both. A person who commits a violation described in this section a second or subsequent time is guilty of a felony punishable by a fine of not more than $50,000.00 for each day of violation or by imprisonment for not more than 2 years, or both.

(4) In addition to the civil fines and penalties provided under subsections (1), (2), and (3), the court may order a person who violates this part to restore as nearly as possible the wetland that was affected by the violation to its original condition immediately before the violation. The restoration may include the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals.

(5) The award of attorney fees in a civil action under this part is subject to applicable provisions of chapter 24 of the revised judicature act of 1961, 1961 PA 235, MCL 600.2401 to 600.2461. However, regardless of whether this state's position was substantially justifiable, reasonable expert professional witness fees, as determined by the court, shall be awarded to a landowner that prevails against this state on the issue of whether the landowner's property is wetland.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30317 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30317 Disposition of fees and civil fines; expenditures; report.

Sec. 30317. (1) The civil fines collected under this part shall be forwarded to the state treasurer for deposit in the general fund of the state. The fees collected under this part shall be deposited in the land and water management permit fee fund created in section 30113.

(2) Subsection (1) does not apply to fines or fees collected under an ordinance adopted under section 30307(4).

(3) Subject to section 30113, the department shall expend money from the land and water management permit fee fund, upon appropriation, to support guidance for property owners and applicants, permit processing, compliance inspections, and enforcement activities under this part. Not more than 90 days after the end of each state fiscal year, the department shall prepare a report describing how money from the land and water management permit fee fund was expended during that fiscal year and shall submit the report to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. Other than civil fines and costs, the disposition of which is governed by section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, or criminal fines, funds collected by a local unit of government under an ordinance authorized under section 30307(4) shall be deposited in the general fund of the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 530, Imd. Eff. Jan. 13, 1997;—Am. 1998, Act 228, Imd. Eff. July 3, 1998;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994

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PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30318 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30318 Revaluation of property for assessment purposes.

Sec. 30318. If a permit is denied for a proposed wetland activity, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30319 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30319 Rules; hearing; award of costs; judicial review; proceedings to protect wetland owner's rights.

Sec. 30319. (1) The department shall promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The award of costs in a contested case under this part and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, is subject to chapter 8 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.321 to 24.328. However, regardless of whether the department's position was substantially justifiable, reasonable expert professional witness fees, as determined by the presiding officer, shall be awarded to a landowner that prevails on the issue of whether the landowner's property is wetland.

(4) A determination, action, or inaction by the department following the hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person if necessary to protect the wetland owner's rights.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

Administrative rules: R 281.921 et seq. of the Michigan Administrative Code.

****** 324.30320 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30320 Inventories of wetland; use; updating; maps, ground surveys, and descriptions as public documents; availability and cost of aerial photographs and satellite telemetry data reproduction to county register of deeds.

Sec. 30320. (1) As inventories of wetland are completed, the inventories shall be used as 1 of the criteria

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by the department in issuing permits. The inventories shall be periodically updated. The maps, ground surveys, and descriptions of wetlands included in the inventories shall be submitted to the respective county register of deeds and shall become a public document available to review by any member of the public.

(2) Aerial photographs and satellite telemetry data reproductions shall be made available to the respective county register of deeds for cost as determined by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30321 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30321 Basis and filing of preliminary inventory of wetland; assessment of property; report; determination; agricultural drain; culvert, ditch, or channel; assessment; fee; providing copy of delineation forms.

Sec. 30321. (1) The department shall make or cause to be made a preliminary inventory of all wetland in this state on a county by county basis and file the inventory with the agricultural extension office, register of deeds, and county clerk.

(2) A person who owns or leases a parcel of property may request that the department of environmental quality assess whether the parcel of property or a portion of the parcel is wetland. The request shall satisfy all of the following requirements:

(a) Be made on a form provided by the department.

(b) Be signed by the person who owns or leases the property.

(c) Contain a legal description of the parcel and, if only a portion of the parcel is to be assessed, a description of the portion to be assessed.

(d) Include a map showing the location of the parcel.

(e) Grant the department or its agent permission to enter on the parcel for the purpose of conducting the assessment.

(3) The department shall assess the parcel within a reasonable time after the request is made. The department may enter upon the parcel to conduct the assessment. Upon completion of the assessment, the department shall provide the person with a written assessment report. The assessment report shall do all of the following:

(a) Identify in detail the location of any wetland in the area assessed.

(b) If wetland is present in the area assessed, describe the types of activities that require a permit under this part.

(c) If the assessment report determines that the area assessed or part of the area assessed is not wetland, state that the department lacks jurisdiction under this part as to the area that the report determines is not wetland and that this determination is binding on the department for 3 years from the date of the assessment.

(d) Contain the date of the assessment.

(e) Advise that the person may request the department to reassess the parcel or any part of the parcel that the person believes was erroneously determined to be wetland if the request is accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department.

(f) Advise that the assessment report does not constitute a determination of wetland that may be regulated under local ordinance or wetland areas that may be regulated under federal law and advise how a determination of wetland areas regulated under federal law may be obtained.

(g) List regulatory programs that may limit land use activities on the parcel, advise that the list is not exhaustive, and advise that the assessment report does not constitute a determination of jurisdiction under those programs. The regulatory programs listed shall be those under the following parts:

(*i*) Part 31, with respect to floodplains and floodways.

(*ii*) Part 91.

(*iii*) Part 301.

(*iv*) Part 323.

(*v*) Part 325.

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(*vi*) Part 353.

(4) A wetland is not contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream if the department determines that there is no direct physical contact and no surface water or interflowing groundwater connection to such a body of water.

(5) A person may request that, as part of an assessment, the department make a determination whether a wetland is contiguous to the Great Lakes, Lake St. Clair, an inland lake or pond, or a stream. The department shall make the determination in writing within 30 days after an on-site evaluation. As used in this subsection, "pond" does not include a farm or stock pond constructed consistent with the exemption under section 30305(2)(g).

(6) The department shall not consider an agricultural drain, as defined in section 30305, in determining whether a wetland is contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.

(7) A drainage structure such as a culvert, ditch, or channel, in and of itself, is not a wetland. A temporary obstruction of drainage, in and of itself, is not a wetland until the presence of water is of sufficient frequency and duration to be identified as wetland pursuant to section 30301(4).

(8) A person may request the department to reassess any area assessed under subsections (2) and (3) that the person believes the department erroneously determined to be wetland. The requirements of subsections (2) and (3) apply to the request, assessment, and assessment report. However, the request shall be accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department. The assessment report shall not contain the information required by subsection (3)(e).

(9) If an assessment report determines that the area assessed or part of the area assessed is not a wetland regulated by the department under this part, then the area determined by the assessment report not to be a wetland is not a wetland regulated by the department under this part for a period of 3 years after the date of the assessment.

(10) The department may charge a fee for an assessment requested under subsection (2) based upon the cost to the department of conducting an assessment.

(11) There shall be no fee for an assessment under the blueberry production assistance program.

(12) The department shall, upon request of the applicant and without charge, provide to the applicant a copy of any delineation forms completed by the department associated with a permit application.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 530, Imd. Eff. Jan. 13, 1997;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30322 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30322 Notice to owners of record of change in status of property.

Sec. 30322. As wetland inventories are completed as specified in section 30321, owners of record as identified by the current property tax roll shall be notified of the possible change in the status of their property. Notification shall be printed on the next property tax bill mailed to property owners in the county. It shall contain information specifying that a wetland inventory has been completed and is on file with the agricultural extension office, register of deeds, and county clerk, and that property owners may be subject to regulation under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30323 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g)*

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*AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30323 Legal rights or authority not abrogated; action to determine if property taken without just compensation; court order; limitation on value of property.

Sec. 30323. (1) This part shall not be construed to abrogate rights or authority otherwise provided by law.

(2) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and been denied a permit from the state or from a local unit of government that adopts an ordinance pursuant to section 30307(4), who has been made subject to modifications or conditions in the permit under this part, or who has been made subject to the action or inaction of the department pursuant to this part or the action or inaction of a local unit of government that adopts an ordinance pursuant to section 30307(4) may file an action in a court of competent jurisdiction.

(3) If the court determines that an action of the department or a local unit of government pursuant to this part or an ordinance authorized pursuant to section 30307(4) constitutes a taking of the property of a person, then the court shall order the department or the local unit of government, at the department's or the local unit of government's option, as applicable, to do 1 or more of the following:

(a) Compensate the property owner for the full amount of the lost value.

(b) Purchase the property in the public interest as determined before its value was affected by this part or the local ordinance authorized under section 30307(4) or the action or inaction of the department pursuant to this part or the local unit of government pursuant to its ordinance.

(c) Modify its action or inaction with respect to the property so as to minimize the detrimental affect to the property's value.

(4) For the purposes of this section, the value of the property may not exceed that share of the state equalized valuation of the total parcel that the area in dispute occupies of the total parcel of land, multiplied by 2, as determined by an inspection of the most recent assessment roll of the township or city in which the parcel is located.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

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324.30325 Repealed. 2013, Act 98, Imd. Eff. July 2, 2013.

Compiler's note: The repealed section pertained to agreement with United States environmental protection agency to expand categories of discharge subject to waiver.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

****** 324.30327 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30327 Certifications by department under federal water pollution control act.

Sec. 30327. The department may provide certifications under section 401 of title IV of the federal water pollution control act, 33 USC 1341.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

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****** 324.30328 THIS SECTION IS REPEALED BY ACT 98 OF 2013 EFFECTIVE 160 DAYS AFTER THE EFFECTIVE DATE, AS PUBLISHED IN THE FEDERAL REGISTER, OF AN ORDER BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 40 CFR 233.53(c)(8)(vi) WITHDRAWING APPROVAL OF THE STATE PROGRAM UNDER 33 USC 1344(g) AND (h). (See enacting section 2 of Act 98 of 2013.) ******

324.30328 Applicability to "navigable waters" and "waters of the United States" as defined under federal law.

Sec. 30328. For the purposes of this part, the powers, duties, functions, and responsibilities exercised by the department because of federal approval of Michigan's permit program under section 404(g) and (h) of the federal water pollution control act, 33 USC 1344, apply only to "navigable waters" and "waters of the United States" as defined under section 502(7) of the federal water pollution control act, 33 USC 1362, and further refined by federally promulgated rules and court decisions that have the full effect and force of federal law. Determining whether additional regulation is necessary to protect Michigan waters beyond the scope of federal law is the responsibility of the Michigan legislature based on its determination of what is in the best interest of the citizens of this state.

History: Add. 2013, Act 98, Imd. Eff. July 2, 2013.

Popular name: Act 451

Popular name: NREPA

324.30329 Repealed. 2009, Act 120, Eff. Apr. 1, 2013.

Compiler's note: The repealed section pertained to the wetland advisory council.

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

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PART 305
NATURAL RIVERS

324.30501 Definitions.

Sec. 30501. As used in this part:

(a) "Free flowing" means existing or flowing in natural condition without impoundment, diversion, straightening, riprapping, or other modification.

(b) "Natural river" means a river that has been designated by the department for inclusion in the wild, scenic, and recreational rivers system.

(c) "River" means a flowing body of water or a portion or tributary of a flowing body of water, including streams, creeks, or impoundments and small lakes thereon.

(d) "System" means all of those rivers or portions of rivers designated under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30502 Natural river; designation; purpose; long-range plans; publicity; cooperation.

Sec. 30502. The department, in the interest of the people of the state and future generations, may designate a river or portion of a river as a natural river area for the purpose of preserving and enhancing its values for water conservation, its free flowing condition, and its fish, wildlife, boating, scenic, aesthetic, floodplain, ecologic, historic, and recreational values and uses. The area shall include adjoining or related lands as appropriate to the purposes of the designation. The department shall prepare and adopt a long-range comprehensive plan for a designated natural river area that sets forth the purposes of the designation, proposed uses of lands and waters, and management measures designed to accomplish the purposes. State land within the designated area shall be administered and managed in accordance with the plan, and state management of fisheries, streams, waters, wildlife, and boating shall take cognizance of the plan. The department shall publicize and inform private and public landowners or agencies as to the plan and its purposes, so as to encourage their cooperation in the management and use of their land in a manner consistent with the plan and the purposes of the designation. The department shall cooperate with federal agencies administering any federal program concerning natural river areas, and with any watershed council established under part 311, when such cooperation furthers the interest of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.30503 Qualifications for designation; categories of rivers.

Sec. 30503. A river qualifying for designation as a natural river area shall possess 1 or more of the natural or outstanding existing values cited in section 30502 and shall be permanently managed for the preservation or enhancement of such values. Categories of natural rivers shall be defined and established by the department, based on the characteristics of the waters and the adjoining lands and their uses, both as existing and as proposed, including such categories as wild, scenic, and recreational. The categories shall be specified in the designation and the long-range comprehensive plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30504 Land acquisition; purpose; interest acquired; consent.

Sec. 30504. The department may acquire lands or interests in lands adjacent to a designated natural river for the purpose of maintaining or improving the river and its environment in conformance with the purposes of the designation and the plan. Interests that may be acquired include, but are not limited to, easements designed to provide for preservation and to limit development, without providing public access and use. Lands or interests in lands shall be acquired under this part only with the consent of the owner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30505 Federal financial assistance programs; leases; expenditures; purposes.

Sec. 30505. (1) The department may administer federal financial assistance programs for natural river areas.

(2) The department may enter into a lease or agreement with any person or political subdivision to administer all or part of their lands in a natural river area.

(3) The department may expend funds for works designed to preserve and enhance the values and uses of a natural river area and for construction, management, maintenance, and administration of facilities in a natural river area conforming to the purposes of the designation, if the funds are appropriated by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30506 Public hearings; notice.

Sec. 30506. Before designating a river as a natural river area, the department shall conduct public hearings in the county seat of any county in which a portion of the designated natural river area is located. Notices of the hearings shall be advertised at least twice, not less than 30 days before the hearing, in a newspaper having general circulation in each such county and in at least 1 newspaper having general circulation in the state and 1 newspaper published in the Upper Peninsula.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30507 Land uses; zoning; local ordinances; state rule.

Sec. 30507. After designation of a river or portion of a river as a natural river area and following the preparation of the long-range comprehensive plan, the department may determine that the uses of land along the river, except within the limits of an incorporated municipality, shall be controlled by zoning contributing to accomplishment of the purposes of this part and the natural river plan. County and township governments are encouraged to establish these zoning controls and additional controls as may be appropriate, including, but not limited to, building and subdivision controls. The department may provide advisory, planning, and cooperative assistance in the drafting of ordinances to establish these controls. If the local unit does not, within 1 year after notice from the department, have in full force and effect a zoning ordinance or interim zoning ordinance established under authority of the acts cited in section 30510, the department, on its own motion, may promulgate a zoning rule in accordance with section 30512. A zoning rule may also be promulgated if the department finds that an adopted or existing zoning ordinance fails to meet adequately

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guidelines consistent with this part as provided by the department and transmitted to the local units concerned, does not take full cognizance of the purposes and objectives of this part, or is not in accord with the purposes of designation of the river as established by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30508 Zoning ordinance or rule; purpose.

Sec. 30508. A zoning ordinance adopted by a local unit of government or a zoning rule promulgated by the department shall provide for the protection of the river and its related land resources consistent with the preservation and enhancement of their values and the objectives set forth in section 30502. The ordinance or rule shall protect the interest of the people of the state as a whole. It shall take cognizance of the characteristics of the land and water concerned, surrounding development, and existing uses and provide for conservation of soil, water, stream bed and banks, floodplains, and adjoining uplands.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30509 Zoning ordinance or rule; establishment of districts; powers; distance.

Sec. 30509. The ordinance or rule shall establish zoning districts within which such uses of land as for agriculture, forestry, recreation, residence, industry, commerce, and additional uses may be encouraged, regulated, or prohibited. It may limit or prohibit the placement of structures of any class or designate their location with relation to the water's edge, to property or subdivision lines, and to flood flows and may limit the subdivision of lands for platting purposes. It may control the location and design of highways and roads and of public utility transmission and distribution lines, except on lands or other interests in real property owned by the utility on January 1, 1971. It may prohibit or limit the cutting of trees or other vegetation, but such limits shall not apply for a distance of more than 100 feet from the river's edge. It may specifically prohibit or limit mining and drilling for oil and gas, but such limits shall not apply for a distance of more than 300 feet from the river's edge. It may contain other provisions necessary to accomplish the objectives of this part. A zoning rule promulgated by the department shall not control lands more than 400 feet from the river's edge.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30510 Local zoning ordinance; conformance with applicable law; construction.

Sec. 30510. A local unit of government, in establishing a zoning ordinance, in addition to the authority and requirements of this part, shall conform to the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, including, but not limited to, the variance provisions of those acts. Any conflict shall be resolved in favor of the provisions of this part. The powers granted under this part shall be liberally construed in favor of the local unit or the department exercising them, in such manner as to promote the orderly preservation or enhancement of the values of the rivers and related land resources and their use in accordance with a long-range comprehensive general plan to ensure the greatest benefit to the state as a whole.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000.

Popular name: Act 451

Popular name: NREPA

324.30511 Districts; valuation for tax purposes.

Sec. 30511. Upon adoption of a zoning ordinance or rule, certified copies of the maps showing districts shall be filed with the local tax assessing officer and the state tax commission. In establishing true cash value of property within the districts zoned, the assessing officer shall take cognizance of the effect of limits on use established by the ordinance or rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30512 Rules; enforcement; promulgation; variance; existing use.

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Sec. 30512. (1) The department shall prescribe administrative procedures and rules and provide personnel as it considers necessary for the enforcement of a zoning ordinance or rule enacted in accordance with this part. A circuit court, upon petition and a showing by the department that there exists a violation of a rule properly promulgated under this part, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

(2) The department shall promulgate a zoning rule to implement this part. The rule shall include procedures for receiving and acting upon applications from local units of government or landowners for change of boundaries or change in permitted uses in accordance with chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. An aggrieved party may seek judicial review under chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

(3) A variance from a zoning rule promulgated by the department to implement this part may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and the variance provisions of the zoning rule.

(4) The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance or rule or of an amendment of a zoning ordinance or rule may be continued although the use does not conform with the ordinance, rule, or amendment. The ordinance or rule shall provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms as set forth in the zoning ordinance or rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2000, Act 17, Imd. Eff. Mar. 8, 2000.

Popular name: Act 451

Popular name: NREPA

324.30513 National wild and scenic river system; administration.

Sec. 30513. This part does not preclude a component of the system from becoming a part of the national wild and scenic river system under the wild and scenic rivers act, Public Law 90-542, 16 U.S.C. 1271 to 1287. The department may enter into written cooperative agreements for joint federal-state administration of rivers that may be designated under the wild and scenic rivers act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30514 Area plans; approval; rules.

Sec. 30514. The department shall approve preliminary and final plans for site or route location, construction, or enlargement of utility transmission lines, publicly provided recreation facilities, access sites, highways, roads, bridges, or other structures and for publicly developed water management projects, within a designated natural river area, except within the limits of a city or incorporated village. The department may require any measure necessary to control damaging erosion or flow alteration during or in consequence of construction. The department shall promulgate rules concerning the approvals and requirements provided for in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30515 Construction of part.

Sec. 30515. This part does not prohibit a reasonable and lawful use of any other natural resource that benefits the general welfare of the people of this state and that is not inconsistent with the purpose of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 307
INLAND LAKE LEVELS

****** 324.30701 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30701.amended ******

324.30701 Definitions.

Sec. 30701. As used in this part:

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(a) "Commissioner" means the county drain commissioner or the county road commission in counties not having a drain commissioner, and, if more than 1 county is involved, each of the drain commissioners or drain commissioner and road commission in counties having no drain commissioner.

(b) "County board" means the county board of commissioners, and if more than 1 county is involved, the boards of commissioners of each of those counties.

(c) "Court" means a circuit court, and if more than 1 judicial circuit is involved, the circuit court designated by the county board or otherwise authorized by law to preside over an action.

(d) "Dam" means an artificial barrier, structure, or facility, and appurtenant works, used to regulate or maintain the level of an inland lake.

(e) "Delegated authority" means the county drain commissioner or any other person designated by the county board to perform duties required under this part.

(f) "Inland lake" means a natural or artificial lake, pond, impoundment, or a part of 1 of those bodies of water. Inland lake does not include the Great Lakes or Lake St. Clair.

(g) "Interested person" means the department and a person who has a record interest in the title to, right of ingress to, or reversionary right to land that would be affected by a permanent change in the natural or normal level of an inland lake.

(h) "Normal level" means the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake. A normal level shall be measured and described as an elevation based on national geodetic vertical datum.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

****** 324.30701.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

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324.30701.amended Definitions.

Sec. 30701. As used in this part:

(a) "Commissioner" means the county drain commissioner, or the board of county road commissioners in counties not having a drain commissioner. However, if more than 1 county is involved, commissioner means the drain commissioner or board of county road commissioners, as applicable, for each county.

(b) "County board" means the county board of commissioners. However, if more than 1 county is involved, county board means the county board of commissioners of each of those counties.

(c) "Court" means a circuit court. However, if more than 1 judicial circuit is involved, court means the circuit court designated by the county board or otherwise authorized by law to preside over an action.

(d) "Dam" means an artificial barrier, structure, or facility, and appurtenant works, used to regulate or maintain the level of an inland lake.

(e) "Delegated authority" means the county drain commissioner or any other person designated by the county board to perform duties required under this part.

(f) "Department" means the department of environment, Great Lakes, and energy.

(g) "Inland lake" means a natural or artificial lake, pond, impoundment, or a part of 1 of those bodies of water. Inland lake does not include the Great Lakes or Lake St. Clair.

(h) "Interested person" means the department and a person who has a record interest in the title to, a right of ingress to, or a reversionary right to land that would be affected by a permanent change in the natural or normal level of an inland lake.

(i) "Normal level" means the target level or levels of the water of an inland lake, around which actual levels may fluctuate, that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of this state; and that best preserve and protect the value of property around the inland lake. A normal level shall be measured and described as an elevation or elevations based on a geodetic vertical datum including ranges based on tolerance, operational or weather conditions, seasonality, or other similar natural and regional considerations. An inland lake shall be considered to be maintained at its normal level during temporary water level fluctuations resulting from weather or natural events, during construction activities authorized by the department, or if a county or its delegated authority

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operates lake level infrastructure in a manner that may affect water levels but is reasonably intended to maintain a normal level. The application of this definition includes, but is not limited to, all normal levels established before the effective date of the amendatory act of the 2023-2024 legislative session that amended this section.

(j) "Normal level project" means a project to establish or maintain a normal level.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2024, Act 112, Eff. (sine die).

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.30702 Determination of normal inland lake level; motion or petition to initiate action; delegation of powers and duties by county board; maintenance.

Sec. 30702. (1) The county board of a county in which an inland lake is located may upon the board's own motion, or shall within 45 days following receipt of a petition to the board of 2/3 of the owners of lands abutting the inland lake, initiate action to take the necessary steps to cause to be determined the normal level of the inland lake.

(2) Unless required to act by resolution as provided in this part, the county board may delegate powers and duties under this part to that county's commissioner, road commission, or other delegated authority.

(3) If a court-determined normal level is established pursuant to this part, the delegated authority of the county or counties in which the lake is located shall maintain that normal level.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.30703 Preliminary study; costs; contents of study.

Sec. 30703. (1) Before proceeding on a motion made or a petition filed under section 30702, the county board may require that a preliminary study be conducted by a licensed professional engineer. The county board, by resolution, may require a cash payment from the petitioners sufficient to cover the actual preliminary study costs or of $10,000.00, whichever is less.

(2) A preliminary study shall include all of the following:

(a) The feasibility of a project to establish and maintain a normal level of the inland lake.

(b) The expediency of the normal level project.

(c) Feasible and prudent alternative methods and designs for controlling the normal level.

(d) The estimated costs of construction and maintenance of the normal level project.

(e) A method of financing initial costs.

(f) The necessity of a special assessment district and the tentative boundaries if a district is necessary.

(g) Other information that the county board resolves is necessary.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30704 Initiating proceeding for determining normal inland lake level and establishing special assessment district; required finding; multicounty lake; joinder permitted.

Sec. 30704. (1) If the county board, based on the preliminary study, finds it expedient to have and resolves to have determined and established the normal level of an inland lake, the county board shall direct the prosecuting attorney or other legal counsel of the county to initiate a proceeding by proper petition in the court of that county for determination of the normal level for that inland lake and for establishing a special assessment district if the county board determines by resolution that one is necessary as provided in section 30711.

(2) If the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined in the same manner if the county boards of all counties involved, by resolution, direct the

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prosecuting attorney or other legal counsel of 1 or more of the counties to institute proceedings. All counties may make a single preliminary study.

(3) The department may join a proceeding initiated under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30705 Special assessment bonds or notes; lake level orders; proceedings; full faith and credit.

Sec. 30705. (1) A special assessment district provided for in section 30704 may issue any of the following in anticipation of the collection of special assessments:

(a) Bonds or notes, subject to section 30716.

(b) Lake level orders.

(2) Bonds or notes issued under subsection (1) shall have a final maturity date not more than 40 years after the date of original issuance.

(3) All proceedings relating to the making, levying, and collection of special assessments authorized by this part and the issuance of bonds, notes, or lake level orders in anticipation of the collection of the special assessments shall conform as nearly as possible to the proceedings for levying special assessments and issuing special assessment bonds as set forth in the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(4) A county board by a vote of 2/3 of its members may pledge the full faith and credit of the county for payment of bonds or notes issued by a special assessment district under subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 215, Imd. Eff. Apr. 29, 2002;—Am. 2020, Act 221, Imd. Eff. Oct. 16, 2020.

Popular name: Act 451

Popular name: NREPA

324.30706 Initiation of proceedings by director of department.

Sec. 30706. If the department finds it expedient to have the normal level of an inland lake determined, the department may initiate by civil action on behalf of the state, in the court of any county in which the lake is located, a proceeding for determination of the normal level.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30707 Hearing; notice; service; powers and duties of court.

Sec. 30707. (1) Upon filing of a civil action under this part, the court shall set a day for a hearing. The prosecuting attorney or other legal counsel of the county or counties or the department shall give notice of the hearing by publication in 1 or more newspapers of general circulation in the county and, if the waters of the inland lake are situated in 2 or more counties, in 1 or more newspapers of general circulation in each of the counties in which the inland lake is located. The notice shall be published at least once each week for 3 successive weeks before the date set for the hearing.

(2) The commissioner shall serve a copy of the published notice of hearing by first-class mail at least 3 weeks prior to the date set for the hearing to each person whose name appears upon the latest city or township tax assessment roll as owning land within a tentative special assessment district at the address shown on the roll; to the governing body of each political subdivision of the state in which the lake is located; and to the governing body of each affected political subdivision of the state. If an address does not appear on the roll, then a notice need not be mailed to the person. The commissioner shall make an affidavit of mailing. The failure to receive a notice properly mailed shall not constitute a jurisdictional defect invalidating proceedings under this part.

(3) The prosecuting attorney or the legal counsel of the county shall serve notice on the department at least 21 days prior to the date of the hearing.

(4) In a determination of the normal level of an inland lake, the court shall consider all of the following:

(a) Past lake level records, including the ordinary high-water mark and seasonal fluctuations.

(b) The location of septic tanks, drain fields, sea walls, docks, and other pertinent physical features.

(c) Government surveys and reports.

(d) The hydrology of the watershed.

(e) Downstream flow requirements and impacts on downstream riparians.

(f) Fisheries and wildlife habitat protection and enhancement.

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(g) Upstream drainage.
(h) Rights of riparians.
(i) Testimony and evidence offered by all interested persons.
(j) Other pertinent facts and circumstances.

(5) The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this part. The court shall confirm the special assessment district boundaries within 60 days following the lake level determination. The court may determine that the normal level shall vary seasonally.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30708 Maintenance of normal level; acquisition by gift, grant, purchase, or condemnation; contract for operation and maintenance of existing dam; dam in adjoining county; operation of pumps and wells.

Sec. 30708. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the county, the delegated authority of any county or counties in which the inland lake is located shall provide for and maintain that normal level.

(2) A county may acquire, in the name of the county, by gift, grant, purchase, or condemnation proceedings, an existing dam that may affect the normal level of the inland lake, sites for dams, or rights in land needed or convenient in order to implement this part. A county may enter into a contract for operation and maintenance of an existing dam. The county may construct and maintain a dam that is determined by the delegated authority to be necessary for the purpose of maintaining the normal level. A dam may be acquired, constructed, or maintained in a county adjoining the county in which the lake is located.

(3) For the purpose of maintaining the normal level, a delegated authority may drill wells or pump water from another source to supply an inland lake with additional water, may lower the level of the lake by pumping water from the lake, and may purchase power to operate pumps, wells, or other devices installed as part of a normal level project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30709 Powers of department.

Sec. 30709. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the department, the department may provide for and maintain that normal level.

(2) In a proceeding initiated by the department, the department has the same powers in connection with a normal level project as a county has under sections 30708, 30713, and 30718.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30710 Condemnation of private property.

Sec. 30710. If the department or the delegated authority determines that it is necessary to condemn private property for the purpose of this part, the department or county may condemn the property in accordance with the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

****** 324.30711 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30711.amended ******

324.30711 Defraying project costs by special assessment; special assessment roll; reassessment.

Sec. 30711. (1) The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions

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of the state, and state owned lands under the jurisdiction and control of the department. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

(2) If the revenues raised pursuant to the special assessment are insufficient to meet the computation of cost included in section 30712, or if these revenues are insufficient to meet bond obligations, the special assessment district may be reassessed without hearing using the same apportioned percentage used for the original assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

***** *324.30711.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE* *****

324.30711.amended Defraying project costs by special assessment; special assessment roll; reassessment.

Sec. 30711. (1) The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of this state, and state owned lands under the jurisdiction and control of the department of natural resources. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

(2) If the revenues raised pursuant to the special assessment are insufficient to meet the computation of cost under section 30712, or if these revenues are insufficient to meet bond obligations, the special assessment district may be reassessed without hearing using the same apportioned percentage used for the original assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2024, Act 112, Eff. (sine die).

Popular name: Act 451

Popular name: NREPA

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324.30712 Computation of project costs.

Sec. 30712. (1) Computation of the cost of a normal level project shall include the cost of all of the following:

(a) The preliminary study.

(b) Surveys.

(c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments.

(d) Acquiring land and other property.

(e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level.

(f) Legal fees, including estimated costs of appeals if assessments are not upheld.

(g) Court costs.

(h) Interest on bonds and other financing costs for the first year, if the project is so financed.

(i) Any other costs necessary for the project which can be specifically itemized.

(2) The delegated authority may add as a cost not more than 15% of the sum calculated under subsection (1) to cover contingent expenses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30713 Contract with agency or corporation; provisions.

Sec. 30713. The delegated authority of a county in which an inland lake is located may contract with a state or federal government agency or a public or private corporation in connection with a project for the establishment and maintenance of a normal level. The contract may specify that the agency or corporation will pay the whole or a part of the cost of the project or will perform the whole or a part of the work connected with the project. The contract may provide that payment made or work done relieves the agency or corporation in whole or in part from assessment for the cost of establishment and construction of the project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.30714 Special assessment roll; public hearing; notice; approval; appeal.

Sec. 30714. (1) A special assessment roll shall describe the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper that circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30715 Assessment payments; installments; amount; interest, penalty, and collection; lien; preliminary study payment credited.

Sec. 30715. (1) The county board may provide that assessments under this part are payable in installments.

(2) Assessment payments shall be sufficient to meet bond and note obligations of the special assessment district.

(3) Special assessments under this part shall be spread upon the county tax rolls, and shall be subject to the same interest and penalty charges and shall be collected in the same manner as county taxes.

(4) From the date of approval of the special assessment roll by the county board, a special assessment under this part shall constitute a lien on the parcel assessed. The lien shall be of the same character and effect as a lien created for county taxes.

(5) A payment for the cost of the preliminary study under section 30703 shall be credited against an assessment for the amount of the payment made by the person assessed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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***** *324.30716 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30716.amended* *****

324.30716 Bonds and notes; issuance.

Sec. 30716. With approval of the county board and subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, the district may issue bonds or notes that shall be payable by special assessments under this part. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 216, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

***** *324.30716.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE* *****

324.30716.amended Bonds and notes; issuance; exempt from MCL 141.2505.

Sec. 30716. (1) With approval of the county board and pursuant to section 30705, the district may issue bonds or notes that are payable by special assessments under this part. Except as provided in subsection (2) and section 30717(3), the issuance of the bonds and notes is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

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(2) Notwithstanding any other provision of this part, bonds, notes, and other obligations issued under this part are exempt from section 505 of the revised municipal finance act, 2001 PA 34, MCL 141.2505.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 216, Imd. Eff. Apr. 29, 2002;—Am. 2024, Act 112, Eff. (sine die).

Popular name: Act 451

Popular name: NREPA

****** 324.30717 THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.30717.amended ******

324.30717 Acceptance and repayment of advance.

Sec. 30717. The delegated authority may accept the advance of work, material, or money in connection with a normal level project. The obligation to repay an advance out of special assessments under this part may be evidenced by a note or contract. Notes and contracts issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 217, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

****** 324.30717.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE ******

324.30717.amended Special assessment district; acceptance and repayment of advance.

Sec. 30717. (1) A special assessment district under this part may borrow money or accept an advance of work, material, or money from a public or private corporation, a partnership, an association, an individual, or the federal government or any agency of the federal government for payment of financing of any costs in connection with a normal level project, including all of the following:

(a) Costs of easement and land acquisition.

(b) Engineering fees.

(c) Financing costs.

(d) Legal fees.

(e) Costs of a preliminary, feasibility, practicability, environmental assessment, or impact study.

(f) Any other permissible costs under this part.

(2) The special assessment district shall pay or provide reimbursement for the obligations under subsection (1), with or without interest as may be agreed, when funds are available. The obligation of the special assessment district under this subsection may be evidenced by a contract or note. The contract or note may pledge the full faith and credit of the special assessment district and may be made payable out of any of the following:

(a) Assessments made or to be made against public corporations at large or against lands in the special assessment district.

(b) The proceeds of lake level orders, notes, or bonds issued by the special assessment district pursuant to this act.

(c) Any other available funds.

(3) A contract or note described in subsection (2) is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, unless the principal amount of the obligation is more than $600,000.00. However, if the principal amount of the obligation is $600,000.00 or less, the contract or note is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177. Projects in which advances or loans are made by any public corporation, the federal government, or any agency of the federal government are not subject to either the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(4) The county board of commissioners by a majority vote of its members may pledge the full faith and credit of the county for the payment of a contract or note of the special assessment district.

(5) All notes previously issued under this section shall be considered to have been validly issued.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 217, Imd. Eff. Apr. 29, 2002;—Am. 2024, Act 112, Eff. (sine die).

Popular name: Act 451

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324.30718 Dam construction or maintenance; plans and specifications; approval by department; bids; work relief project.

Sec. 30718. Plans and specifications for a dam constructed or maintained under this part shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. Bids for doing the work may be advertised in the manner the delegated authority directs. The contract shall be let to the lowest responsible bidder giving adequate security for the performance of the contract, but the delegated authority may reserve the right to reject any and all bids. The county may erect and maintain a dam as a work relief project in accordance with the law applicable to a work relief project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30719 Dam construction; underspill device; fish ladder.

Sec. 30719. (1) The department may require that a new dam that is proposed to be constructed be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

(2) The department may require the installation of a fish ladder or other device to permit the free passage of fish.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30720 Unauthorized change of level; penalty.

Sec. 30720. A person who is not authorized by a delegated authority or the department to operate a dam or other normal level control facility and who changes, or causes to change, the level of an inland lake, the normal level of which has been established under this part or any previous act governing lake levels, and for which the delegated authority or the department has taken steps to maintain the normal level, is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both, and shall be required to pay the actual cost of restoration or replacement of the dam and any other property including any natural resource that is damaged or destroyed as a result of the violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30721 Establishment of normal inland lake level prohibited in certain cases.

Sec. 30721. A normal level shall not be established for an inland lake in either of the following cases:

(a) The inland lake is used as a reservoir for a municipal water supply system, unless a normal level determination is petitioned for by the governing body of the municipality.

(b) The state has title, flowage rights, or easements to all riparian land surrounding the inland lake, unless a normal level determination is petitioned for by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30722 Inspection; report; repairs; penalty; expenditure.

Sec. 30722. (1) The delegated authority of a county shall cause an inspection to be made of each dam on an inland lake within the county which has a normal level established under this part or under any previous act governing lake levels. The inspection shall be conducted by a licensed professional engineer. The inspection shall take place every third year from the date of completion of a new dam or every third year from the determination of a normal level for an existing dam. An inspection report shall be submitted promptly to the department in the form and manner the department prescribes.

(2) If a report discloses a need for repairs or a change in condition of the dam that relates to the dam's safety or danger to natural resources, the department shall conduct an inspection to confirm the report. If the report is confirmed and the public safety or natural resources are endangered by the risk of failure of the dam, the department may require the county either to repair or to replace the dam. Plans and specifications for the

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repairs or replacement shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. If the dam is in imminent danger of failure, the department may order an immediate lowering of the lake level until necessary repair or replacement is complete.

(3) A person failing to comply with this section, or falsely representing dam conditions, is guilty of misconduct in office.

(4) If an inspection discloses the necessity for maintenance or repair, the delegated authority, without approval of the county board, may spend not more than $10,000.00 annually for maintenance and repair of each lake level project. An expenditure of more than $10,000.00 annually shall be approved by resolution of the county board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30723 Other requirements not abrogated.

Sec. 30723. This part does not abrogate the requirements of other state statutes.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 309
INLAND LAKE IMPROVEMENTS

324.30901 Definitions.

Sec. 30901. As used in this part:

(a) "Benefit" or "benefits" means advantages resulting from a project to public corporations, the inhabitants of public corporations, the inhabitants of this state, and property within public corporations. Benefit includes benefits that result from elimination of pollution and elimination of flood damage, elimination of water conditions that jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement, or development of a lake for fishing, wildlife, boating, swimming, or any other recreational, agricultural, or conservation uses.

(b) "Inland lake" means a public inland lake or a private inland lake.

(c) "Interested person" means a person who has a record interest in the title to, right of ingress to, or reversionary right to a piece or parcel of land that would be affected by a permanent change in the bottomland of a natural or artificial, public or private inland lake, or adjacent wetland. In all cases, whether having such an interest or not, the department is an interested person.

(d) "Local governing body" means the legislative body of a local unit of government.

(e) "Preliminary costs" includes costs of the engineering feasibility report, economic study, estimate of total cost, and cost of setting up the assessment district.

(f) "Private inland lake" means an inland lake other than a public inland lake.

(g) "Public inland lake" means a lake that is accessible to the public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30902 Petition for improvement of lake or wetland; local governing bodies' powers; lake boards.

Sec. 30902. (1) The local governing body of any local unit of government in which the whole or any part of the waters of any public inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching,

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digging, or other related work.

(2) Upon receipt of the petition or upon its own motion, the local governing body within 60 days shall set up a lake board as provided in section 30903 that shall proceed with the necessary steps for improving the lake or to void the proposed project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30903 Lake board; composition; election of chairperson, treasurer, and secretary; quorum; concurrence of majority required; technical data; recommendations.

Sec. 30903. (1) The lake board shall consist of all of the following:

(a) A member of the county board of commissioners appointed by the chairperson of the county board of commissioners of each county affected by the lake improvement project; 1 representative of each local unit of government, other than a county, affected by the project, or, if there is only 1 such local unit of government, 2 representatives of that local unit of government, appointed by the legislative body of the local unit of government; and the county drain commissioner or his or her designee, or a member of the county road commission in counties not having a drain commissioner.

(b) A member elected by the members of the lake board serving pursuant to subdivision (a) at the first meeting of the board or at any time a vacancy exists under this subdivision. Only a person who has an interest in a land contract or a record interest in the title to a piece or parcel of land that abuts the lake to be improved is eligible to be elected and to serve under this subdivision. An organization composed of and representing the majority of lakefront property owners on the affected lake may submit up to 3 names to the board, from which the board shall make its selection. The terms served by this member shall be 4 years in length.

(2) The lake board shall elect a chairperson, treasurer, and secretary. The secretary shall attend meetings of the lake board and shall keep a record of the proceedings and perform other duties delegated by the lake board. A majority of the members of the lake board constitutes a quorum. The concurrence of a majority in any matter within the duties of the board is required for the determination of a matter.

(3) The department, upon request of the lake board, shall provide whatever technical data it has available and make recommendations in the interests of conservation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 522, Eff. Mar. 1, 2005.

Popular name: Act 451

Popular name: NREPA

324.30904 Initiation of action by freeholders.

Sec. 30904. Action may be initiated under section 30902 relating to any private inland lake only upon petition of 2/3 of the freeholders owning lands abutting the lake.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30905 Preliminary costs; revolving funds; assessments.

Sec. 30905. The county board of commissioners may provide for a revolving fund to pay for the preliminary costs of improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the lake board after notice of the hearing is given pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and shall be repaid to the fund where the project is not finally constructed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30906 Institution of proceedings for lake improvement; conflicts with local ordinances and charters.

Sec. 30906. (1) Whenever a local governing body, in accordance with section 30902, considers it expedient to have a lake improved, it, by resolution, shall direct the lake board to institute proceedings as prescribed in this part.

(2) When the waters of any inland lake are situated in 2 or more local units of government, the improvement of the lake may be determined jointly in the same manner as provided in this part, if the local

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governing bodies of all local units of government involved determine it to be expedient in accordance with section 30902 and, by resolution, direct the lake board to institute proceedings as prescribed in this part. Where local ordinances and charters conflict, this part shall govern.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30907 Lake improvement; initiation by department.

Sec. 30907. If the department considers it expedient, in accordance with section 30902, to have a lake dredged or improved, the department may petition the local governing body or governing bodies in which the lake is located for an improvement of the lake. The department may also join with the local governing body of any local unit of government in instituting proceedings for improvements as set forth in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30908 Lake board; determination of scope of project; establishment of special assessment districts; ministerial duties.

Sec. 30908. The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment district all parcels of land and local units which will be benefited by the improvement of the lake. The local governing body may delegate to the lake board other ministerial duties including preparation, assembling, and computation of statistical data for use by the board and the superintending, construction, and maintenance of any project under this part, as the local governing body considers necessary.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30909 Engineering and economic reports; cost estimates.

Sec. 30909. (1) The lake board shall retain a licensed professional engineer to prepare an engineering feasibility report, an economic study report, and an estimate of cost. The report shall include, when applicable, recommendations for normal lake levels and the methods for maintaining those levels.

(2) The engineering feasibility report shall include the methods proposed to implement the recommended improvements, such as dredging, removal, disposal, and disposal areas for undesirable materials from the lake. The report shall include an investigation of the groundwater conditions and possible effects on lake levels from removal of bottom materials. A study of existing nutrients and an estimate of possible future conditions shall be included. Estimate of costs of right-of-way shall be included.

(3) The estimate of cost prepared under subsection (1) shall show probable assessments for the project. The economic report shall analyze the existing local tax structure and the effects of the proposed assessments on the local units of government involved. A copy of the report shall be furnished to each member of the lake board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30910 Review of reports by board; determinations of practicability; public hearings; notice; determination.

Sec. 30910. Within 60 days after his or her receipt of the reports, the chairperson shall hold a meeting of the lake board to review the reports required under section 30909 and to determine the practicability of the project. The hearing shall be public, and notice of the hearing shall be published twice in a newspaper of general circulation in each local unit of government to be affected. The first publication shall be not less than 20 days prior to the time of the hearing. The board shall determine the practicability of the project within 10 days after the hearing unless it is determined at the hearing that more information is needed before the determination can be made. Immediately upon receipt of the additional information, the board shall make its determination.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.30911 County contributions toward costs of improvement.

Sec. 30911. The county board of commissioners may provide up to 25% of the cost of a lake improvement project on any public inland lake.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30912 Approval of plans and cost estimates; sufficiency of petition; resolution; publication; assessment roll.

Sec. 30912. If the lake board passes a resolution in which it determines the project to be practicable, the lake board shall determine to proceed with the project, shall approve the plans and estimate of costs as originally presented or as revised, corrected, amended, or changed, and shall determine the sufficiency of the petition for the improvement. The resolution shall be published once in a newspaper of general circulation in each local unit of government to be affected. After the resolution has been published, the sufficiency of the petition shall not be subject to attack except in an action brought in a court of competent jurisdiction within 30 days after publication. The lake board, after finally accepting the special assessment district, shall prepare an assessment roll based upon the benefits to be derived from the proposed lake improvement, and the lake board shall direct the assessing official of each local unit of government to be affected to join in making an assessment roll in which shall be entered and described all the parcels of land to be assessed, with the names of the respective owners of the parcels of land, if known, and the total amount to be assessed against each parcel of land and against each local unit of government to be affected, which amount shall be such relative portion of the whole sum to be levied against all parcels of land and local units of government in the special assessment district as the benefit to such parcel of land and local unit of government bears to the total benefit to all parcels of land and local units of government in the special assessment district. When the assessment roll has been completed, each assessing official shall affix to the assessment roll his or her certificate stating that it was made pursuant to a resolution of the lake board adopted on a specified date, and that in making the assessment roll he or she has, according to his or her best judgment, conformed in all respects to the directions contained in the resolution and the statutes of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30913 Report of assessment to lake board; review; notice and hearing; confirmation.

Sec. 30913. The assessment roll shall be reported to the lake board by the assessing official of the local unit or units of government initiating the proceeding and filed in the office of the clerk of each local unit of government to be affected. Before confirming the assessment roll, the lake board shall appoint a time and place when it will meet and review the assessment roll and hear any objections to the assessment roll, and shall publish notice of the hearing and the filing of the assessment roll twice prior to the hearing in a newspaper of general circulation in each local unit of government to be affected, the first publication to be at least 10 days before the hearing. Notice of the hearing shall also be given in accordance with Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The hearing may be adjourned from time to time without further notice. Any person or local unit of government objecting to the assessment roll shall file his or her objection in writing with the chairperson before the close of the hearing or within such further time period as the lake board may grant. After the hearing, the lake board may confirm the special assessment roll as reported to it or as amended or corrected by it, may refer it back to the assessing officials for revision, or may annul it and direct a new roll to be made. When a special assessment roll has been confirmed, the clerk of each local unit of government shall endorse on the assessment roll the date of the confirmation. After confirmation, the special assessment roll and all assessments on the assessment roll shall be final and conclusive unless attacked in a court of competent jurisdiction within 30 days after notice of confirmation has been published in the same manner as the notice of hearing.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30914 Special assessments; installments; interest; penalties.

Sec. 30914. Upon the confirmation of the assessment roll, the lake board may provide that the assessments

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be payable in 1 or more approximately equal annual installments, not exceeding 30. The amount of each installment, if more than 1, need not be extended upon the special assessment roll until after confirmation. The first installment of a special assessment shall be due on or before such time after confirmation as the board shall establish, and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from such other date as the board shall establish. All unpaid installments, prior to their transfer to the tax roll of each local unit of government involved, shall bear interest, payable annually on each installment due date, at a rate to be set by the board, not exceeding 6% per annum, from such date as established by the board. Future due installments of an assessment against a parcel of land may be paid to the treasurer of each local unit of government at any time in full, with interest accrued to the due date of the next installment. If any installment of a special assessment is not paid when due, then it shall be considered to be delinquent and there shall be collected on the installment, in addition to interest as above provided, a penalty at the rate of 1/2 of 1% for each month or fraction of a month that it remains unpaid before being reported to the township board for reassessment upon the tax roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30915 Special assessments; liens.

Sec. 30915. All special assessments contained in any special assessment roll, including any part of the special assessment payment that is deferred, constitute a lien, from the date of confirmation of the roll, upon the respective parcels of land assessed. The lien shall be of the same character and effect as the lien created for taxes in each local unit of government and shall include accrued interest and penalties. A judgment, decree, or any act of the board vacating a special assessment does not destroy or impair the lien upon the premises assessed for the amount of the assessment as may be equitably charged against the premises, or as by a regular mode of proceeding might be lawfully assessed on the premises.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30916 Special assessments; collections.

Sec. 30916. When any special assessment roll is confirmed, the lake board shall direct the assessments made in the roll to be collected. The clerk of each local unit of government involved shall then deliver to the treasurer of each local unit of government the special assessment roll, to which he or she shall attach his or her warrant commanding the treasurer to collect the assessments in the roll in accordance with the directions of the lake board. The warrant shall further require the treasurer, on September 1 following the date when any assessments or any part of an assessment have become due, to submit to the lake board a sworn statement setting forth the names of delinquent persons, if known, a description of the parcels of land upon which there are delinquent assessments, and the amount of the delinquency, including accrued interest and penalties computed to September 1 of the year. Upon receiving the special assessment roll and warrant, the treasurer shall collect the amounts assessed as they become due.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30917 Delinquent assessments; reassessment.

Sec. 30917. If the treasurer reports as delinquent any assessment or part of an assessment, the lake board shall certify the delinquency to the assessing official of each local unit of government, who shall reassess, on the annual tax roll of the local unit of government of that year, in a column headed "special assessments", the delinquent sum, with interest and penalties to September 1 of that year, and an additional penalty of 6% of the total amount. Thereafter, the statutes relating to taxes shall be applicable to the reassessments in each local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30918 Division of land parcels; uncollected assessment apportioned.

Sec. 30918. If any parcel of land is divided after a special assessment on the land has been confirmed and before the collection of the assessment, the lake board may require the assessment official to apportion the

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uncollected amounts between the divisions of the parcel of land, and the report of the apportionment when confirmed by the lake board shall be conclusive upon all parties. If the interested parties do not agree in writing to the apportionment, then, before confirmation, notice of hearing shall be given to all the interested parties, either by personal service or by publication as provided in the case of an original assessment roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30919 Additional special assessments.

Sec. 30919. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessment, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessment, then the lake board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30920 Special assessments; invalidity and new assessments.

Sec. 30920. Whenever, in the opinion of the lake board, any special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges such assessment illegal, the lake board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on that reassessment and for the collection of the assessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside, if the assessment or part of an assessment has been paid and not refunded, the payment shall be applied upon the reassessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30921 Special assessments; exempt lands.

Sec. 30921. The governing body of any department of the state or any of its political subdivisions, municipalities, school districts, townships, or counties, whose lands are exempt by law, may by resolution agree to pay the special assessments against the lands, in which case the assessment, including all the installments of the assessment, shall be a valid claim against the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30922 Borrowing; issuance of lake level orders and bonds.

Sec. 30922. The lake board may borrow money and issue lake level orders or the bonds of the special assessment district in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds or lake level orders shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. Collections on special assessments to the extent pledged for the payment of bonds or lake level orders shall be set aside in a special fund for the payment of the bonds or lake level orders. The issuance of special assessments bonds or lake level orders shall be governed by the general laws of this state applicable to the issuance of special assessments bonds or lake level orders and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds or lake level orders may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district. The local governing body may pledge the full faith and credit of a local unit of government for the prompt payment of the principal of and interest on the bonds or lake level orders as they become due. The pledge of full faith and credit of the local unit of government shall be included within the total limitation prescribed by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds and lake level orders issued under this part shall be executed by the chairperson and secretary of the lake board, and the interest

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coupons to be attached to the bonds and orders shall be executed by the officials causing their facsimile signatures to be affixed to the bonds and orders.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 218, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.30923 Condemnation; commencement and conduct of proceedings.

Sec. 30923. Whenever the lake board determines by proper resolution that it is necessary to condemn private property for the purpose of this part, the condemnation proceedings shall be commenced and conducted in accordance with Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30924 Gifts and grants-in-aid; acceptance by lake board; contract or agreement.

Sec. 30924. (1) The lake board may receive and accept gifts or grants-in-aid for the purpose of implementing this part.

(2) The lake board may contract or make agreement with the federal government or any agency of the federal government whereby the federal government will pay the whole or any part of the costs of a project or will perform all or any part of the work connected with the project. The contract or agreement may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30925 Gifts and grants-in-aid; acceptance by department.

Sec. 30925. The department in carrying out the purposes of this part may receive and accept, on behalf of the state, gifts and grants-in-aid.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30926 Advertising for bids; letting of contracts; work relief project.

Sec. 30926. (1) Except as provided in subsection (2), the chairperson of the lake board shall advertise for bids. A contract shall be let to the lowest bidder giving adequate security for the performance of the contract, but the lake board shall reserve the right to reject any and all bids.

(2) The lake board may let a contract with a local, incorporated, nonprofit homeowner association, the membership of which is open on a nondiscriminatory basis to all residents within the geographic area to be assessed or serviced, without advertising for public bids. The homeowner association shall give adequate security for the performance of the contract.

(3) The local governing body may improve a lake as a work relief project pursuant to applicable provisions of law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30927 Costs of projects; computation; expenditures; representation by attorney.

Sec. 30927. (1) Within 10 days after the letting of contracts or, in case of an appeal, immediately after the appeal has been decided, the lake board shall make a computation of the entire cost of a project under this part that includes all preliminary costs and engineering and inspection costs incurred and all of the following:

(a) The fees and expenses of special commissioners.

(b) The contracts for dredging or other work to be done on the project.

(c) The estimated cost of an appeal if the apportionment made by the lake board is not sustained.

(d) The estimated cost of inspection.

(e) The cost of publishing all notices required.

(f) All costs of the circuit court.

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(g) Any legal expenses incurred in connection with the project, including litigation expenses, the costs of any judgments or orders entered against the lake board or special assessment district, and attorney fees.

(h) Fees for any permits required in connection with the project.

(i) Interest on bonds for the first year, if bonds are to be issued.

(j) Any other costs necessary for the administration of lake board proceedings, including, but not limited to, compensation of the members of the lake board, record compilation and retention, and state, county, or local government professional staff services.

(2) In addition to the amounts computed under subsection (1), the lake board may add not less than 10% or more than 15% of the gross sum to cover contingent expenses, including additional necessary hydrological studies by the department. The sum of the amounts computed under subsection (1) plus the amount added under this subsection is considered to be the cost of the lake improvement project.

(3) A lake board shall not expend money for improvements, services, or other purposes unless the lake board has adopted an annual budget.

(4) A lake board may retain an attorney to advise the lake board in the proper performance of its duties. The attorney shall represent the lake board in actions brought by or against the lake board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 522, Eff. Mar. 1, 2005.

Popular name: Act 451

Popular name: NREPA

324.30928 Intervention by department.

Sec. 30928. Whenever a public inland lake is to be improved, the department may intervene for the protection and conservation of the natural resources of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30929 Lake board for inland lake; dissolution.

Sec. 30929. A lake board for an inland lake is dissolved if all of the following requirements are met:

(a) The governing body of each local unit of government in which all or part of the lake is located holds a public hearing on the proposed dissolution, determines that the lake board is no longer necessary for the improvement of the lake because the reasons for the establishment of the lake board no longer exist, and approves the dissolution of the lake board. For a public inland lake, the governing body of each local unit of government in which all or part of the lake is located may hold the public hearing on the dissolution of the lake board on its own initiative. For a public or private inland lake, the governing body of each local unit of government in which all or part of the lake is located shall hold a public hearing on the dissolution of the lake board upon petition of at least 2/3 of the property owners owning land abutting the lake or upon petition of the property owners who have been assessed at least 2/3 of the cost of the most recent improvements, excluding the amount assessed to local units at large. Notice of the public hearing shall be published twice in a newspaper of general circulation in each local unit of government in which all or part of the lake is located. The first notice shall be published not less than 10 days before the date of the hearing.

(b) All outstanding indebtedness and expenses of the lake board are paid in full.

(c) Any excess funds of the lake board are refunded based on the last approved special assessment roll. However, if the amount of excess funds is de minimis, the excess funds shall be distributed to the local units of government in which all or part of the lake is located, apportioned based on the amounts assessed against each local unit of government and lands in that local unit on the last approved special assessment roll.

(d) The lake board determines that it is no longer necessary for the improvement of the lake, because the reasons for its establishment no longer exist, and adopts an order approving its dissolution.

History: Add. 2004, Act 522, Eff. Mar. 1, 2005;—Am. 2011, Act 96, Imd. Eff. July 15, 2011.

Popular name: Act 451

Popular name: NREPA

PART 311
LOCAL RIVER MANAGEMENT

324.31101 Definitions.

Sec. 31101. As used in this part:

(a) "Board" means a river management board created as the governing body of a river management district in accordance with this part.

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(b) "Council" means a watershed council created under this part.

(c) "District" means a river management district established under this part.

(d) "Level of stream flow" means a measure of water quantity including the amount of water passing a designated point over a designated period and the levels of lakes that are an integral part of the surface drainage system of the watershed.

(e) "Local agencies" means local units of government, special districts, or other legally constituted agencies of local units of government exercising powers that may affect water resources.

(f) "River management" means the control of river flow by the operation of dams, reservoirs, conduits, and other human-made devices in order to improve and expand the uses of the river for those who depend upon it for a variety of private and public benefits.

(g) "Watershed" means the drainage area of a stream.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31102 Watershed council; petition; contents; organizational meeting; notice.

Sec. 31102. (1) To promote cooperation among local units of government in river management, a watershed council shall be established by the department upon a petition from 3 or more local units of government lying wholly or partially in the watershed as defined in the petition. The petition shall provide a statement of necessity, a description of general purposes and functions to be performed, a description of the area, including a map, and a list of all local units of government lying wholly or partly within the watershed, which shall be eligible for membership on the watershed council.

(2) Upon finding that the petition is in conformance with this part, the department shall establish the council, schedule an organizational meeting, and notify all local units of government eligible for membership by registered mail. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31103 Watershed council; membership; voting rights; term; river management board.

Sec. 31103. (1) The watershed council shall be composed of representatives of local units of government within the watershed who are appointed to and maintain membership in the council in the following manner:

(a) Each local unit of government using the river for water supply or waste disposal shall appoint 1 representative for each 20,000 population or fraction thereof. The governing body of each local unit of government shall determine the method by which its representatives are selected.

(b) Each county having 15% or more of its area in the watershed shall appoint 1 representative, and 1 additional representative for each 20,000 population or fraction thereof, which aggregate total shall be computed from the population of eligible townships not otherwise represented. These townships shall be eligible under this section if they have 15% or more of their respective areas in the basin. The methods by which the county representatives are selected shall be determined by the county board of commissioners.

(c) Any local agency wholly or partly within the basin may appoint a representative to the council upon a finding by the council that the agency is so affected by or concerned with the use and development of water resources in the basin as to warrant representation. If any township is represented under this subdivision, its population shall not be counted in determining the eligible total representatives of its county.

(2) Representatives on the watershed council shall be appointed for 2 years, but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the council unless the local government he or she represents has met its financial obligations to the council.

(3) Representatives to the watershed council may also represent their local units of government, if so designated by their local units of government, on river management boards established in accordance with this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31104 Watershed council; duties.

Sec. 31104. In carrying out its authorized functions, the council shall do all of the following:

(a) Adopt bylaws that govern its operations.

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(b) Prepare an annual operating budget, including apportionment of costs to member governments.

(c) Hold an annual meeting at which time it shall elect a chairperson, vice-chairperson, and secretary-treasurer, submit an annual report to the member governments, and adopt an annual budget that constitutes the council's authorization of activities for the year.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31105 Watershed council; powers.

Sec. 31105. A watershed council may do 1 or more of the following:

(a) Conduct, or cause to be conducted, studies of the water resources of the watershed, including investigations of water uses, water quality, and the reliability of the water resource.

(b) Prepare periodic reports concerning, among other things, trends in water use and availability, emerging water problems, and recommendations for appropriate public policies and programs necessary to maintain adequate water resources for the watershed area.

(c) Request the department to survey the watershed for the purpose of determining minimum levels of stream flow necessary for health, welfare, and safety as provided in sections 31112 through 31117.

(d) Recommend the creation of a river management district or districts under the provisions of sections 31106 through 31111 when the need for river management seems to warrant such an action.

(e) Advise agencies of federal, state, and local units of government as to the council's view of the watershed's problems and needs.

(f) Cooperate with federal, state, and local agencies in providing stream gauges, water quality sampling stations, or other water resource data-gathering facilities or programs that aid the council in its responsibility for studying and reporting on water conditions.

(g) Employ an executive secretary and such other professional, administrative, or clerical staff, including consultants, as may be provided for in an approved budget.

(h) Establish such subcommittees or advisory committees as are considered helpful in the discharge of its functions.

(i) Establish special project funds as needed to finance special studies outside its annual budget capacity. For this purpose, the council may accept gifts and grants from any person.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31106 River management district; establishment; powers; consolidation; coordination.

Sec. 31106. (1) The governing bodies of 2 or more local units of government may petition the department to establish a river management district in order to provide an agency for the acquisition, construction, operation, and financing of water storage and other river control facilities necessary for river management. The petition shall be accompanied by a statement of necessity, a description of the district purposes, functions, and operating procedures, which shall include methods of financing capital improvements and of apportioning benefit charges, and a general plan of development. Not later than 60 days following receipt of such a petition, the department shall establish the time and place for a public hearing on the petition and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least 1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may establish the district and publish notice of the establishment in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposal is consistent with the public interest in the conservation, development, and use of water resources, and the proposed district is geographically suitable to effectuation of the district purposes.

(b) That the establishment and operation of the district will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands or waters, and will not endanger public health or safety.

(2) A management district shall not be created that affects any city now or hereafter having a population of more than 1,500,000, except with the concurrence of the governing body of that city.

(3) Prior to approving the establishment of a district consisting of a portion of a river basin, the department shall determine the feasibility of establishing the district to include the entire river basin or as large a portion of the basin as possible. Approval of districts consisting of a portion of a river basin shall be on the basis that when in the judgment of the department it becomes feasible to form a district including the entire river basin,

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the river management boards shall initiate proceedings to combine the smaller districts into larger districts or into an entire watershed-wide district.

(4) Any plans for a river management district shall be coordinated with plans of adjacent river basins, organizations, or agencies and with any comprehensive regional master programs for river management.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31107 River management district; organizational meeting; notice; date; board; membership; term; voting rights.

Sec. 31107. (1) Within 60 days after establishing a district, the department shall schedule an organizational meeting of the district board and shall provide notice of the meeting by registered mail to the governing bodies of all local units of government comprising the district. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice. At the meeting, the department shall serve as temporary chairperson. The board shall elect a chairperson, vice-chairperson, secretary, and treasurer and adopt bylaws.

(2) A district shall be governed by a river management board composed of representatives of local units of government within the district. The representation of each local unit of government on the board may be provided as part of the operating procedures submitted to the department in the petition of local units of government made in accordance with section 31106. If the composition of the board is not so designated, representation shall be established under section 31103.

(3) Representatives on the river management board shall be appointed for 2 years but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the board unless the local government he or she represents has met its financial obligations to the district.

(4) Representatives to the river management board may also serve as representatives of their local units of government, if so designated by their local units of government, on the watershed council.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31108 River management board; powers.

Sec. 31108. A river management board may do any of the following:

(a) Conduct a continuing study of river use requirements and needs for river management within its area of jurisdiction; analyze alternative methods of meeting needs; and develop and adopt a river management program, including plans for constructing, operating, and financing water storage and river control structures and negotiating coordinated policies and programs relating to river use among local units of government within the district.

(b) Impound and control the waters of the river system within the district, subject to minimum levels of stream flow established pursuant to sections 31112 and 31113, through acquisition, construction, maintenance, and/or operation of water storage reservoirs, dams, or other river control structures as necessary to assure adequate quantity, quality, and stability of river flow to protect the public health, welfare, and safety. A river management district shall not release water in such an amount as to produce or increase flooding or otherwise damage downstream interests.

(c) Contract with or enter into agreement with the federal government or any agency or department of the federal government or with other governmental agencies or with private individuals or corporations that may maintain and operate reservoirs and control structures or that may construct, maintain, and operate new reservoirs and control structures as necessary to carry out the purposes of this part.

(d) Perform, with respect to the area within the district, the functions assigned to a watershed council by sections 31102 through 31105 whenever a relevant watershed council has not been formed, or if the appropriate watershed council's failure to act impairs the functions and programs of a district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31109 River management district; body corporate; powers; taxing power.

Sec. 31109. A district formed under this part is a body corporate with powers to contract; to sue and be sued; to exercise the right of eminent domain; to apportion administrative costs and benefit charges for river management and related facilities among the local units of government members, which costs shall be

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payable from general funds or taxes raised by the local units of government; to collect revenues for services rendered by the exercise of its functions; to issue bonds; to apply for and receive grants, gifts, and other devises from any governmental agency or from the federal government; and to exercise other powers as necessary to implement this part. The river management district shall not have direct taxing power.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31110 River management board; duties.

Sec. 31110. A river management board shall do all of the following:

(a) Adopt bylaws to govern its operations.

(b) Prepare an annual operating budget and levy an annual assessment of local unit of government members to cover costs of organizing, developing plans, and maintaining general overhead administration.

(c) Adopt and maintain a schedule of benefit assessments upon local units of government in the district levied to help defray the costs of capital improvements, which schedule constitutes a legal obligation upon those assessed.

(d) Hold an annual meeting at which it shall report to its members and to the watershed council, elect officers, and adopt an annual budget.

(e) Maintain a public record of its transactions.

(f) Do all other things necessary for the operation of the district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31111 Executive secretary; additional staff.

Sec. 31111. The executive secretary of a watershed council may serve as executive secretary to the river management board. If a relevant watershed council does not exist, or if the executive secretary of a watershed council is otherwise unavailable, the board may employ an executive secretary. In addition, the board may employ additional staff as it determines appropriate within its approved budget.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31112 Minimum level of stream flow; industrial use of water.

Sec. 31112. Upon request of a council or a board, the department shall determine, within the watershed subject to the council, the minimum level of stream flow necessary to safeguard the public health, welfare, and safety, but a determination or order shall not prevent any industry along the stream from using water from the stream for industrial use sufficient for the industry's requirement if all the water used is returned to the stream within 72 hours of the taking.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31113 Minimum level of stream flow; order of determination; notice; publication; review.

Sec. 31113. In carrying out its authority to determine minimum levels of stream flow, the department, after public hearing, shall issue an order of determination setting forth minimum levels at locations as necessary to carry out the purposes of this part. Notice of the order of determination shall be published and the order may be reviewed in the circuit court in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, upon petition filed by any person within 15 days following the last date of the publication.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31114 Minimum level of stream flow; determination by watershed council or department; request.

Sec. 31114. A river management board may request a watershed council to seek a determination of minimum levels of stream flow in accordance with sections 31112 and 31113, or the board may request the

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department to make the determinations if a watershed council has not been formed for the larger watershed of which the district is a part, or when an appropriately established council fails to act within 90 days upon the district's request.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31115 Measurement of stream flow, lake levels, and water quality; gauges and sampling devices; entering public property.

Sec. 31115. The department may maintain gauges and sampling devices to measure stream flow, lake levels, and water quality as necessary to implement this part, and may enter at all reasonable times in or upon any public property for the purpose of inspecting and investigating conditions relating to implementing this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31116 Preparation of river management plan; advice, assistance, and supervision by department.

Sec. 31116. The department may cooperate and negotiate with any person in establishing and maintaining gauges and sampling devices to measure stream flow, lake levels, or water quality or in implementing any other provision of this part. When requested by a council or board, the department shall provide technical advice and assistance in the preparation of a river management plan of the district. A river management plan shall not be placed into effect until it has been approved by the department as conforming to the stated objectives of the petition. The department shall maintain supervision over the functioning of the district to the extent it considers necessary for the purpose of ensuring conformance with the plan in the public interest.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31117 Rules.

Sec. 31117. The department shall promulgate rules to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31118 Authority of department not affected by part.

Sec. 31118. This part does not abridge the authority vested in the department by part 31. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31119 Director of public health; powers unaffected.

Sec. 31119. The functions, powers, and duties of the director of public health as provided for by Act No. 98 of the Public Acts of 1913, being sections 325.201 to 325.214 of the Michigan Compiled Laws, shall remain unaffected by this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 312
WATERSHED ALLIANCES

324.31201 Definitions.

Sec. 31201. As used in this part:

(a) "County agency" means an agency created or controlled by a county board of commissioners or a

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county executive, a board of county road commissioners, or an office of the county drain commissioner.

(b) "Member" means a municipality, county, county agency, public school district, public college or university, or other local or regional public agency that is a member of a watershed alliance as provided for in this part.

(c) "Watershed" means a geographic area in the state within which surface water drains into a common river, stream, or body of water.

(d) "Watershed alliance" means an organization established under section 31202.

(e) "Watershed management plan" means a written document prepared and approved by a watershed alliance that identifies water management issues and problems, proposes goals and objectives, and outlines actions to achieve the goals and objectives identified by members of a watershed alliance.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.31202 Watershed alliance; establishment by municipalities; purpose; resolution; bylaws; voluntary membership.

Sec. 31202. (1) Two or more municipalities, by resolution of their respective governing bodies, may establish a watershed alliance for the purpose of studying problems and planning and implementing activities designed to address surface water quality or water flow issues of mutual concern within the portion of a watershed located within their boundaries, including 1 or more of the following:

(a) Preparation of watershed management plans and other required documents as part of state or federal requirements to obtain water discharge permits or grant funding.

(b) Monitoring, sampling, and analyses of data necessary to manage the watershed, including, but not limited to, surface water quality, water quantity and flows, ecosystem health, recreational use, and the publication of results.

(c) Conducting public surveys, preparing and distributing informational and educational materials, and organizing activities involving the public.

(d) Designing and implementing projects and conducting activities to protect or enhance water quality and related beneficial uses, or manage flows to protect or reduce damage to riparian property and aquatic habitat.

(e) Designing and implementing other actions consistent with watershed management plans adopted by a watershed alliance, or required to protect public health, and maintain and restore beneficial public uses of the surface water resources of the watershed.

(2) A resolution under subsection (1) establishing a watershed alliance shall include bylaws that identify, at a minimum, all of the following:

(a) The structure of the organization and decision-making process.

(b) The geographic boundaries of the watershed.

(c) The municipalities, counties, county agencies, public school districts, and other local or regional public agencies eligible for membership in the watershed alliance as provided under subsection (3).

(d) The basis for assessing costs to members.

(e) A mechanism to be used for adoption of an annual budget to support projects and activities.

(3) A watershed alliance shall provide an equitable basis for all municipalities, counties, and county agencies within the geographic boundaries of the watershed to voluntarily join as members. In addition, at its discretion, the watershed alliance may authorize the voluntary membership of any local public school district, public college or university, or any other local or regional public agency that has water management responsibilities. Following establishment of a watershed alliance under subsection (1), by resolution of its governing body, a municipality, county, county agency, public school district, public college or university, or other local or regional public agency established under state law with surface water management responsibility may voluntarily join a watershed alliance as provided for in this subsection.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.31203 Watershed alliance as body corporate; powers and authority.

Sec. 31203. A watershed alliance is a body corporate with power to sue and be sued in any court of this state and with the authority to carry out its responsibilities under this part and as otherwise provided by law.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

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Popular name: NREPA

324.31204 Watershed alliance; powers and authority; report; assessment or collection of fees or taxes.

Sec. 31204. (1) A watershed alliance, consistent with the purposes identified in section 31202 and its bylaws, may do 1 or more of the following:

(a) Employ personnel to coordinate and implement actions.

(b) Enter into agreements or contracts with public or private entities to coordinate or implement actions.

(c) Assess and collect fees from members with approval of the governing bodies of the members.

(d) Solicit grants, gifts, and contributions from federal, state, regional, or local public agencies and from private sources.

(e) Expend funds provided by members, or through grants, gifts, and contributions.

(f) Represent members of the watershed alliance before other bodies considering issues affecting water quality or flow management issues within the designated watershed, including obtaining local, state, or federal permits or authorizations that may be required to carry out activities as may be authorized by its members.

(2) A watershed alliance shall prepare and deliver to its members on or before April 1 of each year a report detailing the revenue received and expenditures by the watershed alliance during the immediately prior January 1 through December 31 period.

(3) A watershed alliance shall have no independent authority to assess or collect any fees or taxes directly from individuals or property owners. A watershed alliance member may allocate the use of public funds from fees, taxes, or assessments generated under the provisions of other state laws for use by a watershed alliance.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.31205 Audit.

Sec. 31205. (1) A watershed alliance shall obtain an audit of its financial records, accounts, and procedures at least every other year.

(2) A watershed alliance shall submit the results of an audit under subsection (1) to the governing bodies of its members and to the state treasurer.

(3) An audit under subsection (1) shall satisfy all audit requirements set under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

Popular name: NREPA

Popular name: Act 451

324.31206 Additional authority prohibited.

Sec. 31206. This part does not provide a watershed alliance or any of its members with any additional authority not otherwise provided by law.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

PART 313
SURPLUS WATERS

324.31301 Definitions.

Sec. 31301. As used in this part:

(a) "Board" means the county board of commissioners.

(b) "Dams" means dams, embankments, dikes, pumps, weirs, locks, gates, tubes, ditches, or any other devices or construction to impound or release water.

(c) "Local unit" means any city, village, township, or soil conservation district acting through its governing body.

(d) "Optimum flow" means that rate and quantity of flow in any stream as determined in accordance with this part.

(e) "Plan" means a plan adopted by the board or boards and approved by an order of the department for the best development, utilization, and conservation of the surplus water of the state.

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(f) "Surplus water" means water that may be impounded without decreasing the flow of a river or stream below its optimum flow.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31302 Request for surveys; utilization of reports.

Sec. 31302. Any board or group of boards or local unit or units acting singly or in concert may request the department to undertake a survey of the water in a river basin or watershed located or partially located in the county or counties or in the local unit or units of government to determine whether there is surplus water that may be available and, if so, how it may be best impounded, utilized, and conserved. All studies, surveys, and reports made by public and other competent authorities may be utilized by the department in making this determination.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31303 Request for surveys; involvement of other boards.

Sec. 31303. If it appears to the department, after a review of the request, that a feasible plan for the impoundment, utilization, and conservation of surplus water will involve the water in counties or local units other than those making the request, the department shall so inform the requestors. If the request was originally made by a local unit only, the board of the county in which the local unit is situated shall be informed of the decision of the department; and unless the board joins in the request and becomes an originator of the request, the department shall discontinue any further work on the survey. The requesting board may then request the other boards to join in the request so that a complete survey of the surplus water located in all affected counties may be made. Refusal on the part of any of the other boards to join in the request shall be reported to the department, and if the department believes that the plan can be effectuated without the cooperation of the refusing boards, the department shall enter a decision to that effect and the boards requesting the survey may proceed in accordance with this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31304 Request for surveys; determination of optimum flow; plan for improvement, utilization, and conservation of surplus water; factors; limitations.

Sec. 31304. (1) Upon receipt of a request, the department shall determine the optimum flow for the rivers and streams that may be substantially affected by the impounding and releasing of surplus water and upon its completion shall require the boards to prepare and submit to the department a plan for the impoundment, best utilization, and conservation of the surplus water in accordance with this part. The department shall cooperate and collaborate with the boards in the preparation of the plan. The plan shall specify the persons who may make use of the water and the terms, conditions, and restrictions under which the water may be used.

(2) In making the determination of optimum flow and in preparing the plan, the department and boards shall consider the following factors:

(a) The range of stream flow variation.

(b) The uses that are being made of the water from the stream or that may be made in the foreseeable future by any riparian owner.

(c) The stream's waste assimilation capacity and its practical utility for domestic use, fish and wildlife habitat, recreation, municipal and industrial water supply, commercial and recreational navigation, including portages, public and private utilities, and water storage purposes.

(d) Other factors that appear to the department to be necessary to adequately protect and preserve the rights of riparians on the streams involved.

(3) A plan shall not permit the impounding of water if the flow is below the optimum flow. This part does not authorize the diversion of water from 1 watershed to another.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31305 Public hearing; determination of optimum flow; notice; order; review.

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Sec. 31305. (1) Before making a determination of optimum flow, the department shall hold a public hearing on the issue. The department shall set the time and place for the public hearing and shall publish notice of the hearing. The hearing shall be held not less than 180 days after the date of the first publication. The notice shall be published once during each of 2 separate weeks in at least 1 newspaper of general circulation in each county that requested the survey or later joined in the survey. Notice shall be given by first-class mail to each owner or party in interest of upper and lower riparian property that will be affected by the determination and whose name appears upon the most recent local tax assessment records. The notice shall be mailed at least 60 days prior to the date of the hearing to the address shown on the tax records. At the hearing, any interested person may appear, present witnesses, and submit evidence.

(2) Upon the completion of the public hearing pursuant to subsection (1), the department, if it believes it to further the public interest, shall enter an order making a determination of optimum flow. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as to questions of law only by a writ of superintending control in an action in the nature of certiorari brought before the order becomes final. Only an owner or party in interest of upper or lower riparian property affected by the order who appeared, testified, or filed a written statement at the hearing, who considers himself or herself aggrieved by the order, has the right to file a petition for a writ of superintending control in the nature of certiorari in the circuit court for the county of Ingham or in the circuit court for any county that requested the survey or joined in the survey.

(3) After the order of determination becomes final, the department shall hold a public hearing on the proposed plan as submitted by the board. The department shall set the time and place for the public hearing and shall publish notice in the manner provided in subsection (1). The hearing shall be held not less than 30 days after the date of the first publication. Notice shall be given by first-class mail to the persons and in the manner provided in subsection (1) and shall be mailed at least 30 days prior to the date of the hearing. At the hearing, any interested person may appear, present witnesses, and submit evidence. If the department finds that the proposed plan is in the public interest and in compliance with this part, it shall enter an order approving the plan. The order shall become final 30 days after the mailing of a copy of it by certified mail to those interested persons who appeared and testified or filed a written statement at the hearing. The order is subject to review as is provided in subsection (2).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31306 Transmission of plans to boards; adoption; dams; supervision.

Sec. 31306. (1) When the order has become final, the department shall transmit the plan to all of the boards involved, and, if the plan is adopted by the boards involved, the boards may construct, operate, and maintain, either singly or jointly, the dams necessary to impound the surplus waters and to make use or disposition of the surplus water in accordance with the plan. The department shall maintain supervision over the execution of the plan to the extent it considers necessary to protect the public interest of the state.

(2) For the implementation and effectuation of the plan, the boards, either singly or jointly, may establish a governmental agency or commission as may be necessary, may hire employees or assistants as may be required, and may enter into contracts with each other and any person as may be necessary to implement this part. The boards constructing, maintaining, or operating the dams shall be responsible for the proper construction, maintenance, and operation of the dams, and they shall be in full and complete charge of the dams and of the impoundments created by the dams.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31307 Gifts and grants; buying, selling, exchanging, or condemning land; restrictions on financing dams.

Sec. 31307. For the purpose of implementing this part, the boards may receive and accept in the name of the county gifts and grants of land and other property and grants-in-aid from any person, and may buy, sell, exchange, or condemn land and other property or property interests, including the rights of riparian owners to surplus waters, in any county where the land and property are located. The department, if direct acceptance by the boards is not possible, may accept the gifts or grants on their behalf. The boards shall not use any money of the county to implement the terms and provisions of this part, but shall finance the construction, operation, and maintenance of the dams wholly and solely from gifts or grants-in-aid that may be received and from fees

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and charges as may be made for the use of the surplus water.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31308 Gifts and grants-in-aid; acceptance by department.

Sec. 31308. The department, in carrying out the purposes of this part, may receive and accept on behalf of the state gifts and grants-in-aid from any person.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31309 Use of increased flowage; waste assimilation; rates for usage.

Sec. 31309. All increased flowage resulting from operation of a plan shall be available for nonconsumptive use to all riparians. A person shall not utilize for waste assimilation, or divert from the stream, any surplus water created by release from dams operated under this part, except in accordance with the plan. The amount of surplus water released from any impoundment shall be determined by the department by the use of well-recognized engineering computations. The boards may charge users of the surplus water for waste assimilation or consumptive use, except those making an incidental, noncommercial, or recreational use, a reasonable fee or rate for the quantity of water or for the benefits they receive. Those users who contribute to the construction, maintenance, or operation of the dams may be charged a reduced fee or no fee, but the fees and rates charged by the boards shall be sufficient at all times to defray all costs, expenses, and other financial burdens assumed by the boards in the construction, maintenance, and operation of the dams.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31310 Permits granted by department not affected by part.

Sec. 31310. This part does not abridge the authority of the department as it presently exists. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31311 Rules.

Sec. 31311. The department shall promulgate rules to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31312 Redetermination of optimum flow; modification of plan; hearings.

Sec. 31312. After a determination or plan has been in effect for 5 years, any riparian owner may petition the department for a redetermination of the optimum flow or modification of the plan, and upon a showing of substantial changes in conditions, the department shall hold hearings as provided in section 31305 and may redetermine the optimum flow or modify the plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31313 Violation as misdemeanor.

Sec. 31313. Any person knowingly violating this part, or any rule promulgated under this part, or any written order of the department in pursuance of this part, is guilty of a misdemeanor.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31314 Applicability of part to river management districts.

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Sec. 31314. This part does not apply within the boundaries of any river management district created under part 311.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 315
DAM SAFETY

324.31501 Meanings of words and phrases.

Sec. 31501. For purposes of this part, the words and phrases defined in sections 31502 to 31505 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31502 Definitions; A to D.

Sec. 31502. (1) "Abandonment" means an affirmative act on the part of an owner to discontinue maintenance or operation of a dam.

(2) "Administrative procedures act of 1969" means Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) "Alteration" means a change in the design of an existing dam that directly affects or may directly affect the structural integrity of a dam.

(4) "Appurtenant works" means the structure or machinery incident to or annexed to a dam that is built to operate and maintain a dam, including spillways, either in a dam or separate from the dam; low level outlet works; and water conduits such as tunnels, pipelines, or penstocks, located either through the dam or through the abutments of the dam.

(5) "Auxiliary spillway" means a secondary spillway which is operational at all times and does not require stoplog removal or gate manipulation.

(6) "Dam" means an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water or a combination of water and any other liquid or material in the water; that is or will be when complete 6 feet or more in height; and that has or will have an impounding capacity at design flood elevation of 5 surface acres or more. Dam does not include a storage or processing tank or standpipe constructed of steel or concrete, a roadway embankment not designed to impound water, or a dug pond where there is no impoundment of water or waste materials containing water at levels above adjacent natural grade levels.

(7) "Days" means calendar days, including Sundays and holidays.

(8) "Design flood" means the design flow rate for spillway capacity and dam height design.

(9) "Design flood elevation" means the maximum flood elevation that is considered in the design of the spillway capacity and freeboard for a dam.

(10) "Downstream toe elevation" means the elevation of the lowest point of intersection between the downstream slope of an earthen embankment and the natural ground.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31503 Definitions; E to H.

Sec. 31503. (1) "Emergency action plan" means a plan developed by the owner that establishes procedures for notification of the department, public off-site authorities, and other agencies of the emergency actions to be taken prior to and following an impending or actual failure of a dam.

(2) "Enlargement" means any change in or addition to an existing dam which raises or may raise the design flood elevation of the water impounded by the dam.

(3) "Failed dam" means a dam not capable of impounding water at its intended level due to a structural deficiency.

(4) "Failure" means an incident resulting in an unplanned or uncontrolled release of water from a dam.

(5) "Flood of record" means the greatest flow rate determined by the department to have occurred at a particular location.

(6) "Freeboard" means the vertical distance between the design flood elevation and the lowest point of the

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top of the dam.

(7) "Half probable maximum flood" means the largest flood that may reasonably occur over a watershed, and is derived from the combination of hydrologic runoff parameters and the half probable maximum storm that produces the maximum runoff.

(8) "Half probable maximum storm" means the spatial and temporal distribution of the probable maximum precipitation, divided by 2, that produces the maximum volume of precipitation over a watershed.

(9) "Hazard potential classification" means a reference to the potential for loss of life, property damage, and environmental damage in the area downstream of a dam in the event of failure of the dam or appurtenant works.

(10) "Height" means the difference in elevation measured vertically between the natural bed of a stream or watercourse at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the lowest point of the top of the dam, whichever is less.

(11) "High hazard potential dam" means a dam located in an area where a failure may cause serious damage to inhabited homes, agricultural buildings, campgrounds, recreational facilities, industrial or commercial buildings, public utilities, main highways, or class I carrier railroads, or where environmental degradation would be significant, or where danger to individuals exists with the potential for loss of life.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31504 Definitions; I to P.

Sec. 31504. (1) "Impoundment" means the water held back by a dam.

(2) "Low hazard potential dam" means a dam located in an area where failure may cause damage limited to agriculture, uninhabited buildings, structures, or township or county roads, where environmental degradation would be minimal, and where danger to individuals is slight or nonexistent.

(3) "Maintenance" means the upkeep of a dam and its appurtenant works but does not include alterations or repairs.

(4) "One-hundred year flood" means a flood that has a 1% chance of being equaled or exceeded in any given year.

(5) "Owner" means a person who owns, leases, controls, operates, maintains, manages, or proposes to construct a dam.

(6) "Probable maximum precipitation" means the theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographic location at a certain time of year.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31505 Definitions; R to T.

Sec. 31505. (1) "Removal" means the physical elimination of a dam or impoundment.

(2) "Repair" means to substantially restore a dam to its original condition and includes only such restoration as may directly affect the structural integrity of the dam.

(3) "Riparian owner" means a person who has riparian rights.

(4) "Riparian rights" means rights which accrue by operation of law to a landowner on the banks of an inland lake or stream.

(5) "Significant hazard potential dam" means a dam located in an area where its failure may cause damage limited to isolated inhabited homes, agricultural buildings, structures, secondary highways, short line railroads, or public utilities, where environmental degradation may be significant, or where danger to individuals exists.

(6) "Spillway" means a waterway in or about a dam designed for the discharge of water.

(7) "Spillway capacity" means the maximum rate of discharge that will pass through a spillway at design flood elevation.

(8) "Two-hundred year flood" means a flood that has a 0.5% chance of being equaled or exceeded in any given year.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

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324.31506 Jurisdiction of dams and impoundments; exemptions.

Sec. 31506. (1) Except as otherwise provided in subsections (2) and (3), dams and impoundments in the state are under the jurisdiction of the department.

(2) The following are exempt from this part:

(a) Projects licensed, projects that have preliminary permits, or projects for which an application for licensure has been filed under the federal power act, chapter 285, 41 Stat. 1063, 16 U.S.C. 791a to 793, 796 to 797, 798 to 818, 820 to 824a, and 824b to 825r, if federal dam safety inspection provisions apply during the license period and the inspection reports are provided to the department.

(b) Projects located on boundary waters under the jurisdiction and supervision of the United States army corps of engineers.

(c) Impoundments licensed pursuant to part 115 that contain or are designed to contain type III wastes as defined in rules promulgated under that part.

(3) Until January 1, 1998, a permit shall not be required under this part for the repair, reconstruction, or improvement of a dam, a portion of which is at least 75 years old, was damaged or destroyed by an act of God and is located in a county that has a per capita income of less than $8,500.00. However, a person who is performing a project for the repair, reconstruction, or improvement of a dam that is exempt from obtaining a permit under this subsection shall submit to the department and the joint capital outlay committee plans and specifications for the project. These plans and specifications shall be prepared by a licensed professional engineer and shall meet acceptable standards in the industry in order for a dam to be repaired, reconstructed, or improved. In reviewing plans and specifications for the project, the joint capital outlay committee may recommend environmental considerations to protect water quality such as underspill devices, minimum flow releases and removal of contaminated sediments that may be resuspended in the water column upon impoundment. Such contaminated sediments shall be disposed of in accordance with state law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 100, Imd. Eff. June 22, 1995.

Popular name: Act 451

Popular name: NREPA

324.31507 Prohibited conduct; exception.

Sec. 31507. (1) A person shall not construct, enlarge, repair, reconstruct, alter, remove, or abandon any dam except in a manner provided for in this part.

(2) This section does not apply to maintenance performed on a dam that does not affect the structural integrity of the dam.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31508 Preparation of plans and specifications; licensed professional engineer required; exceptions.

Sec. 31508. (1) Except as otherwise provided in subsection (2), a licensed professional engineer shall prepare all plans and specifications, except for minor projects undertaken pursuant to section 31513.

(2) A person who is not a licensed professional engineer may prepare plans and specifications only for repairs or alterations to a dam where the application is made by a nonprofit organization under the following circumstances:

(a) The nonprofit organization has assets of less than $30,000.00, is exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and is not composed primarily of the owners of property adjacent to or contiguous to an impoundment.

(b) The proposed repairs or alterations have a projected total cost of less than $25,000.00.

(c) The impoundment is open to the public and a notice of public access is posted.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31509 Activities requiring permit; application for permit; fees; waiver and disposition of fees.

Sec. 31509. (1) Except as otherwise provided in this part or as authorized by a permit issued by the department pursuant to part 13, a person shall not undertake any of the following activities:

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(a) Construction of a new dam.
(b) Enlargement of a dam or an impoundment.
(c) Repair of a dam.
(d) Alteration of a dam.
(e) Removal of a dam.
(f) Abandonment of a dam.
(g) Reconstruction of a failed dam.

(2) An application for a permit shall include information that the department determines is necessary for the administration of this part. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(3) An application for a permit for construction of a new dam, reconstruction of a failed dam, or enlargement of a dam shall be accompanied by the following fees:

(a) For a dam with a height of 6 feet or more but less than 10 feet, $500.00.
(b) For a dam with a height of 10 feet or more but less than 20 feet, $1,000.00.
(c) For a dam with a height of 20 feet or more, $3,000.00.

(4) An application for a permit for the repair, alteration, removal, or abandonment of a dam shall be accompanied by a fee of $200.00, and an application for a permit for a minor project pursuant to section 31513(1) shall be accompanied by a fee of $100.00.

(5) The department shall waive the fees under this section for applications from state agencies, department sponsored projects located on public lands, and organizations of the type described in section 31508(2)(a) through (c).

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.31510 Request for notification of pending applications for permits; annual fee; biweekly list of applications; copies; contents.

Sec. 31510. (1) A person who wants to be notified of pending applications for permits issued under this part may make a written request to the department, accompanied by an annual fee of $25.00. The fee shall be deposited in the state treasury and credited to the general fund.

(2) The department shall prepare a biweekly list of the applications made during the previous biweekly period and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice and paid the fee under this section.

(3) The biweekly list shall state the name and address of each applicant, the legal description of the lands included in the applicant's project, and a summary statement of the purpose of the project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31511 Copies of application and statement; submission; public hearing; notice.

Sec. 31511. (1) Upon receipt of an application for a permit under this part, the department shall submit copies of the application accompanied by a statement indicating that the department may act upon the application without a public hearing unless a written request is filed with the department within 20 days after the submission for review. The department shall submit copies of the application to all of the following:

(a) The local unit of government where the project is to be located.
(b) The adjacent riparian owners.
(c) Any person considered appropriate by the department.
(d) Any person who requests copies.
(e) A watershed council, organized pursuant to part 311, of the watershed within which the project is located or is to be located.

(2) The department may hold a public hearing upon the written request of any of the following:

(a) An applicant.
(b) A riparian owner.
(c) A person or local unit of government that is entitled to receive a copy of the application pursuant to subsection (1).

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(3) A public hearing held pursuant to this section shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the hearing shall be given in the manner provided by that act. Additionally, the department shall mail copies of the public notice to the persons who have requested the biweekly list pursuant to section 31510, the person requesting the hearing, and the persons and local units of government that are entitled to receive a copy of the application pursuant to subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31512 Necessity for immediate action; emergency conditions; application for permit to reconstruct failed dam.

Sec. 31512. (1) When immediate action is necessary to protect the structural integrity of a dam, the department may issue a permit before the expiration of the 20-day period referred to in section 31511(1). This subsection does not prohibit an owner from taking action necessary to mitigate emergency conditions if imminent danger of failure exists.

(2) A person applying for a permit to reconstruct a failed dam shall file a complete application not less than 1 year after the date of the failure. If such an application is filed more than 1 year after the date of the failure, the department shall consider the application to be an application to construct a new dam.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.31513 Minor project categories; rules.

Sec. 31513. (1) The department shall promulgate rules to establish minor project categories for alterations and repairs that have minimal effect on the structural integrity of a dam. The department may act upon an application and grant a permit for an activity or project within a minor project category, after an on-site inspection of the dam, without providing public notice.

(2) All other provisions of this part shall be applicable to minor projects, except that a final inspection by the department or certification of the project by a licensed professional engineer shall not be required for a project completed under a permit granted pursuant to subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31514 Effect of proposed activity on public health, safety, welfare, property, or natural resources.

Sec. 31514. The department shall not issue a permit to construct a new dam, reconstruct a failed dam for which a complete application to reconstruct has been submitted more than 1 year after the date of the failure, or enlarge the surface area of an impoundment by more than 10% unless it determines, after a review of the application submitted, that the proposed activity for which a permit is requested will not have a significant adverse effect on public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31515 Approval of plans and specifications; completion of permitted activity; time; extension; approval of changes; duration and renewal of permit; terms and conditions; mitigating measures; recommendations; performance bond; suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of permit; hearings.

Sec. 31515. (1) Except as otherwise provided in this section, a permit issued by the department under this part shall require that plans and specifications be approved by the department before construction begins. The department shall approve or reject complete plans and specifications within 60 days after their receipt. The permitted activity shall be completed within a specified time not to exceed 2 years after the date of issuance of the permit. Upon the written application of the permittee, and for good cause shown, the department may extend the time for completing construction. The permittee shall notify the department at least 10 days before

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beginning construction and shall otherwise notify the department as the department may require.

(2) A change in approved plans and specifications shall not be implemented unless the department gives its prior approval. The department shall approve or reject changes in plans and specifications within 30 days after the request for the changes.

(3) A permit is effective for the length of time specified in the permit unless it is revoked pursuant to this part. The department may renew a permit.

(4) A permit to alter, repair, or construct a new dam, reconstruct a failed dam, or enlarge the surface area of an impoundment by more than 10% may specify the terms and conditions including, but not limited to, requirements for minimum flows, cold water release, impoundment fluctuations, portage, contingency plans, and conditions under which the work is to be performed. The terms and conditions of a permit shall be effective for the life of the project. The department may consider, in issuing a permit, any mitigating measures in conjunction with the permitted activities and may make recommendations as to fish passage that may be required by part 483.

(5) A permit to construct a new dam or reconstruct a failed dam may require a performance bond to assure completion of the project or to provide for complete or partial restoration of the project site, as determined by the department in rules promulgated by the department.

(6) A permit may be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended after a hearing for a violation of any of its provisions, a violation of this part, a violation of a rule promulgated under this part, or any misrepresentation contained in the application. Hearings shall be conducted by the department in accordance with the provisions for contested cases in the administrative procedures act of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31516 Spillway capacity; minimum criteria; freeboard; auxiliary spillway; duty of owner.

Sec. 31516. (1) Spillway capacity shall meet the following minimum criteria:

(a) Low hazard potential dams shall be capable of passing the 100-year flood, or the flood of record, whichever is greater.

(b) Significant hazard potential dams shall be capable of passing the 200-year flood, or the flood of record, whichever is greater.

(c) High hazard potential dams, less than 40 feet in height, as measured from the 200-year design flood elevation to the lowest downstream toe elevation, shall be capable of passing the 200-year flood, or the flood of record, whichever is greater.

(d) High hazard potential dams, 40 feet or greater in height, as measured from the 200-year design flood elevation to the lowest downstream toe elevation, shall be capable of passing the half probable maximum flood. The half probable maximum flood criterion may be reduced to not less than the 200-year flood, with proper documentation evidencing a failure of a dam under half probable maximum flood conditions will not cause additional flood damage or loss of life.

(e) Spillway design capacity shall not be less than the flood of record.

(2) Freeboard shall be considered when determining spillway capacity.

(3) If a dam cannot pass the design flood, an auxiliary spillway must be provided. The owner must document, to the satisfaction of the department, that the dam has sufficient spillway capacity, and that proper means are available to operate the spillway or spillways during the design flood.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31517 Duties of owner; inspection; notice of final approval; notice of project not completed in accordance with plans, specifications, or conditions; enforcement action.

Sec. 31517. (1) Except for minor projects authorized pursuant to section 31513, the owner shall do both of the following:

(a) Within 10 days after the completion of a new, reconstructed, enlarged, repaired, or altered dam, notify the department of its completion.

(b) Within 20 days after submitting the notice of completion, file with the department as-built plans and a statement signed by a licensed professional engineer certifying that the project was constructed in conformance with plans and specifications approved by the department.

(2) The department shall inspect the project and shall provide the owner with written notice of final approval if the project is determined to have been completed in accordance with approved plans,

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specifications, and permit conditions.

(3) If the project is determined not to be completed in accordance with plans and specifications approved by the department and permit conditions, the department shall provide notice to the permittee as to the specific reasons the department determines the project not to be completed in accordance with those plans, specifications, or conditions. The department may then take enforcement action as provided in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31518 Inspection reports; determination of hazard potential classification; inspection schedule; notice; additional inspection reports; contents of inspection report; visual inspection and report; detailed investigation or evaluation; life or property threatened by breach of dam; cause of action; ordering actions to alleviate danger.

Sec. 31518. (1) An owner shall submit to the department inspection reports prepared by a licensed professional engineer that evaluate the condition of the dam. The inspection report shall be submitted as follows:

(a) Not less than once every 3 years for high hazard potential dams.

(b) Not less than once every 4 years for significant hazard potential dams.

(c) Not less than once every 5 years for low hazard potential dams.

(2) The department shall determine the hazard potential classification of all dams and shall establish an inspection schedule. The inspection schedule shall require annual submission of inspection reports for approximately 1/3 of all high hazard potential dams, 1/4 of all significant hazard potential dams, and 1/5 of all low hazard potential dams. The department shall notify owners in writing when inspection reports are due. The department may order additional inspection reports following an event or change in condition that could threaten a dam.

(3) An inspection report required by this section shall include, at a minimum, all of the following:

(a) An evaluation of the dam's condition, spillway capacity, operational adequacy, and structural integrity.

(b) A determination of whether deficiencies exist that could lead to the failure of the dam.

(c) Recommendations for maintenance, repair, and alterations of a dam as are necessary to eliminate any deficiencies.

(4) Instead of engaging a licensed professional engineer to prepare an inspection report, local units of government or an organization of the type described in section 31508(2)(a) through (c) may request the department to conduct a visual inspection of a dam owned by that local unit of government and prepare a report on the condition of the dam in accordance with subsection (3). The department shall notify a requesting local unit of government as to when the inspection is to occur.

(5) If an inspection report discloses the need for a more detailed investigation or evaluation of certain dam features for the purpose of determining the condition of the dam, the department may order the completion and submission of that detailed investigation or evaluation at the expense of the owner. An investigation or evaluation required under this subsection shall be conducted under the supervision of a licensed professional engineer.

(6) If an owner does not submit an inspection report as required by subsection (1) or conduct additional investigations if required by subsection (5), the department or any person who would have life or property threatened by a breach of the dam may have a report prepared and recover the costs of preparing the report in a civil action commenced in a court of competent jurisdiction. This subsection does not limit the right of any person to bring a cause of action in a court of proper jurisdiction to compel an owner to comply with the requirements of this part.

(7) If, based on the findings and recommendations of the inspection report and an inspection by the department, the department finds that a condition exists which endangers a dam, it shall order the owner to take actions that the department considers necessary to alleviate the danger.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31519 Order to limit dam operations; order to remove dam; hearing.

Sec. 31519. (1) Where significant damage to the public health, safety, welfare, property, and natural resources or the public trust in those natural resources or damage to persons or property occurs or is anticipated to occur due to the operation of a dam, the department may order the owner to limit dam

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operations. These orders may include, but are not limited to, cold water release, minimum flow releases from dams, impoundment fluctuation restrictions, or requirements for run-of-the-river operation. In issuing these orders, the department shall take into account social, economic, and public trust values.

(2) Where significant damage to persons, property, or natural resources or the public trust in those natural resources occurs as a result of the condition or existence of a dam, the department may order the removal of the dam following a determination by the department that, due to the continued condition or existence of the dam, the dam is likely to continue to cause significant damage. In issuing a removal order, the department shall take into account social and economic values, the natural resources, and the public trust in those natural resources and shall not issue a removal order when those factors exceed adverse impacts on natural resources or present danger to persons or property. The department shall not issue a removal order involving a dam subject to the regulatory authority of the Michigan public service commission or the federal energy regulatory commission unless that commission has concurred in writing with the order.

(3) Prior to finalizing an order under this section, the department shall provide an owner an opportunity for a hearing pursuant to the administrative procedures act of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31520 Sudden or unprecedented flood; unusual or alarming circumstance or occurrence; emergency drawdowns, repairs, breaching, or other action; notice.

Sec. 31520. (1) The owner or his or her agent shall advise the department and the affected off-site public authorities and safety agencies of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence existing or anticipated that may affect the safety of the dam within 24 hours of the flood, circumstance, or occurrence.

(2) The owner shall notify the department as soon as possible of any necessary emergency drawdowns, repairs, breaching, or other action being taken in response to an emergency condition.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31521 Emergency orders.

Sec. 31521. (1) The department may issue emergency orders as provided in this section. The department may, by written notice, order an owner to immediately repair, draw down, breach, or cease operation of a dam where a dam is in imminent danger of failure and is causing or threatening to cause harm to public health, safety, welfare, property, or the natural resources or the public trust in those natural resources. If an owner fails to comply with an order, or is unavailable or unable to be contacted, then the department may undertake immediate repair, drawdown, breaching, or cessation of operation, as may be necessary to alleviate the danger, and may recover from the owner the costs incurred in a civil action commenced in a court of competent jurisdiction. The department may terminate an emergency order upon a determination in writing that all necessary emergency actions have been complied with by the owner and that an emergency no longer exists.

(2) When ordering emergency actions under subsection (1), the department may specify maximum drawdown level and discharge rates and require sediment surveys, water quality sampling, monitoring, or any other action determined necessary by the department to ensure adequate protection of the public health, safety, welfare, property, or natural resources or the public trust in those natural resources. The department may modify the requirements of an emergency order if, during the conduct of ordered actions, it determines that the modification is necessary to protect the public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

(3) Upon the issuance of an emergency order, the department shall provide the owner with an opportunity for a hearing pursuant to the administrative procedures act of 1969 within 15 days of the date of its issuance. At the hearing, the department shall determine, based on information and fact, if the emergency order shall be continued, modified, or suspended as necessary to protect public health, safety, welfare, property, or natural resources or the public trust in those natural resources.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31522 Structural integrity and operation of dam; investigations and studies.

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Sec. 31522. The department may make, or cause to be made, hydrologic or other investigations and studies as may be required to facilitate its decisions regarding the structural integrity and operation of a dam.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31523 Emergency action plans; submissions; review; consistency with other plans; contents of plans.

Sec. 31523. (1) An owner shall prepare, and keep current, emergency action plans for all high and significant hazard potential dams owned by that person.

(2) Emergency action plans shall be submitted to the department.

(3) The applicable county or local emergency management coordinators shall review for consistency emergency action plans with the county or local emergency operations plan prior to submission of those plans to the department.

(4) An emergency action plan shall be consistent with the applicable provisions of the affected county or local emergency operations plans and the Michigan emergency preparedness plan as developed pursuant to the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

(5) Emergency action plans shall include, but not be limited to, the name, address, and telephone number of the person, and of an alternate person, responsible for operation of the dam; the name and telephone number of local emergency management coordinators; and a listing of occupied facilities, buildings, and residences that may be threatened with flooding due to a failure of the dam.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31524 Violation; order; suspension, modification, or revocation of permit; remedies cumulative; civil action.

Sec. 31524. (1) If the department determines that a person is in violation of this part, a rule promulgated under this part, or a condition set forth in a permit issued under this part, the department may issue an order requiring the person to comply with the conditions or to restore the site affected by the violation as nearly as practicable to its original condition. Restoration may include, but is not limited to, removing fill material deposited or replacing soil, sand, or minerals.

(2) An order shall state the nature of the violation and the required remedial action, and shall specify a time for compliance that the department determines is reasonable, taking into account the seriousness of the violation and the nature of any threat to public health, safety, welfare, property, or natural resources, or the public trust in those natural resources, that may be involved.

(3) If the department determines that a person is in violation of this part, a rule promulgated under this part, an order issued by the department, or a permit, the department, after notice and opportunity for hearing pursuant to the administrative procedures act of 1969, may suspend, modify, or revoke a permit. The remedies under this section and section 31525 are cumulative and do not prevent the department from imposing other penalties available under this part, a rule promulgated under this part, or an order of the department.

(4) If the department determines that a person is in violation of this part, a rule promulgated under this part, an order issued by the department pursuant to this part, or a permit issued pursuant to this part, the department may bring a civil action in the circuit court.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31525 Commencement of civil action; request; place; civil fine; contempt; willful or reckless violation as misdemeanor; penalty; subsequent violations; fine for failure to obtain permit; restoration of site; schedule of administrative monetary penalties for minor violations.

Sec. 31525. (1) The attorney general may commence a civil action for appropriate relief, including injunctive relief, upon request of the department under section 31524.

(2) Any civil action under this section may be brought in the circuit court for the county of Ingham or for the county in which the dam is located.

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(3) In addition to any other relief granted under this section, the court may impose a civil fine of not more than $10,000.00 for each day of violation of this part, a rule promulgated under this part, or a permit issued under this part.

(4) A person found guilty of contempt of court for the violation of an order of the court shall be subject to a civil fine not to exceed $10,000.00 for each day of violation.

(5) A person who willfully or recklessly violates this part, a rule promulgated under this part, an order issued by the department, or a condition in a permit issued under this part, which violation places or may place a person in imminent danger of death or serious bodily injury or may cause serious property damage or serious damage to natural resources, or a person who has knowledge of or is responsible for such a violation, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not less than $2,500.00 or more than $25,000.00 for each day of violation, or both. A person who violates this section a second or subsequent time is guilty of a felony, punishable by imprisonment for not more than 2 years or a fine of not less than $10,000.00 for each day of violation, or both.

(6) A person required to obtain a permit for activity regulated under this part who does not obtain that permit shall be fined not less than twice the fee charged for the appropriate permit application.

(7) In addition to the orders of compliance and penalties provided under this part, the court may order a person who violates this part, a rule promulgated under this part, or a permit issued under this part to restore the site affected by the violation as nearly as practicable to its original condition. Restoration may include, but is not limited to, removing fill material deposited or replacing soil, sand, or minerals.

(8) The department may establish, by rule, a schedule of administrative monetary penalties for minor violations of this part, a rule promulgated under this part, a permit issued pursuant to this part, or an order issued by the department pursuant to this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31526 Person aggrieved by action or inaction of department; hearing; determination; judicial review.

Sec. 31526. (1) A person aggrieved by any action or inaction of the department under this part or rules promulgated under this part may request a hearing on the matter involved. The hearing shall be conducted by the department in accordance with the provisions for contested cases in the administrative procedures act of 1969.

(2) A determination of action or inaction by the department following the hearing may be subject to judicial review as provided in the administrative procedures act of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31527 Entering private or public property; time; purpose.

Sec. 31527. The department may enter in or upon any private or public property anytime where the public safety may be in danger and at all reasonable times, after attempting to contact the owner before entering the site and having shown proper identification, for the purpose of inspecting or investigating conditions relating to the construction, operation, or safety of a dam and for the purpose of determining compliance with the terms, conditions, and requirements of permits, orders, or notices of approval issued under this part and rules promulgated under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31528 Rules.

Sec. 31528. The department shall promulgate rules as necessary to implement and enforce this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.31529 Construction of part.

Sec. 31529. (1) This part does not abrogate requirements of parts 31, 91, 301, 303, 305, 307, and 483 or other applicable law.

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(2) This part does not relieve an owner of any legal duty, obligation, or liability incident to the ownership or operation of a dam or impoundment.

(3) This part does not deprive an owner of any legal remedy to which he or she may be entitled under the laws of this state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 317

AQUIFER PROTECTION AND DISPUTE RESOLUTION

324.31701 Definitions.

Sec. 31701. As used in this part:

(a) "Agricultural well" means a high-capacity well that is located on a farm and is used for an agricultural purpose as that term is defined in section 32701.

(b) "Complaint" means a complaint submitted under section 31702 alleging a potential groundwater dispute.

(c) "Construction" means the process of building a building, road, utility, or another structure, including all of the following:

(*i*) Assembling materials.

(*ii*) Disassembling and removing a structure.

(*iii*) Preparing the construction site.

(*iv*) Work related to any of the items described in subparagraphs (*i*) to (*iii*).

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

(e) "Dewatering well" means a well or pump that is used to remove water from a mining operation or that is used for a limited time period as part of a construction project to remove or pump water from a surface or subsurface area and ceases to be used upon completion of the construction project or shortly after completion of the construction project.

(f) "Director" means the director of the department or his or her designee.

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

(h) "Fund" means the aquifer protection revolving fund created in section 31710.

(i) "Groundwater" means the water in the zone of saturation that fills all of the pore spaces of the subsurface geologic material.

(j) "Groundwater dispute" means a groundwater dispute declared by order of the director or the director of the department of agriculture and rural development under section 31703.

(k) "High-capacity well" means 1 or more water wells associated with an industrial or processing facility, an irrigation facility, or a farm that, in the aggregate from all sources and by all methods, have the capability of withdrawing 100,000 or more gallons of groundwater in 1 day.

(*l*) "Local health department" means that term as it is defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(m) "Owner of a high-capacity well" means the person that owns or controls the parcel of property where a high-capacity well is located.

(n) "Owner of a small-quantity well" means the person that owns or controls the parcel of property where a small-capacity well is located.

(o) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(p) "Potable water" means water that at the point of use is acceptable for human consumption.

(q) "Small-quantity well" means 1 or more water wells of a person at the same location that, in the aggregate from all sources and by all methods, do not have the capability of withdrawing 100,000 or more gallons of groundwater in 1 day.

(r) "Water well" means an opening in the surface of the earth, however constructed, that is used for the purpose of withdrawing groundwater. Water well does not include a drain as defined in section 3 of the drain code of 1956, 1956 PA 40, MCL 280.3.

(s) "Well drilling contractor" means a well drilling contractor registered under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

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Compiler's note: Former MCL 324.31701, which pertained to definitions used in part, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31702 Allegation of potential groundwater dispute; submission of complaint by small-quantity well owner; investigation; on-site evaluation; inability to resolve complaint; toll-free facsimile and telephone line; duties of director of department of environmental quality and director of department of agriculture and rural development; unverified complaints; other resolutions.

Sec. 31702. (1) The owner of a small-quantity well may submit a complaint alleging a potential groundwater dispute if the small-quantity well has failed to furnish the well's normal supply of water or the well has failed to furnish potable water and the owner has credible reason to believe that the well's problems have been caused by a high-capacity well. A complaint shall be submitted to the director or to the director of the department of agriculture and rural development if the complaint involves an agricultural well. The complaint shall be in writing and shall be submitted in person, via certified mail, via the toll-free facsimile telephone number provided in subsection (6), or via other means of electronic submittal as developed by the department. However, the director or the director of the department of agriculture and rural development may refuse to accept an unreasonable complaint. The complaint shall include all of the following information:

(a) The name, address, and telephone number of the owner of the small-quantity well.

(b) The location of the small-quantity well, including the county, township, township section, and address of the property on which the small-quantity well is situated, and all other available information that indicates the location of that well.

(c) A written assessment by a well drilling contractor that the small-quantity well failure was not the result of well design or equipment failure. The assessment shall include a determination of the static water level in the well at the time of the assessment, if the static water level determination will not result in the well being damaged or decommissioned, and, if readily available, the type of pump and equipment.

(d) An explanation of why the small-quantity well owner believes that a high-capacity well has interfered with the proper function of the small-quantity well and any information available to the small-quantity well owner about the location and operation of the high-capacity well.

(e) The date or dates on which the interference by a high-capacity well occurred.

(f) Sufficient evidence to establish a reasonable belief that the interference was caused by a high-capacity well.

(2) The owner of a small-quantity well may call the toll-free telephone line provided for in subsection (6) to request a complaint form or other information regarding the dispute resolution process provided in this part.

(3) Within 2 business days after receipt of a complaint under subsection (1), the director or the director of the department of agriculture and rural development, as appropriate, shall contact the complainant and the owner of each high-capacity well identified in the complaint, shall provide actual notice of the complaint to the owner of each high-capacity well identified in the complaint, and shall begin an investigation.

(4) Within 5 business days after the owner of each high-capacity well has been provided with actual notice of the complaint under subsection (3), the director or the director of the department of agriculture and rural development, as appropriate, shall conduct an on-site evaluation. If the well is an agricultural well, the department shall consult with and provide technical assistance to the department of agriculture and rural development regarding the on-site evaluation. However, if the complaint is for a small-quantity well that is in close proximity to other small-quantity wells for which documented complaints have been received and investigated during the previous 60 days, the department or the department of agriculture and rural development, as appropriate, need not conduct an on-site evaluation unless it determines that an on-site evaluation is necessary. The director or the director of the department of agriculture and rural development, as appropriate, shall give affected persons an opportunity to contribute to the investigation of a complaint. In conducting the investigation, the director or the director of the department of agriculture and rural development, as appropriate, shall consider whether the owner of the high-capacity well is using industry-recognized water conservation management practices.

(5) After conducting an investigation, the director or the director of the department of agriculture and rural development, as appropriate, shall make a diligent effort to resolve the complaint. In attempting to resolve a complaint, the director or the director of the department of agriculture and rural development, as appropriate, may propose a remedy that he or she believes would equitably resolve the complaint.

(6) The director shall provide for the use of a toll-free facsimile line to receive complaints and a toll-free telephone line for owners of small-quantity wells to request complaint forms and to obtain other information

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regarding the dispute resolution process provided in this part.

(7) The director and the director of the department of agriculture and rural development shall do both of the following:

(a) Publicize the toll-free facsimile line and the toll-free telephone line provided for in subsection (6).

(b) Enter into a memorandum of understanding that describes the process that will be followed by each director when a complaint involves an agricultural well.

(8) A complainant who submits more than 2 unverified complaints under this section within 1 year may be ordered by the director or the director of the department of agriculture and rural development to pay for the full costs of investigation of any third or subsequent unverified complaint. As used in this subsection, "unverified complaint" means a complaint in response to which the director or the director of the department of agriculture and rural development determines that there is not reasonable evidence to declare a groundwater dispute.

(9) If an owner of a high-capacity well that is not an agricultural well does not wish to participate in the dispute resolution process under this part, that dispute shall be resolved as otherwise provided by law.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31702, which pertained to complaints alleging potential groundwater disputes, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31702a Informal meeting between parties.

Sec. 31702a. (1) If a complaint regarding an agricultural well is not resolved under section 31702, the director of the department of agriculture and rural development shall schedule and provide written notice of an informal meeting between the parties to the dispute. The informal meeting shall be scheduled at least 10 business days prior to the issuance of an order declaring a groundwater dispute under section 31703. The participants at the informal meeting shall include the director of the department of agriculture and rural development, the owner of the agricultural well, and the owner or owners of the small-quantity wells that are alleged to be impacted by the agricultural well who wish to attend. However, upon written notice provided to the director of the department of agriculture and rural development, the owner of the agricultural well may waive the informal meeting.

(2) At the informal meeting held pursuant to subsection (1), the director of the department of agriculture and rural development shall present the information that he or she has obtained regarding the items listed in section 31703(1)(a) through (f) and (2). The owner of the agricultural well shall be given an opportunity to challenge the department's assertions and may submit information that the problems associated with the small-quantity well or wells are not being caused by the agricultural well. The owner or owners of the small-quantity wells alleged to be impacted may also submit additional information regarding the complaint.

History: Add. 2013, Act 86, Imd. Eff. June 28, 2013.

Popular name: Act 451

Popular name: NREPA

324.31703 Duties of director or director of department of agriculture and rural development in groundwater dispute.

Sec. 31703. (1) The director or the director of the department of agriculture and rural development, as appropriate, shall, by order, declare a groundwater dispute if an investigation of a complaint discloses all of the following, based upon reasonable scientifically based evidence, and within a reasonable amount of time the director or the director of the department of agriculture and rural development, as appropriate, is unable to resolve the complaint:

(a) That the small-quantity well has failed to furnish the well's normal supply of water or failed to furnish potable water.

(b) That the small-quantity well and the well's equipment were functioning properly at the time of the failure. The determination under this subdivision shall be made based upon an assessment from a well drilling contractor that is provided by the owner of the small-quantity well.

(c) That the failure of the small-quantity well was caused by the lowering of the groundwater level in the area.

(d) That the lowering of the groundwater level exceeds normal seasonal water level fluctuations and substantially impairs continued use of the groundwater resource in the area.

(e) That the lowering of the groundwater level was caused by at least 1 high-capacity well.

(f) That the owner of the small-quantity well did not unreasonably reject a remedy proposed by the director

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or the director of the department of agriculture and rural development under section 31702(5).

(2) In addition to the authority under subsection (1) to declare a groundwater dispute, if the director or the director of the department of agriculture and rural development, as appropriate, has clear and convincing scientifically based evidence that indicates that continued groundwater withdrawals from a high-capacity well will exceed the recharge capability of the groundwater resource of the area, the director or the director of the department of agriculture and rural development, as appropriate, by order, may declare a groundwater dispute.

(3) The director or the director of the department of agriculture and rural development, as appropriate, may amend or terminate an order declaring a groundwater dispute at any time. Prior to amending an order declaring a groundwater dispute regarding an agricultural well under this subsection, the director of the department of agriculture and rural development shall schedule an informal meeting and provide notice of the informal meeting in the manner provided under section 31702a.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31703, which pertained to declaration of groundwater dispute by order of director, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31704 Order declaring groundwater dispute.

Sec. 31704. (1) Subject to subsections (2) and (4), an order declaring a groundwater dispute is effective when a copy of the order is served upon the owner of a high-capacity well that is reasonably believed to have caused the failure of the complainant's small-quantity well.

(2) If a groundwater dispute requires action before service can be completed under subsection (1), oral notification in person by the director or the director of the department of agriculture and rural development, as appropriate, is sufficient until service can be completed. Oral notification is effective for not more than 96 hours.

(3) As soon as possible after an order declaring a groundwater dispute has been issued, the director or the director of the department of agriculture and rural development, as appropriate, shall provide copies of the order to the local units of government in which the high-capacity well and the small-quantity well are located and to the local health departments with jurisdiction over those wells.

(4) Within 14 days after service of an order under subsection (1), the owner of an agricultural well may contest the order by submitting an appeal to the commission of agriculture and rural development. The appeal shall be submitted on a form provided by the department of agriculture and rural development and shall outline the basis for the appeal. Upon receipt of an appeal under this subsection, the commission of agriculture and rural development shall schedule the appeal for consideration at the next scheduled meeting of the commission. Except for the provision of an adequate supply of potable water under section 31705(1), the terms of the order are stayed until a determination is made by the commission of agriculture and rural development regarding the appeal. At the commission's meeting, the commission shall review the order and consider any testimony or other documentation contesting the order and shall make a determination to affirm the order or dismiss the order. If the commission of agriculture and rural development dismisses the order, the department of agriculture and rural development shall reimburse the appellant for the cost of providing potable water under section 31705.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31704, which pertained to service of order declaring groundwater dispute and effectiveness of oral notification, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31705 Declaration of groundwater dispute; temporary provision at point of use of adequate supply of potable water; extraction of groundwater; restriction; impact on viability of certain businesses; public water supply owned or operated by local government.

Sec. 31705. (1) Upon declaration of a groundwater dispute, the director or the director of the department of agriculture and rural development, as appropriate, shall, by order, require the immediate temporary provision at the point of use of an adequate supply of potable water.

(2) Except as provided in subsections (3), (4), and (5), if the director or the director of the department of agriculture and rural development, as appropriate, issues an order declaring a groundwater dispute, the director or the director of the department of agriculture and rural development, as appropriate, may, by order,

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restrict the quantity of groundwater that may be extracted from a high-capacity well under either of the following conditions:

(a) If the high-capacity well is reasonably believed to have caused the failure of the complainant's small-quantity well and an immediate temporary provision of an adequate supply of potable water has not been provided to the complainant by the owner of the high-capacity well.

(b) If there is clear and convincing scientifically based evidence that continued groundwater withdrawals from the high-capacity well will exceed the recharge capability of the groundwater resource of the area.

(3) In issuing an order under subsection (2), the director or the director of the department of agriculture and rural development, as appropriate, shall consider the impact the order will have on the viability of a business associated with the high-capacity well or other use of the high-capacity well.

(4) If an operator of a high-capacity well withdraws water by a means other than pumping, the director or the director of the department of agriculture and rural development, as appropriate, may, by order, temporarily restrict the quantity of groundwater that may be extracted only if the conditions of subsection (2)(a) or (b) have not been met.

(5) The director or the director of the department of agriculture and rural development, as appropriate, shall not issue an order that diminishes the normal supply of drinking water or the capability for fire suppression of a public water supply system owned or operated by a local unit of government.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31705, which pertained to duties of director upon issuance of order declaring groundwater dispute, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31706 Compensation; conditions.

Sec. 31706. If a groundwater dispute has been declared, the owner of a high-capacity well shall, subject to an order of the director or the director of the department of agriculture and rural development, as appropriate, provide timely and reasonable compensation as provided in section 31707 if there is a failure or substantial impairment of a small-quantity well and the following conditions exist:

(a) The failure or substantial impairment was caused by the groundwater withdrawals of the high-capacity well.

(b) The small-quantity well was constructed prior to February 14, 1967 or, if the small-quantity well was constructed on or after February 14, 1967, the well was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31706, which pertained to duty of owner of high-capacity well to provide compensation if there is substantial impairment of small-quantity well and certain other conditions exist, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31707 Compensation; requirements.

Sec. 31707. (1) Timely and reasonable compensation under section 31706 consists of and is limited to either or both of the following:

(a) The reimbursement of expenses reasonably incurred by the complainant beginning 30 days prior to the date on which a complaint was made under section 31702 in doing the following:

(*i*) Paying for the cost of conducting a well assessment to determine that the small-quantity well and the well's equipment were functioning properly at the time of the failure.

(*ii*) Paying for the cost of obtaining an immediate temporary provision at the prior point of use of an adequate supply of potable water.

(*iii*) Obtaining 1 of the following:

(A) The restoration of the affected small-quantity well to the well's normal supply of water.

(B) The permanent provision at the point of use of an alternative potable supply of equal quantity.

(b) If an adequate remedy is not achievable under subdivision (a), the restriction or scheduling of the groundwater withdrawals of the high-capacity well so that the affected small-quantity well continues to produce either of the following:

(*i*) The well's normal supply of water.

(*ii*) The normal supply of potable water if the well normally furnishes potable water.

(2) The refusal of an owner of an affected small-quantity well to accept timely and reasonable

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compensation described in subsection (1) is sufficient grounds for the director to terminate an order imposed on the owner of a high-capacity well.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013.

Compiler's note: Former MCL 324.31707, which pertained to limitations to timely and reasonable compensation and the effect of small-quantity well owner's refusal to accept compensation, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Part 451

Popular name: NREPA

324.31708 Appeal.

Sec. 31708. Notwithstanding section 31704(4), the owner of a high-capacity well subject to an order under this part may appeal that order directly to circuit court pursuant to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31708, which pertained to appeal of order to circuit court, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31709 Exceptions.

Sec. 31709. This part does not apply to a potential groundwater dispute involving either of the following:

(a) A high-capacity well that is a dewatering well.

(b) A high-capacity well that is used solely for the purpose of fire suppression.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013.

Compiler's note: Former MCL 324.31709, which pertained to inapplicability of part to certain groundwater disputes, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31710 Aquifer protection revolving fund.

Sec. 31710. (1) The aquifer protection revolving fund is created in the state treasury.

(2) The fund may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) Money in the fund shall be expended by the department only to implement this part and to reimburse the department of agriculture and rural development for its actual costs incurred in implementing this part.

(6) If money in the fund is used to conduct hydrogeological studies or other studies to gather data on the nature of aquifers or groundwater resources in the state, the department shall include this information in the groundwater inventory and map prepared under section 32802.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013.

Compiler's note: Former MCL 324.31710, which pertained to aquifer protection revolving fund, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31711 Report.

Sec. 31711. (1) Not later than April 1, 2013, and every 2 years thereafter, the department shall prepare and submit to the legislature a report that includes both of the following:

(a) An analysis of the department's costs of implementing this part.

(b) Recommendations on modifications to this part that would improve the overall effectiveness of this part.

(2) The department shall file with the secretary of the senate and the clerk of the house of representatives a report that evaluates the effectiveness of the dispute resolution process during the 5-year period beginning on the effective date of the amendatory act that added this subsection. The report shall be filed within 90 days after the expiration of that 5-year period.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

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Compiler's note: Former MCL 324.31711, which pertained to preparation and submission of report to legislative committees, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31712 Violation of order; civil fine or costs; default; deposit; action to enforce order.

Sec. 31712. (1) A person who violates an order issued under this part is responsible for a civil fine of not more than $1,000.00 for each day of violation, but not exceeding a total of $50,000.00.

(2) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(3) All civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the fund.

(4) The director or the director of the department of agriculture and rural development, as appropriate, may bring an action in a court of competent jurisdiction to enforce an order under this part, including injunctive or other equitable relief.

History: Add. 2012, Act 602, Imd. Eff. Jan. 9, 2013;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Compiler's note: Former MCL 324.31712, which pertained to identification of at-risk geographic areas, was repealed by Act 176 of 2009, Imd. Eff. Dec. 15, 2009.

Popular name: Act 451

Popular name: NREPA

324.31713 Repealed. 2009, Act 176, Imd. Eff. Dec. 15, 2009.

Compiler's note: The repealed section pertained to penalty, default, disposition, and enforcement action relating to violation of an order.

Popular name: Act 451

Popular name: NREPA

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THE GREAT LAKES

PART 321
THE GREAT LAKES COMPACT AUTHORIZATION

324.32101 Great Lakes compact; cooperation with Ontario and bordering states; agreement authority.

Sec. 32101. So that the state of Michigan can consult and cooperate with the other states bordering on the Great Lakes and the province of Ontario in regard to all matters and things affecting the rights and interests of this state and such other states and province, in the management, control and supervision of the waters of the Great Lakes including the marine life therein, the governor of the state of Michigan is hereby authorized and empowered for and in the name of the state of Michigan to execute an agreement or agreements with any or all the other states bordering on the Great Lakes and the province of Ontario, in conformity with the terms, conditions and provisions contained in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32102 Compact; ratification.

Sec. 32102. Such compact shall become operative whenever, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York and Minnesota shall have ratified it and congress has given its consent, if needed. The province of Ontario may become a party to this compact by taking such action as its laws and the laws of the Dominion of Canada may prescribe for ratification.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32103 Compact; terms; conditions; provisions.

Sec. 32103. In addition to other pertinent and necessary provisions which are in consonance with the expressed purposes of the compact as herein provided, such a compact shall contain the following terms, conditions and provisions: Said compact shall authorize the compacting parties to do all things reasonably

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necessary for carrying out the purposes of this part but such a compact shall be entered into solely for the purpose of empowering the duly appointed representatives of said states and the province of Ontario to meet, consult with and make recommendations to their respective governors, legislative bodies or governmental agencies and to the international joint commission established under the treaty of 1909 between the United States and Great Britain with respect to the management, control and supervision of the waters of the Great Lakes including the marine life therein. However, it is distinctly provided that any such recommendation and any decision or agreement arrived at among the compacting parties shall at no time have any force of law or be binding on any compacting party.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32104 Compact commission; memberships.

Sec. 32104. Each compacting party shall have the right to designate 5 representatives to such interstate compact commission to be known as the Great Lakes compact commission. The representatives from this state shall be as provided in section 32202.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32105 Compact; effective date; commission meetings; officers; duties; quorum.

Sec. 32105. The compact herein provided shall become effective upon the adoption of laws by the states referred to in section 2 in conformity with the provisions of this part. When, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York, and Minnesota have adopted such laws and the congress of the United States has given its consent, if needed, the designated representatives of the Great Lakes compact commission shall meet upon the call of any governor of any of the ratifying states or the legally designated governmental official of the province of Ontario. At such meeting or at any subsequent meeting the duly designated representatives shall adopt a compact agreement not inconsistent in any way with this part and containing the necessary provisions for enabling the commission to carry out the purposes of this part. At such meeting or at subsequent meetings, the representatives composing such commission shall select a chairman and a secretary from among their numbers and such other officers as to them may seem expedient and shall prescribe the duties of such officers. A 2/3 majority of all representatives designated shall be sufficient to form a quorum for the transaction of business. Said commission shall meet from time to time or at such places or locations as it shall seem necessary and proper or shall meet upon the call of the chairman and such call shall designate the time and place of meeting and the purpose thereof.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32106 Compact; commission; records of meetings and proceedings; reports.

Sec. 32106. Said commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each compacting party.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32107 Compact commission; expenses.

Sec. 32107. Each compacting party shall pay for the expenses of its representatives on said commission and each compacting party shall pay to the secretary of the commission a pro rata share of the expenses of said commission. No expenditures shall be authorized under the provisions of this part unless and until moneys shall be appropriated therefor by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 322
GREAT LAKES BASIN COMPACT

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324.32201 Great Lakes basin compact; ratification; contents.

Sec. 32201. The great lakes basin compact is hereby ratified, enacted into law, and entered into by this state as a party thereto with any other state or province which, pursuant to article II of said compact, has legally joined therein in the form substantially as follows:

GREAT LAKES BASIN COMPACT

The party states solemnly agree:

Article I. Purpose

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).

2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

Article II. Enactment and Effective Date

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any 4 of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the government of Canada may prescribe for adherence thereto. For the purpose of this compact the word "state" shall be construed to include a Province of Canada.

Article III. The Basin

The Great Lakes Commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact, shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise part of any watershed draining into any of said lakes.

Article IV. The Commission

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words "The Great Lakes Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

B. The Commission shall be composed of not less than 3 commissioners nor more than 5 commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to 3 votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any 2 or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his or her vote may be cast by another representative or

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commissioner of his or her state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept for any of the Commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain 1 or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind bylaws, rules and regulations for the conduct of its business.

L. The organization meeting of the Commission shall be held within 6 months from the effective date of this compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

Article V. Finance

A. The members of the Commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he or she represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under

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the bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

Article VI. Powers of Commission

The Commission shall have power to:

A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.

B. Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies, or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Basin or any portion thereof.

H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor.

J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact; provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

Article VII. State Action

Each party state agrees to consider the action the Commission recommends in respect to:

A. Stabilization of lake levels.

B. Measures for combating pollution, beach erosion, floods, and shore inundation.

C. Uniformity in navigation regulations within the constitutional powers of the states.

D. Proposed navigation aids and improvements.

E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wild life and other water resources.

F. Suitable hydroelectric power developments.

G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.

H. Diversion of waters from and into the Basin.

I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

Article VIII. Renunciation

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state; provided that such renunciation shall not become effective until 6 months after

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notice of such action shall have been officially communicated in writing to the executive head of the other party states.

Article IX. Construction and Severability

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32202 Great Lakes commission; membership; oath; expenses; voting rights.

Sec. 32202. (1) For purposes of this section through section 32206, "commission" means the Great Lakes commission established in the compact entered into by this part.

(2) In pursuance of article IV of the compact, there shall be 5 commissioners on the Great Lakes commission from this state. Each commissioner shall have all of the powers conferred on a commissioner by the compact or which shall be necessary or incidental to the performance of his or her functions as a commissioner. For this state, the governor, or the governor's designee, the attorney general, or the attorney general's designee, an appointee of the majority leader of the senate, and an appointee of the speaker of the house of representatives shall be members of the Michigan representation. In addition, the governor shall appoint, with the advice and consent of the senate, the remaining 1 member who shall come from groups or organizations interested in or affected by the Great Lakes, which member shall serve at the governor's pleasure. The appointees of the governor, the majority leader of the senate, and of the speaker of the house of representatives, before entering upon the performance of their office, shall take and subscribe to the constitutional oath of office. Each commissioner shall receive necessary expenses incurred in the performance of his or her duties. Each commissioner shall have the right to cast 3/5 of a vote whenever a vote is required by the terms of the compact.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For the designation of the director of the department of environment, Great Lakes, and energy as a commissioner on the Great Lakes commission, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

324.32203 Commission; cooperation by state officers.

Sec. 32203. All officers of this state are hereby authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of this state are hereby authorized and directed at reasonable times and upon request of said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32204 Commission; budget; appropriations.

Sec. 32204. The budget of the estimated expenditures of the commission shall be submitted to the director and to the director of the department of commerce for such period and in form as shall be required by them. Neither the compact nor this part shall be construed to commit, or authorize the expenditure of, any funds of the state except in pursuance of appropriations made by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.32205 Basin compact; transmission of copy of part and compact to other parties.

Sec. 32205. The governor is hereby authorized and directed to transmit a duly authenticated copy of this part and the compact contained herein to each jurisdiction now party to the compact and to each jurisdiction which is or subsequently shall become party to the compact.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32206 Limiting diversions of water of Great Lakes.

Sec. 32206. The commissioners who represent this state shall request the commission to consider and recommend amendments or agreements supplementary to the Great Lakes basin compact that would give the party states the authority to limit diversions of the waters of the Great Lakes.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 323
SHORELANDS PROTECTION AND MANAGEMENT

324.32301 Definitions.

Sec. 32301. As used in this part:

(a) "Connecting waterway" means the St. Marys river, Detroit river, St. Clair river, or Lake St. Clair.

(b) "Environmental area" means an area of the shoreland determined by the department on the basis of studies and surveys to be necessary for the preservation and maintenance of fish and wildlife.

(c) "High-risk area" means an area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to erosion.

(d) "Land to be zoned or regulated" or "land to be zoned" means the land in this state that borders or is adjacent to a Great Lake or a connecting waterway and that, except for flood risk areas, is situated within 1,000 feet landward from the ordinary high-water mark as defined in section 32501, land bordering or adjacent to waters affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 30101, and land between the ordinary high-water mark and the water's edge.

(e) "Shoreland" means the land, water, and land beneath the water that is in close proximity to the shoreline of a Great Lake or a connecting waterway.

(f) "Shoreline" means that area of the shorelands where land and water meet.

(g) "Flood risk area" means the area of the shoreland that is determined by the department on the basis of studies and surveys to be subject to flooding from effects of levels of the Great Lakes and is not limited to 1,000 feet.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 631, Eff. Mar. 29, 2019.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.32302 Shoreland engineering study; determinations.

Sec. 32302. By April 1, 1972, the department shall make or cause to be made an engineering study of the shoreland to determine all of the following:

(a) The high-risk areas.

(b) The areas of the shorelands that are platted or have buildings or structures and that require protection from erosion.

(c) The type of protection that is best suited for an area determined in subdivision (b).

(d) A cost estimate of the construction and maintenance for each type of protection determined in subdivision (c).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.32303 Engineering study.

Sec. 32303. Before January 1, 1975, the department shall make or cause to be made an engineering study of the shoreland to determine:

(a) Flood risk areas.

(b) The frequency with which a flood risk area can be expected to be flooded.

(c) Appropriate rules necessary to prevent damage or destruction to property.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32304 Environmental study.

Sec. 32304. By April 1, 1972, the department shall make or cause to be made an environmental study of the shoreland to determine all of the following:

(a) The environmental areas.

(b) The areas of marshes along and adjacent to the shorelands.

(c) The marshes and fish and wildlife habitat areas that should be protected by shoreland zoning or regulation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32305 Use of high risk area; prevention of property loss; notice of determinations and recommendations.

Sec. 32305. The department pursuant to section 32302 shall determine if the use of a high-risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a high-risk area that is in a local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32306 Use of flood risk area; prevention of property loss; notice of determinations and recommendations.

Sec. 32306. The department pursuant to section 32303 shall determine if the use of a flood risk area shall be regulated to prevent property loss or if suitable methods of protection shall be installed to prevent property loss. The department shall notify a local unit of government, the department of labor, the department of treasury, and the department of commerce or other affected state agencies of its determinations and recommendations relative to a flood risk area that is in a local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32307 Environmental area; use; regulation.

Sec. 32307. The department in accordance with section 32304 shall notify a local unit of government of the existence of any environmental area that is in a local unit of government and shall formulate appropriate use regulations necessary to protect an environmental area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.32308 County zoning.

Sec. 32308. Until July 1, 1975, a county, pursuant to rules promulgated under section 32313 and the county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the county.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32309 City or village zoning.

Sec. 32309. Until July 1, 1975, a city or village, pursuant to rules promulgated under section 32313 and Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the city or village.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32310 Township zoning.

Sec. 32310. Until July 1, 1975, a township, pursuant to rules promulgated under section 32313 and the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws, may zone any shoreland and land to be zoned that is in the township.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32311 Approval or disapproval of zoning ordinance regulating high risk area, flood risk area, or environmental area.

Sec. 32311. An existing zoning ordinance or a zoning ordinance or a modification or amendment to a zoning ordinance that regulates a high-risk area, a flood risk area, or an environmental area shall be submitted to the department for approval or disapproval. The department shall determine if the ordinance, modification, or amendment adequately prevents property damage or prevents damage to an environmental area, a high-risk area, or a flood risk area. If an ordinance, modification, or amendment is disapproved by the department, it shall not have force or effect until modified by the local unit of government and approved by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32312 Rules; fee required with permit application or project; disposition of fees; violation; restraining order.

Sec. 32312. (1) To regulate the uses and development of high-risk areas, flood risk areas, and environmental areas and to implement the purposes of this part, the department shall promulgate rules. If permits are required under rules promulgated under this part, the permits must be issued pursuant to the rules and part 13. Except as provided under subsection (2), until October 1, 2025, if permits are required pursuant to rules promulgated under this part, an application for a permit must be accompanied by a fee as follows:

(a) For a commercial or multifamily residential project, $500.00.

(b) For a single-family home construction, $100.00.

(c) For an addition to an existing single-family home or for a project that has a minor impact on fish and wildlife resources in environmental areas as determined by the department, $50.00.

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

(a) Part 301.

(b) Part 303.

(c) Part 325.

(d) Section 3104.

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

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

(4) A circuit court, upon petition and a showing by the department that a rule promulgated under

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subsection (1) has been violated, shall issue any necessary order to the defendant to correct the violation or to restrain the defendant from further violation of the rule.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 168, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 281.21 et seq. of the Michigan Administrative Code.

324.32312a Construction of above grade walls with movable brick.

Sec. 32312a. Notwithstanding any other provision of this part or the rules promulgated under this part, the department shall allow above grade walls to be constructed with movable brick.

History: Add. 1997, Act 126, Imd. Eff. Nov. 5, 1997.

Popular name: Act 451

Popular name: NREPA

324.32313 Use and management plan; contents; hearings; submission of plan copies to governor and legislature.

Sec. 32313. (1) By October 1, 1972, the department shall, in compliance with the purposes of this part, prepare a plan for the use and management of shoreland. The plan shall include but not be limited to all of the following:

(a) An inventory and identification of the use and development characteristics of the shoreland; the general physical and man-influenced shoreline features; the existing and proposed municipal and industrial water intakes and sewage and industrial waste outfalls; and high-risk areas and environmental areas.

(b) An inventory of existing federal, state, regional, and local plans for the management of the shorelands.

(c) An identification of problems associated with shoreland use, development, conservation, and protection.

(d) A provision for a continuing inventory of shoreland and estuarine resources.

(e) Provisions for further studies and research pertaining to shoreland management.

(f) Identification of the high-risk and environmental areas that need protection.

(g) Recommendations that do all of the following:

(*i*) Provide procedures for the resolution of conflicts arising from multiple use.

(*ii*) Foster the widest variety of beneficial uses.

(*iii*) Provide for the necessary enforcement powers to assure compliance with plans and to resolve conflicts in uses.

(*iv*) Provide criteria for the protection of shorelands from erosion or inundation, for aquatic recreation, for shore growth and cover, for low-lying lands, and for fish and game management.

(*v*) Provide criteria for shoreland layout for residential, industrial, and commercial development, and shoreline alteration control.

(*vi*) Provide for building setbacks from the water.

(*vii*) Provide for the prevention of shoreland littering, blight harbor development, and pollution.

(*viii*) Provide for the regulation of mineral exploration and production.

(*ix*) Provide the basis for necessary future legislation pertaining to efficient shoreland management.

(2) Upon completion of the plan, the department shall hold regional public hearings on the recommendations of the plan. Copies of the plan shall be submitted with the hearing records to the governor and the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32314 Agreements and contracts.

Sec. 32314. The department may enter into an agreement or make contracts with the federal government, other state agencies, local units of government, or private agencies for the purposes of making studies and plans for the efficient use, development, preservation, or management of the state's shoreland resources. Any study, plan, or recommendation shall be available to a local unit of government in this state that has shoreland. The recommendations and policies set forth in the studies or plans shall serve as a basis and guideline for establishing zoning ordinances and developing shoreland plans by local units of government and

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the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32315 Money, grants, or grants-in-aid; purpose.

Sec. 32315. For the purposes of this part, the department may receive, obtain, or accept money, grants, or grants-in-aid for the purpose of research, planning, or management of shoreland.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 325
GREAT LAKES SUBMERGED LANDS

324.32501 Additional definitions.

Sec. 32501. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Director" means the director of the department.

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.32502 Unpatented lake bottomlands and unpatented made lands in Great Lakes; construction of part.

Sec. 32502. The lands covered and affected by this part are all of the unpatented lake bottomlands and unpatented made lands in the Great Lakes, including the bays and harbors of the Great Lakes, belonging to the state or held in trust by it, including those lands that have been artificially filled in. The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, to provide for the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands whenever it is determined by the department that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition. The word "land" or "lands" as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands in the Great Lakes and the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark, but this part does not affect property rights secured by virtue of a swamp land grant or rights acquired by accretions occurring through natural means or reliction. For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

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324.32503 Agreements pertaining to waters over and filling in of submerged patented lands; lease or deed of unpatented lands; terms, conditions, and requirements; reservation of mineral rights; exception; lease or deed allowing drilling operations for exploration of oil or gas purposes; execution of agreement, lease, or deed with United States.

Sec. 32503. (1) Except as otherwise provided in this section, the department, after finding that the public trust in the waters will not be impaired or substantially affected, may enter into agreements pertaining to waters over and the filling in of submerged patented lands, or to lease or deed unpatented lands, after approval of the state administrative board. Quitclaim deeds, leases, or agreements covering unpatented lands may be issued or entered into by the department with any person, and shall contain such terms, conditions, and requirements as the department determines to be just and equitable and in conformance with the public trust. The department shall reserve to the state all mineral rights, including, but not limited to, coal, oil, gas, sand, gravel, stone, and other materials or products located or found in those lands, except where lands are occupied or to be occupied for residential purposes at the time of conveyance.

(2) The department shall not enter into a lease or deed that allows drilling operations beneath unpatented lands for the exploration or production of oil or gas.

(3) An agreement, lease, or deed entered into under this part by the department with the United States shall be entered into and executed pursuant to the property rights acquisition act, 1986 PA 201, MCL 3.251 to 3.262.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 148, Imd. Eff. Apr. 5, 2002;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

Compiler's note: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

Popular name: Act 451

Popular name: NREPA

324.32504 Unpatented lake lands and unpatented made lands; application for conveyance; contents; qualifications of applicant; consent; approval; fee.

Sec. 32504. (1) Application for a deed or lease to unpatented lands or agreement for use of water areas over patented lands shall be on forms provided by the department. An application shall include a surveyed description of the lands or water area applied for, together with a surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor. The description shall show the location of the water's edge at the time it was prepared and other information that is required by the department. The applicant shall be a riparian or littoral owner or owners of property touching or situated opposite the unpatented land or water area over patented lands applied for or an occupant of that land. The application shall include the names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property or having riparian or littoral rights or interests in the lands or water areas applied for, and the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application.

(2) Before an application is acted upon by the department, the applicant shall secure approval of or permission for his or her proposed use of such lands or water area from any federal agency as provided by law, the department with the advice of the Michigan waterways commission, and the legislative body of the local unit or units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent. A deed, lease, or agreement shall not be issued or entered into by the department without such approvals or permission. The department may also require the applicant to furnish an abstract of title and ownership, and a 20-year tax history on the riparian or littoral property that is contiguous or adjacent to the lands or water area applied for, as well as on the lands applied for, if available.

(3) The department shall require the applicant to deposit a fee of not less than $50.00 for each application filed. The fee shall be deposited with the state treasurer to the credit of the state's general fund. If a deed, lease, or other agreement is approved by the department, the applicant is entitled to credit for the fee against the consideration that is paid for the deed, lease, or other agreement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32504a Restoration or maintenance of lighthouse; lease or agreement for use of lands;

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“approved organization” defined.

Sec. 32504a. (1) The department may accept an application under this part from an approved organization, whether or not the approved organization is a riparian landowner, and may enter into a lease or agreement for the use of lands described in section 32502 on which a lighthouse is located, including the use of water over those lands immediately adjacent to the lighthouse.

(2) As used in this section, "approved organization" means a lawful nonprofit entity as approved by the department, a local unit of government, a federal or state agency or department, an educational agency, or a community development organization, that is seeking to secure a lease or agreement under this section for the purpose of restoring or maintaining a lighthouse.

History: Add. 2002, Act 650, Imd. Eff. Dec. 23, 2002.

Popular name: Act 451

Popular name: NREPA

324.32505 Unpatented lake bottomlands and unpatented made lands; consideration for conveyances or lease.

Sec. 32505. (1) If the department determines that it is in the public interest to grant an applicant a deed or lease to lands or enter into an agreement to allow use and improvements in the waters or to enter into any other agreement in regard thereto, the department shall determine the amount of consideration to be paid to this state by the applicant for the conveyance or lease of unpatented lands.

(2) The department may allow, by lease or agreement, the filling in of patented and unpatented submerged lands and allow permanent improvements and structures after finding that the public trust will not be impaired or substantially injured.

(3) The department may issue deeds or may enter into leases of unpatented lands if the lands have been artificially filled in or are proposed to be changed from the condition that exists on October 14, 1955 by filling, sheet piling, shoring, or by any other means, and the lands are used or to be used or occupied in whole or in part for uses other than existing, lawful riparian or littoral purposes. The consideration to be paid to this state for the conveyance or lease of unpatented lands by the applicant shall be not less than the fair, cash market value of the lands determined as of the date of the filing of the application, minus any improvements placed on the lands, but the sale price shall not be less than 30% of the value of the land. In determining the fair, cash market value of the lands applied for, the department may consider the fact that the lands are connected with the riparian or littoral property belonging to the applicant, and the uses, including residential and commercial, being made or which can be made of the lands.

(4) Agreements for the lands or water area described in section 32502 may be granted to or entered into with local units of government for public purposes. The agreements may contain terms and conditions considered just and equitable given the public trust involved and may grant permission to fill those lands as necessary.

(5) If unpatented lands have not been filled in or in any way substantially changed from their natural character and the application to acquire or lease those lands is filed for the purpose of flood control, shore erosion control, drainage and sanitation control, or to straighten irregular shore lines, then the consideration to be paid to this state by the applicant shall be the fair, cash value of the land, giving due consideration to its being adjacent to and connected with the riparian or littoral property owned by the applicant.

(6) Leases or agreements covering unpatented lands may be granted or entered into with riparian or littoral proprietors for commercial marina purposes or for marinas operated by persons for consideration and containing terms and conditions considered by the department to be just and equitable. The leases may include either filled or unfilled lake bottomlands, or both. Rental shall commence as of the date of use of the unpatented lands for the marina operations. Dockage and other uses by marinas in waters over patented lands on October 14, 1955 shall be considered to be lawful riparian or littoral use.

(7) The department may enter into a lease with the owner of riparian or littoral property, occupied only for single-family residential purposes, to use the abutting unpatented lake bottomlands and waters over those bottomlands for a private harbor if all of the following conditions are met:

(a) The private harbor was formed by a breakwater erected on unpatented lake bottomlands.

(b) The private harbor is used exclusively for private, noncommercial recreational watercraft.

(c) The full-term of the lease is 50 years consisting of two 25-year terms.

(d) The consideration for the lease is as follows:

(*i*) For a lease entered into on or after the effective date of the amendatory act that amended this section, a lump-sum payment at the beginning of the first 25-year term of the agreement of 0.5% of twice the current state equalized value of the lessee's upland riparian or littoral property or payment of the lump sum pursuant

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to a schedule as agreed by the department, and a lump-sum payment at the beginning of the second 25-year term of the agreement of 0.5% of twice the current state equalized value of the lessee's upland riparian or littoral property or payment of the lump sum pursuant to a schedule as agreed by the department.

(*ii*) Unless otherwise requested by the lessee and agreed to by the department, for a lease entered into prior to the effective date of the amendatory act that amended this section, the department shall credit any lease payment made in 2016 against the future payments owed under the terms of subparagraph (*i*).

(8) If the department after investigation determines that an applicant to acquire or lease lands has willfully and knowingly filled in or in any way substantially changed the lands with an intent to defraud, or if the applicant has acquired the lands with knowledge of such a fraudulent intent and is not an innocent purchaser, the consideration shall be the fair, cash market value of the land or leasehold. An applicant may request a hearing of a determination made under this subsection. The department shall grant a hearing if requested.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 18, Eff. May 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.32506 Unpatented lands and unpatented made lands; value determination by department; appraisal; decision of court.

Sec. 32506. The fair, cash market value of lands approved for sale under this part shall be determined by the department. Consideration paid to the state shall not be less than $50.00. If the applicant is not satisfied with the value determined by the department, within 30 days after the receipt of the determination he or she may submit a petition in writing to the circuit court of the county in which the lands are located, and the court shall appoint an appraiser or appraisers as the court shall determine for an appraisal of the lands. The decision of the court is final.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32507 Receipts; disposition; accounting; employees.

Sec. 32507. (1) All money received by the department from the sale, lease, or other disposition of land and water areas under this part shall be forwarded to the state treasurer and be credited to the land and water management permit fee fund created in section 30113.

(2) The department shall comply with the accounting laws of this state and the requirements with respect to submission of budgets. The department may hire employees, assistants, and services that may be necessary within the appropriation made by the legislature and may delegate this authority as may be necessary to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32508 Lands conveyed; taxation.

Sec. 32508. All lands conveyed or leased under this part are subject to taxation and the general property tax laws and other laws as other real estate used and taxed by the governmental unit or units within which the land is or may be included.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32509 Rules.

Sec. 32509. The department may promulgate rules, in accordance with the requirements of law, consistent with this part, that may be necessary to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32510 Land filled, excavated, or modified without approval; misdemeanor; penalty; issuance or service of appearance ticket; "minor offense" defined.

Sec. 32510. (1) Except as provided in subsection (2), a person who excavates or fills or in any manner

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alters or modifies any of the land or waters subject to this part without the approval of the department is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both. Land altered or modified in violation of this part shall not be sold to any person convicted under this section at less than fair, cash market value.

(2) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(3) As used in this section, "minor offense" means either of the following violations of this part if the department determines that restoration of the affected property is not required:

(a) The failure to obtain a permit under this part.

(b) A violation of a permit issued under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32511 Certificate of location of lakeward boundary; application; riparian owner; fee.

Sec. 32511. A riparian owner may apply to the department for a certificate suitable for recording indicating the location of his or her lakeward boundary or indicating that the land involved has accreted to his or her property as a result of natural accretions or placement of a lawful, permanent structure. The application must be accompanied by a fee of $200.00 and proof of upland ownership.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2018, Act 18, Eff. May 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.32512 Acts prohibited; exceptions; activities not subject to regulation; applicability of subsection (2) to certain lands.

Sec. 32512. (1) Except as provided in subsection (2), unless a permit has been granted by the department pursuant to part 13 or authorization has been granted by the legislature, or except as to boat wells and slips facilitating private, noncommercial, recreational boat use, not exceeding 50 feet in length where the spoil is not disposed of below the ordinary high-water mark of the body of water to which it is connected, a person shall not do any of the following:

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

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

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

(d) Construct a marina.

(2) Except as provided in subsection (3), the following activities are not subject to regulation under this part:

(a) Leveling of sand, removal of vegetation, grooming of soil, or removal of debris, in an area of unconsolidated material predominantly composed of sand, rock, or pebbles, located between the ordinary high-water mark and the water's edge.

(b) Mowing of vegetation between the ordinary high-water mark and the water's edge.

(3) Subsection (2) does not apply to lands included in the survey of the delta of the St. Clair River, otherwise referred to as the St. Clair flats, located within Clay township, St. Clair county, as provided for in 1899 PA 175.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

Popular name: Act 451

Popular name: NREPA

324.32512a Minor project categories; activities; conditions; application; notice; general permit.

Sec. 32512a. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental

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effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 32513 for an activity within a minor project category without providing notice pursuant to section 32514. A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. A general permit shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit. Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 32514 but shall not hold a public hearing and shall not typically require a site inspection. A general permit shall not be valid for more than 5 years, but may be reissued.

History: Add. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2012, Act 247, Imd. Eff. July 2, 2012.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

324.32513 Application for permit; contents; fees; disposition of fees.

Sec. 32513. (1) To obtain a permit for any activity specified in section 32512, a person shall file an application with the department on a form provided by the department. The application must include all of the following:

(a) The name and address of the applicant.

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

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

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

(e) Other information required by the department.

(2) Except as provided in subsections (3) and (4), until October 1, 2025, an application for a permit under this section must be accompanied by the following fee, as applicable:

(a) For a project in a category of activities for which a general permit is issued under section 32512a(2), a fee of $50.00.

(b) For activities included in a minor project category established under section 32512a(1), a fee of $100.00.

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

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

(*ii*) $100.00 for a new marina with 1-10 proposed marina slips.

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

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

(*v*) $1,500.00 if an existing permitted marina proposes maintenance dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand, or the addition of seawalls, bulkheads, or revetments of 500 feet or more.

(d) For major projects other than a project described in subdivision (c)(*v*), involving any of the following, a fee of $2,000.00:

(*i*) Dredging of 10,000 cubic yards or more, unless the dredge material is determined through testing to be 90% or more sand.

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

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

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

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

(*vi*) New breakwater or channel jetty.

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

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

(e) For all other projects not listed in subdivisions (a) to (d), $500.00.

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

(a) Section 3104.

(b) Part 301.

(c) Part 303.

(d) Part 323.

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 170, Imd. Eff. Oct. 9, 1995;—Am. 1999, Act 106, Imd. Eff. July 7, 1999;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2012, Act 247, Imd. Eff. July 2, 2012;—Am. 2013, Act 11, Imd. Eff. Mar. 27, 2013;—Am. 2013, Act 98, Imd. Eff. July 2, 2013;—Am. 2015, Act 76, Eff. Oct. 1, 2015;—Am. 2019, Act 84, Imd. Eff. Sept. 30, 2019;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) $4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and $4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) $2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

324.32514 Application for permit; copies to department of community health, local units, and adjacent riparian owners; objections; public hearing; notice; conditional permit; additional conditions.

Sec. 32514. (1) Upon receipt of the application, the department shall mail copies of the application to the department of community health, the clerks of the county, city, village, and township, and, if one exists, the drain commissioner of the county, in which the project or body of water affected is located, and to the adjacent riparian owners. Along with the application, the department shall include a statement that unless a written objection is filed with the department within 20 days after the mailing of the copies of the application, the department may take action to grant the application. The department may hold a public hearing on the application. If the department holds a public hearing, the department shall provide notice of the public hearing by publication in a newspaper circulated in the county and by mailing copies of the notice to the persons named in this section at least 10 days prior to the date of the public hearing.

(2) Notwithstanding subsection (1), the department may issue a conditional permit before the expiration of the 20-day period if emergency conditions warrant a project to protect property or public health, safety, or welfare. Following the 20-day period and any public hearing that is held, the department shall take into consideration additional information or objections received and may, consistent with this part, place additional conditions on the final permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2013, Act 12, Imd. Eff. Mar. 27, 2013.

Popular name: Act 451

Popular name: NREPA

324.32515 Artificial waterway; permit; issuance; conditions; maintenance.

Sec. 32515. If the department finds that the project will not injure the public trust or interest including fish and game habitat, that the project conforms to the requirements of law for sanitation, and that no material injury to the rights of any riparian owners on any body of water affected will result, the department shall issue

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a permit authorizing enlargement of the waterway affected. The permit shall provide that the artificial waterway shall be a public waterway, except intake or discharge canals or channels on property owned, controlled, and used by a public utility. The existing and future owners of land fronting on the artificial waterway are liable for maintenance of the waterway in accordance with the conditions of the permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.32515a Dredging or placing dredged spoils on bottomland; permit; conditions.

Sec. 32515a. A permit under this part to dredge or place dredged spoil on bottomland is subject to all of the following:

(a) The permit shall be valid for a period of 5 years.

(b) During the term of the permit, the department shall not require additional environmental studies or surveys unless an act of God results in significant geological or ecological changes to the permitted area.

(c) The permit shall allow, at the discretion of the applicant, open lake disposal of dredge material that is not contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code in waters at the 30-meter depth contour or deeper. However, dredge materials shall not be disposed of within a Great Lakes bottomland preserve established under part 761, a permitted submerged log removal area under part 326, or a lake trout or diporeia refuge.

History: Add. 2013, Act 87, Imd. Eff. June 28, 2013.

Popular name: Act 451

Popular name: NREPA

324.32516 Repealed. 2012, Act 247, Imd. Eff. July 2, 2012.

Compiler's note: The repealed section pertained to identification of Great Lakes and Lake St. Clair shoreline where removal of vegetation is allowed.

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PART 326
GREAT LAKES SUBMERGED LOGS RECOVERY

324.32601 Definitions.

Sec. 32601. As used in this part:

(a) "Bottomlands" means land in the Great Lakes, and bays and harbors of the Great Lakes, lying below and lakeward of the ordinary high-water mark as described in section 32502.

(b) "Department" means the department of environmental quality.

(c) "Fair market value" means the price based upon the unique historical and physical properties, including, but not limited to, species, growth rates, volume, and condition of the submerged logs as calculated at dockside following delivery to shore.

(d) "Fund" means the submerged log recovery fund created in section 32610.

(e) "Great Lakes" means Lake Superior, Lake Michigan, Lake Huron, and Lake Erie, and includes Lake St. Clair.

(f) "Ordinary high-water mark" means the elevations described in section 32502. When the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary high-water mark is located where it would have been if this alteration had not occurred.

(g) "Patented lands" means any bottomlands lying within a specific government grant area, including a private claim patent or federal patent.

(h) "Riparian owner" means a person who owns frontage bordering bottomlands.

(i) "Riparian rights" means those rights that are associated with the ownership of frontage bordering bottomlands, subject to the public trust.

(j) "Submerged log" means a portion of the trunk of a felled tree that has not been further processed for any end use and is located on, in, over, or under bottomlands. Submerged log does not include a portion of a tree that is located in the Great Lakes or on, in, over, or under bottomlands that poses a navigational or safety hazard or is of no or little commercial value.

(k) "Unpatented lands" means all bottomlands except patented lands.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

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324.32602 Submerged logs; reservation of ownership rights.

Sec. 32602. This state reserves to itself title and ownership of all submerged logs lying on or over, embedded in, or buried under unpatented lands.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.32603 Removal of submerged logs from bottomlands, patented lands, or underwater preserves; permit.

Sec. 32603. (1) A person shall not remove submerged logs from bottomlands except as authorized by a permit issued by the department pursuant to part 13.

(2) The department may issue a permit under this part to a person for the removal of submerged logs from patented lands if permission is received from the lawful owner of the patented lands.

(3) A person shall not recover, alter, or destroy abandoned property as defined in part 761 while engaging in submerged log removal operations under a submerged log removal permit issued under this part.

(4) For submerged log recovery in underwater preserves established under part 761, the department shall place reasonable conditions on submerged log removal permits to prevent damage to abandoned watercraft or other features of archaeological, historical, recreational, or environmental significance and to minimize conflicts between recreational activities within the preserve and the submerged log recovery operation.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

324.32604 Application for submerged log removal permit; submission; form; information; time period for submission; disposition of fees.

Sec. 32604. (1) Applications for submerged log removal permits shall be submitted before February 1 of each calendar year.

(2) An application for a submerged log removal permit shall be submitted in writing on a form provided by the department and shall include all of the following:

(a) A description of the proposed bottomland log removal area with boundaries delineated by the use of current technology such as a digital global positioning system or other technology approved by the department. The proposed bottomland log removal area shall be a contiguous area of not more than 320 acres. The area proposed shall be square or rectangular in shape, and the length shall not exceed the width by more than a factor of 6.

(b) A description of the methods to be used to raise the submerged logs, the time of year during which submerged logs will be raised, and the procedures to be used for transferring logs to the shore.

(c) Identification of any adverse environmental impacts associated with the proposed submerged log removal method.

(d) Identification of the steps proposed to mitigate any adverse environmental impacts caused by the proposed submerged log removal operation.

(e) Other information that the department considers necessary in evaluating a submerged log removal permit application.

(f) A $500.00 application fee.

(3) An application for a submerged log removal permit is not complete until all information requested on the application form and any other information requested by the department are received. Within 30 days of its receipt of an application, the department shall notify the applicant in writing if the application is deficient. The applicant shall submit the requested information to the department within 30 days after the date the notice is provided. If the applicant fails to respond within the 30-day period, the department shall deny the submerged log removal permit unless the applicant requests and the department approves an extension of time based upon the applicant's reasonable justification for the extension.

(4) Application fees received under this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

324.32605 Receipt of completed application; review by department; issuance of permit;

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conditions.

Sec. 32605. Upon receiving a complete application for a submerged log removal permit, the department shall do both of the following:

(a) Place the application on public notice for a 20-day period for review and comment.

(b) Submit a copy to the department of natural resources and the department of state for their review and comment.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.32606 Department review of application; issuance; limitation; time period for making decision; conditions; notification of approval or denial; disposition of fees.

Sec. 32606. (1) The department shall review each complete application received for a submerged log removal permit and shall not issue a permit unless the department determines both of the following:

(a) That any adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust are minimal and will be mitigated to the extent practicable.

(b) That the proposed activity will not unreasonably affect the public health, safety, and welfare.

(2) The department may determine that certain areas within a proposed bottomland log removal area described in an application for a submerged log removal permit shall not be authorized for submerged log removal based upon adverse impacts, including, but not limited to, adverse impacts to the environment, natural resources, riparian rights, and the public trust.

(3) The department shall make a decision on whether or not to issue a submerged log removal permit under this part within 90 days after the close of the review and comment period under section 32605 or, if a public hearing is held under section 32608, within 90 days after the date of that public hearing.

(4) If the department issues a submerged log removal permit, the department shall condition the permit on compliance with both of the following:

(a) The permittee has provided the department with a $3,000.00 log recovery fee.

(b) The permittee has provided the department a bond as required in section 32607(7).

(5) The department shall notify the applicant in writing within 10 days after the date the department approves or denies a submerged log removal permit under this section.

(6) The department shall forward log recovery fees received under this subsection to the state treasurer for deposit into the Great Lakes fund created in section 32611.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

324.32607 Submerged log removal permit; overlaps; expiration; transfer; bond; termination; "bond" defined.

Sec. 32607. (1) The department shall not authorize the same bottomland log removal area in more than 1 submerged log removal permit at any 1 time.

(2) The department may modify the boundaries of a proposed bottomland log removal area in a submerged log removal permit to avoid overlaps with other active submerged log removal permits or adverse impacts, including, but not limited to, impacts to the environment, natural resources, riparian rights, and the public trust.

(3) A submerged log removal plan approved by the department shall be included in each submerged log removal permit.

(4) A submerged log removal permit shall contain terms and conditions that are determined by the department to protect the environment, natural resources, riparian rights, and the public trust.

(5) Each submerged log removal permit shall expire 5 years after the date the permit is issued. However, a submerged log removal permit issued prior to the effective date of the 2011 amendatory act that amended this section expires 5 years after the effective date of the 2011 amendatory act that amended this section. If federal approval is required, an applicant shall notify the department of the date on which the federal government issued its approval for the submerged log removal permit.

(6) A submerged log removal permit issued under this section is not transferrable unless the transfer is approved in writing by the department.

(7) An applicant for a submerged log removal permit shall provide a bond acceptable to the department in the amount of not less than $10,000.00 or more than $100,000.00 as required by the department, based upon

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permit conditions including costs of restoration and payments under section 32609. Except as provided in subsection (8), the term of the bond shall extend for 1 year following the expiration of the submerged log removal permit. The bond shall be provided to the department at least 10 days prior to beginning submerged log removal in a bottomland log removal area. The bond shall ensure compliance with the submerged log removal permit and all required payments under section 32609. If a submerged log removal permit is terminated under subsection (8), the department shall issue a written statement releasing the permittee or bonding company, or both, upon satisfaction of the department as to the compliance of the permittee with the terms and conditions of the permit and satisfaction of all payments as required in section 32609.

(8) A permittee may request, in writing, and the department may grant, termination of a submerged log removal permit prior to the expiration date, including release from quarterly reports and bond requirements.

(9) As used in this section, "bond" means a performance bond from a surety company authorized to transact business in this state or an irrevocable letter of credit, in favor of the department.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2004, Act 546, Imd. Eff. Jan. 3, 2005;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

324.32608 Application for submerged log removal permit; hearing.

Sec. 32608. (1) The department may hold a public hearing on an application for a submerged log removal permit if the department desires additional information before making a decision on the permit application, or upon request, if such request is made within the public notice period.

(2) An applicant for a submerged log removal permit or a riparian owner who is aggrieved by an action or inaction of the department under this part may request a formal hearing on the matter, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 60 days of the notice of the department's decision.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.32609 Sawlog stumpage value; reservation of payments; "sawlog stumpage value" defined; report and payments due; disposition of payments; overdue payment.

Sec. 32609. (1) The state reserves a payment of 15% of the sawlog stumpage value of each submerged log that is removed from unpatented lands. As used in this subsection, "sawlog stumpage value" means the price received from recovered submerged logs.

(2) The holder of a submerged log removal permit under this part shall provide the department with a detailed report and all payments due under this section within 30 days after the close of each calendar quarter. The report shall include an accurate scaling at dockside of all submerged logs removed, by species. The permittee shall provide for an independent agent, approved by the department in writing, to conduct the scaling and species determination.

(3) All payments received under this section shall be forwarded to the state treasurer for deposit into the fund.

(4) After a permittee is notified in writing that a payment under this section is overdue, the department may order suspension of the submerged log removal permit until the payment is submitted in full. The permittee shall not resume submerged log removal operations until the department provides written authorization for the operations to resume.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

324.32610 Submerged log recovery fund.

Sec. 32610. (1) The submerged log recovery fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Subject to subsection (5), money from the fund shall be used, upon appropriation, for the administrative costs of the department, the department of natural resources, and the department of state in implementing this

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part.

(5) On December 1, 2001 and on December 1 of each following year, the state treasurer shall transfer the balance of the fund as follows:

(a) Fifty percent to the Great Lakes fund created in section 32611.

(b) Fifty percent to the forest development fund established under section 50507.

History: Add. 2000, Act 277, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.32611 Great Lakes fund.

Sec. 32611. (1) The Great Lakes fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the Great Lakes fund. The state treasurer shall direct the investment of the Great Lakes fund. The state treasurer shall credit to the Great Lakes fund interest and earnings from Great Lakes fund investments.

(3) Money in the Great Lakes fund at the close of the fiscal year shall remain in the Great Lakes fund and shall not lapse to the general fund.

(4) The department shall expend money from the Great Lakes fund, upon appropriation, only for environmental projects related to the Great Lakes and areas contiguous to the Great Lakes including, but not limited to, the prevention and management of nonnative species, coastal wetland restoration, contaminated sediment cleanup, and underwater preserve management, and for the administration of this part.

History: Add. 2000, Act 277, Imd. Eff. July 10, 2000;—Am. 2011, Act 218, Imd. Eff. Nov. 10, 2011.

Popular name: Act 451

Popular name: NREPA

324.32612 Violation; civil action; remedies; civil fine.

Sec. 32612. (1) The department may bring a civil action against a person in the circuit court of the county in which a violation occurs or in Ingham county circuit court to do 1 or more of the following:

(a) Enforce compliance with this part and the rules promulgated under this part.

(b) Restrain a violation of this part or the rules promulgated under this part.

(c) Enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or the rules promulgated under this part.

(d) Enforce a permit issued under this part.

(e) Order the restoration of an area affected by a violation of this part or the rules promulgated under this part to its prior condition.

(2) In an action brought under this section, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than $5,000.00 per day for each day of violation of this part or the rules promulgated under this part.

(3) Any civil fine or remedy assessed, sought, or agreed to by the department shall be appropriate to the violation.

(4) Civil fines recovered under this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.32613 Violation as misdemeanor; penalties.

Sec. 32613. (1) A person who does any of the following is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 per day for each day of violation:

(a) Violates this part or a rule promulgated under this part.

(b) Violates a permit issued under this part.

(c) Makes a false statement, representation, or certification in an application for or with regard to a permit or in a notice or report required by a permit.

(d) Renders inaccurate any monitoring device or method required to be maintained by a permit.

(2) In addition to any other penalty provided in this section, a court shall order a person convicted under this section to return to the state any logs removed from bottomlands in violation of this part or the rules promulgated under this part, or to compensate the state for the full market value of the logs. If the person convicted under this section had been issued a permit under this part, the permit is void as of the date of conviction.

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History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

324.32614 Repealed. 2018, Act 237, Eff. Sept. 25, 2018.

Compiler's note: The repealed section pertained to an annual report on great lakes submerged logs recovery program.

Popular name: Act 451

Popular name: NREPA

324.32615 Rules.

Sec. 32615. The department may promulgate rules to implement this part.

History: Add. 2000, Act 278, Imd. Eff. July 10, 2000.

Popular name: Act 451

Popular name: NREPA

PART 327
GREAT LAKES PRESERVATION

324.32701 Definitions; retention of established baseline capacity.

Sec. 32701. (1) As used in this part:

(a) "Adverse resource impact" means any of the following:

(*i*) Until February 1, 2009, decreasing the flow of a river or stream by part of the index flow such that the river's or stream's ability to support characteristic fish populations is functionally impaired.

(*ii*) Beginning February 1, 2009, subject to subparagraph (*vi*), decreasing the flow of a cold river system by part of the index flow as follows:

(A) For a cold stream, the withdrawal will result in a 3% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, the withdrawal will result in a 1% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*iii*) Beginning February 1, 2009, subject to subparagraph (*vi*), decreasing the flow of a cold-transitional river system by part of the index flow such that the withdrawal will result in a 5% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*iv*) Beginning February 1, 2009, subject to subparagraph (*vi*), decreasing the flow of a cool river system by part of the index flow as follows:

(A) For a cool stream, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a cool small river, the withdrawal will result in a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, the withdrawal will result in a 12% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*v*) Beginning February 1, 2009, subject to subparagraph (*vi*), decreasing the flow of a warm river system by part of the index flow as follows:

(A) For a warm stream, the withdrawal will result in a 5% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a warm small river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(C) For a warm large river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(*vi*) Beginning February 1, 2009, decreasing the flow of a stream or river by more than 25% of its index flow.

(*vii*) Decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired. As used in this subparagraph, lake or pond does not include a retention pond or other artificially created surface water body.

(b) "Agricultural purpose" means the agricultural production of plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and

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dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur.

(c) "Assessment tool" means the water withdrawal assessment tool provided for in section 32706a.

(d) "Baseline capacity", subject to subsection (2), means any of the following, which shall be considered the existing withdrawal approval amount under section 4.12.2 of the compact:

(*i*) The following applicable withdrawal capacity as reported to the department or the department of agriculture, as appropriate, by the person making the withdrawal in the annual report submitted under section 32707 not later than April 1, 2009 or in the water use conservation plan submitted under section 32708 not later than April 1, 2009:

(A) Unless reported under a different provision of this subparagraph, for a quarry or mine that holds an authorization to discharge under part 31 that includes a discharge volume, the discharge volume stated in that authorization on February 28, 2006.

(B) The system capacity used or developed to make a withdrawal on February 28, 2006, if the system capacity and a description of the system capacity are included in an annual report that is submitted under this part not later than April 1, 2009.

(*ii*) If the person making the withdrawal does not report under subparagraph (*i*), the highest annual amount of water withdrawn as reported under this part for calendar year 2002, 2003, 2004, or 2005. However, for a person who is required to report by virtue of the 2008 amendments to section 32705(2)(d), baseline capacity means the person's withdrawal capacity as reported in the April 1, 2009 annual report submitted under section 32707.

(*iii*) For a community supply, the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, on February 28, 2006 as reported to the department in a report submitted not later than April 1, 2009.

(e) "Characteristic fish curve" means a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(f) "Characteristic fish population" means the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(g) "Cold river system" means a stream or small river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a scientific methodology adopted by order of the commission.

(h) "Cold-transitional river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will cause a decline in the proportion of cold-water species, as determined by a scientific methodology adopted by order of the commission.

(i) "Community supply" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

(j) "Compact" means the Great Lakes-St. Lawrence river basin water resources compact provided for in part 342.

(k) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. Consumptive use includes a withdrawal of waters of the Great Lakes basin that is packaged within the Great Lakes basin in a container of 5.7 gallons (20 liters) or less and is bottled drinking water as defined in the food code, 2005 recommendations of the food and drug administration of the United States public health service.

(*l*) "Cool river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed mostly of warm-water fish species, but also contains some cool-water species or cold-water species, or both, as determined by a scientific methodology adopted by order of the commission.

(m) "Council" means the Great Lakes-St. Lawrence river basin water resources council created in the compact.

(n) "Department" means the department of environmental quality.

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(o) "Designated trout stream" means a trout stream identified on the document entitled "Designated Trout Streams for the State of Michigan", as issued under order of the director of the department of natural resources, FO-210.04, on October 10, 2003.

(p) "Diversion" means a transfer of water from the Great Lakes basin into another watershed, or from the watershed of 1 of the Great Lakes into that of another by any means of transfer, including, but not limited to, a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker but does not apply to water that is used in the Great Lakes basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the Great Lakes basin or watershed. Diverted has a corresponding meaning. Diversion includes a transfer of water withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters). Diversion does not include any of the following:

(*i*) A consumptive use.

(*ii*) The supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of vehicles.

(*iii*) Use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

(*iv*) A transfer of water from a Great Lake watershed to the watershed of its connecting waterways.

(q) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

(*i*) Are environmentally sound.

(*ii*) Reflect best practices applicable to the water use sector.

(*iii*) Are technically feasible and available.

(*iv*) Are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

(*v*) Consider the particular facilities and processes involved, taking into account the environmental impact, the age of equipment and facilities involved, the process employed, energy impacts, and other appropriate factors.

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

(s) "Flow-based safety factor" means a protective measure of the assessment tool that reduces the portion of index flow available for a withdrawal to 1/2 of the index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.

(t) "Great Lakes" means Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways including the St. Marys river, Lake St. Clair, the St. Clair river, and the Detroit river. For purposes of this definition, Lakes Huron and Michigan shall be considered a single Great Lake.

(u) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.

(v) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(w) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.

(x) "Index flow" means the 50% exceedance flow for the lowest summer flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the United States geological survey flow gauges in Michigan. Beginning on October 1, 2008, index flow shall be calculated as of that date.

(y) "Intrabasin transfer" means a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake.

(z) "Lake augmentation well" means a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream as defined in section 30101.

(aa) "Large quantity withdrawal" means 1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.

(bb) "Large river" means a river with a drainage area of 300 or more square miles.

(cc) "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.

(dd) "New or increased withdrawal capacity" means new or additional water withdrawal capacity to supply

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a common distribution system that is an increase from the person's baseline capacity. New or increased capacity does not include maintenance or replacement of existing withdrawal capacity.

(ee) "Online registration process" means the online registration process provided for in section 32706.

(ff) "Preventative measure" means an action affecting a stream or river that prevents an adverse resource impact by diminishing the effect of a withdrawal on stream or river flow or the temperature regime of the stream or river.

(gg) "Registrant" means a person who has registered a water withdrawal under section 32705.

(hh) "River" means a flowing body of water with a drainage area of 80 or more square miles.

(ii) "Site-specific review" means the department's independent review under section 32706c to determine whether the withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a withdrawal is likely to cause an adverse resource impact.

(jj) "Small river" means a river with a drainage area of less than 300 square miles.

(kk) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways. If water is withdrawn from the watershed of a direct tributary to a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways, with a preference for returning water to the watershed of the direct tributary from which it was withdrawn.

(*ll*) "Stream" means a flowing body of water with a drainage area of less than 80 square miles.

(mm) "Stream reach" means a segment of a stream or river.

(nn) "Thriving fish curve" means a fish functional response curve that describes the initial decline in density of thriving fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(oo) "Thriving fish population" means the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(pp) "Warm river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of warm-water fish species, as determined by a scientific methodology adopted by order of the commission.

(qq) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.

(rr) "Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of the state. Waters of the state do not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

(ss) "Withdrawal" means the removal of water from surface water or groundwater.

(tt) "Zone A withdrawal" means the following:

(*i*) For a cold river system, as follows:

(A) For a cold stream, less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, less than 50% of the withdrawal that would result in an adverse resource impact.

(*ii*) For a cold-transitional river system, there is not a zone A withdrawal.

(*iii*) For a cool river system, as follows:

(A) For a cool stream, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, less than an 8% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*iv*) For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(uu) "Zone B withdrawal" means the following:

(*i*) There is not a zone B withdrawal for a cold stream or small river.

(*ii*) For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*iii*) For a cool river system, as follows:

(A) For a cool stream, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

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(B) For a cool small river, a 5% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, an 8% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*iv*) For a warm river system, as follows:

(A) For a warm stream, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a warm small river or a warm large river, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(vv) "Zone C withdrawal" means the following as long as the withdrawal will not decrease the flow of a stream or river by more than 25% of its index flow:

(*i*) For a cold river system, as follows:

(A) For a cold stream, a 1% or more but less than a 3% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, 50% or more of the withdrawal that would result in an adverse resource impact but less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*ii*) There is not a zone C withdrawal for a cold-transitional river system.

(*iii*) For a cool river system, as follows:

(A) For a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For cool small rivers, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For cool large rivers, a 10% or more but less than a 12% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(*iv*) For warm river systems, as follows:

(A) For warm streams, a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For warm small rivers and warm large rivers, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(ww) "Zone D withdrawal" means, beginning February 1, 2009, a withdrawal that is likely to cause an adverse resource impact.

(2) For purposes of determining baseline capacity, a person who replaces his or her surface water withdrawal capacity with the same amount of groundwater withdrawal capacity from the drainage area of the same stream reach may retain the baseline capacity established under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 179, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32702 Legislative findings and declarations; authority.

Sec. 32702. (1) The legislature finds and declares that:

(a) A diversion of water out of the basin of the Great Lakes may impair or destroy the Great Lakes. The legislature further finds that a limitation on such diversions is authorized by and is consistent with the mandate of section 52 of article IV of the state constitution of 1963 that the legislature provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.

(b) Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support the state's opposition to diversion of waters of the Great Lakes basin and to provide a source of information on water use to protect Michigan's rights when proposed water losses affect the level, flow, use, or quality of waters of the Great Lakes basin.

(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces

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of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future interbasin diversions and consumptive uses of waters of the Great Lakes basin may have significant adverse impacts upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

(i) The waters of the Great Lakes basin are capable of concurrently serving multiple uses, and such multiple uses of water resources for municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem and other purposes are encouraged, recognizing that such uses are interdependent and must be balanced.

(j) The waters of the Great Lakes basin are interconnected and part of a single hydrologic system.

(2) The legislature has the authority under sections 51 and 52 of article IV of the state constitution of 1963 to regulate the withdrawal and uses of the waters of the state, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the state from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or arbitrary governmental action and the taking of property without just compensation. This authority extends to all waters within the territorial boundaries of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

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324.32703 Diversion of waters prohibited.

Sec. 32703. Subject to section 32704, a diversion of the waters of the state out of the Great Lakes basin is prohibited.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32703a Diversion; authorization; conditions.

Sec. 32703a. (1) If the prohibition in section 32703 is determined to be invalid, the waters of the state shall not be diverted unless authorized by law.

(2) When considering whether to grant legislative approval for a diversion, the legislature shall consider sections 51 and 52 of article IV of the state constitution of 1963 and whether the project serves a public purpose, whether the project will result in no material harm to the waters of the state, the public trust, or related purposes, and whether the project would result in any improvement to the waters of the state or the water dependent natural resources of the state.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

Popular name: Act 451

Popular name: NREPA

324.32704 Applicability of MCL 324.32703.

Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32704a Diversion; proposal; comment period; notification; waiver.

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Sec. 32704a. The governor shall establish a public comment period with regard to a proposal subject to 42 USC 1962d-20 to divert waters of the Great Lakes basin outside of the Great Lakes basin and shall notify the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment of his or her receipt of the proposal. The governor may waive the comment period under this section if he or she determines that it is necessary to take immediate action to provide humanitarian relief or firefighting capabilities.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

Popular name: Act 451

Popular name: NREPA

324.32705 Registration of withdrawal; use of assessment tool; exception; agricultural purpose; form; calculating total amount of existing or proposed withdrawal; aggregate information; duration of valid registration.

Sec. 32705. (1) Except as otherwise provided in this section, the owner of real property who intends to develop capacity on that property to make a new or increased large quantity withdrawal from the waters of this state shall register the withdrawal with the department after using the assessment tool, if required under this part, and prior to beginning that withdrawal. A registration under this section may be made using the online registration process.

(2) The following persons are not required to register under this section:

(a) Subject to subdivision (c), a person who has previously registered for that property under this part or the owner of real property containing the capacity to make a withdrawal that was previously requested under this part, unless the property owner develops new or increased withdrawal capacity on the property of an additional 100,000 gallons of water per day from the waters of the state.

(b) A community supply required to obtain a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(c) A person required to obtain a permit under section 32723.

(d) The owner of a noncommercial well located on the following residential property:

(*i*) Single-family residential property unless that well is a lake augmentation well.

(*ii*) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

(3) Subsection (1) does not limit a property owner's ability to withdraw water from a test well prior to registration if the test well is constructed in association with the development of new or increased withdrawal capacity and used only to evaluate the development of new or increased withdrawal capacity.

(4) A registration under this section by the owner of a farm in which the withdrawal is intended for an agricultural purpose, including irrigation for an agricultural purpose, may be submitted to the department of agriculture instead of the department.

(5) A registration submitted under this section that is not submitted via the online registration process shall be on a form provided by the department or the department of agriculture, as appropriate.

(6) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.

(7) The department shall aggregate information received by the state related to large quantity withdrawal capacities within the state and reported large quantity withdrawals in the state.

(8) Unless a property owner develops the capacity to make the new or increased large quantity withdrawal within 18 months after the property owner registers under subsection (1), the registration is no longer valid.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32706 Development of internet-based online registration process; registration; required statement and supporting documentation.

Sec. 32706. (1) Not later than 1 year after the effective date of the amendatory act that amended this section, the department shall develop and implement an internet-based online registration process that may be used for registrations under section 32705. The online registration process shall be designed to work in conjunction with the assessment tool.

(2) Each registration under this part shall include both of the following:

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(a) A statement and supporting documentation that includes all of the following:

(*i*) The place and source of the proposed withdrawal.

(*ii*) The location of any discharge or return flow associated with the proposed withdrawal.

(*iii*) The location and nature of the proposed water use.

(*iv*) The capacity of the equipment used for making the proposed withdrawal.

(*v*) The estimated average annual and monthly volumes and rate of the proposed withdrawal.

(*vi*) The estimated average annual and monthly volumes and rates of consumptive use from the proposed withdrawal.

(b) Beginning 1 year after the effective date of the amendatory act that added this subdivision, for a new or increased large quantity withdrawal from a stream or river or groundwater, the determination from the use of the assessment tool under section 32706b or the determination from a site-specific review, as appropriate.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32706a Internet-based water withdrawal assessment tool; implementation; determination of proposed zone withdrawal; entering and printing data; working in conjunction with online registration process; technical modifications; redesignation of stream or river; report.

Sec. 32706a. (1) On October 1, 2008, the department shall make available for testing and evaluation an internet-based water withdrawal assessment tool based upon the recommendations of the former groundwater conservation advisory council and the requirements of this part. The assessment tool shall contain a flow-based safety factor. Beginning 1 year after the effective date of the amendatory act that added this section, the department shall implement the assessment tool.

(2) The assessment tool shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a proposed withdrawal is likely to cause an adverse resource impact based upon whether the proposed withdrawal is from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The assessment tool shall account for impacts due to cumulative withdrawals as provided for in section 32706e. The assessment tool shall also distinguish the impact of a proposed withdrawal based upon whether the proposed withdrawal is from a stream, a small river, or a large river, subject to the following:

(a) Cool streams and warm streams with less than 3 square miles of drainage area shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(b) Cool streams and warm streams with less than 20 square miles of drainage area and less than 1 cubic foot per second of index flow shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(c) Cool streams and warm streams with a drainage area of more than 3 square miles but less than 6 square miles shall be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

(3) The assessment tool shall allow the user to enter into fields the following data related to a proposed withdrawal:

(a) The capacity of the equipment used for making the withdrawal.

(b) The location of the withdrawal.

(c) The withdrawal source, whether surface water or groundwater.

(d) If the source of the withdrawal is groundwater, whether the source of the withdrawal is a glacial stratum or bedrock.

(e) The depth of the withdrawal if from groundwater.

(f) The amount and rate of water to be withdrawn.

(g) Whether the withdrawal will be intermittent.

(4) The assessment tool shall contain a print function that allows the user, upon receipt of the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

(5) The assessment tool shall work in conjunction with the online registration process and shall also allow operation independent of the online registration process.

(6) On an ongoing basis, the department shall add verified data to the assessment tool's database from reports submitted under sections 32707, water use conservation plans submitted under section 32708, and permits issued under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and other sources

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of data regarding the waters of the state. Additionally, the department shall make technical modifications to the assessment tool related to considerations of temperature, hydrology, and stream or river flow based upon a scientific methodology adopted by order of the commission.

(7) If a person disagrees with the designation of a particular stream or river as a cold river system, a cold-transitional river system, a cool river system, or a warm river system for use in the assessment tool or otherwise under this part, the person may petition for a redesignation of that stream or river. The petition shall be submitted to the commission for its review and determination.

(8) The department shall report annually to the standing committees of the legislature with jurisdiction primarily pertaining to natural resources and the environment on the implementation of the assessment tool and this part. This report shall include, but is not limited to, all of the following:

(a) The number of zone C withdrawal site-specific reviews requested by applicants each 12 months after the effective date of the implementation of the assessment tool under section 32706a.

(b) The number of zone C withdrawal site-specific review determinations that resulted in changes from zone C to zone B and the number of changes from zone C to zone A.

(c) The number of zone C withdrawal site-specific review determinations that result in a zone D withdrawal determination.

(d) The number of site-specific review determinations where the department failed to meet statutory timelines.

(e) The number of registered assessment tool determinations for each zone.

(f) The number of voluntary requests for site-specific reviews that were submitted to the department and whether the department failed to meet statutory timelines on these site-specific reviews.

(g) The number of registrations submitted to the department under this part.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32706b Utilization of assessment tool; request for site-specific review; designation of proposed withdrawal; registration; rerun of assessment tool; correction of data.

Sec. 32706b. (1) Beginning on the effective date of the implementation of the assessment tool under section 32706a, prior to registering a new or increased large quantity withdrawal under section 32705 for a proposed withdrawal from a stream or river, or from groundwater, the property owner proposing to make the withdrawal shall utilize the assessment tool by entering the data related to the proposed withdrawal into the assessment tool. However, a person who intends to make a new or increased large quantity withdrawal for the purpose of dewatering a mine that has a permit under part 31 and is not regulated under part 631, 632, or 637 may choose to submit a request for a site-specific review rather than utilize the assessment tool.

(2) Upon entry of the relevant data under subsection (1), the assessment tool shall indicate to the user whether or not the proposed withdrawal is likely to cause an adverse resource impact and whether the proposed withdrawal falls into the category of zone A, zone B, zone C, or zone D.

(3) If the assessment tool designates a proposed withdrawal as a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system, the property owner may register the withdrawal and proceed to make the withdrawal.

(4) If the assessment tool designates a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner shall not register the withdrawal or make the withdrawal except in accordance with section 32706c.

(5) After a property owner registers a withdrawal, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were entered into the assessment tool, the property owner shall rerun the assessment tool and shall enter the corrected data into the assessment tool. The property owner shall notify the department of the corrected data and the corrected results from the assessment tool. If the corrected data do not change the determination of the assessment tool, the property owner may proceed with the withdrawal. If the corrected data change the determination from the assessment tool, the property owner shall proceed under the provisions of this part related to the corrected assessment tool determination.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32706c Request for site-specific review; analysis; supporting evidence; conditions;

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form; information to be included; completion of review by department; withdrawals; registration; corrected data; disclosure under freedom of information act; definitions.

Sec. 32706c. (1) If the assessment tool determines that a proposed withdrawal with a capacity of 1,000,000 gallons of water or less per day from the waters of the state to supply a common distribution system is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner may submit to the department the information described in section 32706a(3) and either of the following:

(a) An analysis of the proposed withdrawal by a professional hydrologist or hydrogeologist calculating the streamflow depletion of the proposed withdrawal. The analysis shall be based on an aquifer performance test, streamflow depletion calculations, and geological data consisting of at least 1 of the following, which shall be included with the analysis:

(*i*) Evidence the proposed withdrawal is in the water management unit or units that were part of a regional or watershed based study of water use impacts accepted by the department under this part. The evidence must include an affidavit by the property owner that the proposed withdrawal is located in a river system and aquifer included in the study, and records of applicable data collected in the study.

(*ii*) A hydrogeologic analysis of the water management unit or units that will potentially be affected by the proposed withdrawal, incorporating data from well logs, gamma ray logs, surficial maps of the glacial geology, geologic cross sections, and any other available hydrogeologic data.

(b) An analysis by a professional hydrologist or hydrogeologist of a proposed withdrawal from an aquifer separated from streams by bedrock, calculating streamflow depletion of the proposed withdrawal as described in this subdivision by providing hydrogeologic data demonstrating the bedrock transmissivity for the formation or relying on published estimates of transmissivity for the bedrock formation.

(2) Within 20 working days after the department's actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1), the department shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and shall provide to the property owner written notification of its determination. However, if upon a preliminary review of the analysis and supporting evidence and data the department determines that the proposed withdrawal will cause a rejection only under subdivision (d)(*iv*), the department may, within the first 20 working days after actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1), provide written notification to the property owner that up to 5 additional working days are needed for confirmation. If the department does not provide written notification stating a need for up to 5 additional working days or if the department cites any other reason under subdivision (d) for rejection, it must make its determination and provide to the property owner written notification of its determination within 20 working days after actual receipt of the analysis and supporting evidence and data related to the proposed withdrawal under subsection (1). The department's determination is subject to the following:

(a) If the department fails to provide written notification to the property owner within the time period required under this subsection, the property owner may register the withdrawal and proceed with the withdrawal.

(b) If the department determines that the proposed withdrawal is a zone A or a zone B withdrawal, the property owner may register the withdrawal and may proceed with the withdrawal.

(c) If the department determines that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable. A property owner proceeding under this subdivision shall provide 5 sets of water level recovery measurements, as described in an aquifer performance test, taken after pumping between June and October within 2 years after the production well is put in service. The department shall not require submission of additional information or data from a property owner proceeding under this subdivision.

(d) If the department determines that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless the property owner applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section, or unless it is authorized under subsection (4). In addition to the written notification of its determination under this subsection, if the department determines that the proposed withdrawal is a zone D withdrawal, the department shall include documentation demonstrating that the proposed water withdrawal is likely to cause an adverse resource impact. The documentation shall include 1 or more of the following:

(*i*) Identification of specific errors in data collection performed by the professional hydrologist or

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hydrogeologist that render the analysis of the proposed withdrawal invalid.

(*ii*) A statement that the professional hydrologist or hydrogeologist used an inapplicable model to analyze the proposed withdrawal, with an explanation including both why the model selected for analysis was inapplicable for the proposed withdrawal and an analysis using an applicable model that shows the proposed withdrawal is likely to cause an adverse resource impact.

(*iii*) Identification of specific errors in the model analysis performed by the professional hydrologist or hydrogeologist that render the analysis of the proposed withdrawal invalid.

(*iv*) The cumulative streamflow depletion estimated for all the registered water withdrawals in an impacted watershed management area is likely to cause an adverse resource impact. The cumulative streamflow depletion calculation shall account for reevaluation of previously registered water withdrawals in the affected water management units using the Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion.

(3) After a property owner registers a withdrawal pursuant to subsection (2), if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated, the property owner shall notify the department of the corrected data and the department shall confirm its determination under subsection (2). If the corrected data do not change the determination, the property owner may proceed with the withdrawal. If the corrected data change the determination, the property owner shall proceed under the provisions of this part related to the corrected determination.

(4) If a proposed withdrawal is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, and a property owner does not submit any of the information described in subsection (1) or the department determines under subsection (2) that the proposed withdrawal is a zone D withdrawal, the property owner may request a site-specific review. A request for a site-specific review shall be submitted to the department in a form required by the department and shall include all of the following:

(a) The information described in section 32706a(3).

(b) The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the proposed withdrawal.

(c) If the amount and rate of the proposed withdrawal will have seasonal fluctuations, the relevant information related to the seasonal use of the proposed withdrawal.

(d) A description of how the water will be used and the location, amount, and rate of any return flow.

(e) Any other information the property owner would like the department to consider in making its determination under this section.

(5) Upon receipt of a request for a site-specific review under subsection (4), the department shall consider the information submitted and shall consider the actual stream or river flow data of any affected stream reach. The department shall also apply the drainage area integration standards provided in section 32706a(2)(a), (b), and (c), if applicable, and account for cumulative withdrawals as provided for in section 32706e. The department shall not rely on the assessment tool's determination in making its determination under a site-specific review. The department may calculate streamflow depletion using Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion. The calculation of streamflow depletion may also be conducted on existing withdrawals in the same water management unit or units as the proposed withdrawal if applicable data are available. This data may be used to provide additional evidence as needed to demonstrate whether a proposed withdrawal is likely to cause an adverse resource impact.

(6) The department shall complete a site-specific review within 10 working days of submittal of a request for a site-specific review. If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone A or a zone B withdrawal, the department shall provide written notification to the property owner and the property owner may register the withdrawal and may proceed with the withdrawal.

(7) Subject to subsection (8), if the department determines in conducting a site-specific review that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable.

(8) Except for withdrawals exempt from obtaining a water withdrawal permit under section 32723, if a site-specific review determines that a proposed withdrawal is a zone C withdrawal with capacity in excess of 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system, the person proposing the withdrawal shall not register the withdrawal and shall not proceed with making the withdrawal unless the person obtains a water withdrawal permit under section 32723.

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(9) If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless he or she applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section.

(10) After a property owner registers a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated in the site-specific review, the property owner shall notify the department of the corrected data and the department shall confirm its determination under the site-specific review. If the corrected data do not change the determination under the site-specific review, the property owner may proceed with the withdrawal. If the corrected data change the determination under the site-specific review, the property owner shall proceed under the provisions of this part related to the corrected determination.

(11) Nothing in this section alters any requirement to disclose information or any exemption from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, as otherwise provided under sections 32707(6) and 32708(4).

(12) As used in this part:

(a) "Aquifer performance test" means a controlled field test in which all of the following are done:

(*i*) At least 1 monitoring well is installed. The monitoring well must be installed in the same aquifer and screened at or near the same depth as the production well, and be located at a distance of 1 to 5 times the thickness of the aquifer from the proposed production well. A nearby existing well may be used as a monitoring well for the test instead if it meets all the monitoring well requirements.

(*ii*) Static water level elevation measurements are taken at 1-minute intervals for 24 hours before the pumping portion of the test to an accuracy of 0.05 feet.

(*iii*) Pumping is conducted at a rate at or above the desired production rate for the duration of the test and metered or periodically measured to ensure consistency of rate.

(*iv*) The pumping portion of the test is conducted for a period of 24 hours in confined aquifers or 72 hours in unconfined aquifers, during which drawdown measurements are taken at 1-minute intervals to an accuracy of 0.05 feet.

(*v*) After completion of the pumping period, measurements of water level recovery are taken at 1-minute intervals for 24 hours to an accuracy of 0.05 feet.

(*vi*) An analysis is conducted to determine, at a minimum, the aquifer hydraulic characteristics of transmissivity and storage coefficient employing the methods of Cooper and Jacob, 1946; Theis, 1935; Hantush and Jacob, 1955; Hantush and Jacob, 1960; Hantush and Jacob, 1961; Neuman, 1972; Neuman, 1974; or Hunt and Scott, 2007.

(b) "Cooper and Jacob, 1946" means Cooper and Jacob, 1946: "A Generalized Graphical Method for Evaluating Formation Constants and Summarizing Well-Field History".

(c) "Hantush and Jacob, 1955" means Hantush and Jacob, 1955: "Non-Steady Radial Flow in an Infinite Leaky Aquifer".

(d) "Hantush and Jacob, 1960" means Hantush and Jacob, 1960: "Modification of the Theory of Leaky Aquifers".

(e) "Hantush and Jacob, 1961" means Hantush and Jacob, 1961: "Aquifer Tests on Partially Penetrating Wells".

(f) "Hunt, 1999" means Hunt, 1999: "Unsteady Stream Depletion from Ground Water Pumping".

(g) "Hunt, 2003" means Hunt, 2003: "Unsteady Stream Depletion When Pumping from Semiconfined Aquifer".

(h) "Hunt and Scott, 2007" means Hunt and Scott, 2007: "Flow to a Well in a Two-Aquifer System".

(i) "Neuman, 1972" means Neuman, 1972: "Theory of Flow in Unconfined Aquifers Considering Delayed Gravity Response of the Water Table".

(j) "Neuman, 1974" means Neuman, 1974: "Effect of Partial Penetration on Flow in Unconfined Aquifers Considering Delayed Gravity Response".

(k) "Professional hydrologist or hydrogeologist" means an individual holding a license or registration from any state as a professional hydrologist, hydrogeologist, or geologist, or a current certification as a professional geologist by the American Institute of Professional Geology.

(*l*) "Streamflow depletion calculation" means an evaluation of the potential streamflow depletion in which all of the following are done:

(*i*) The streambed conductance of the potentially impacted streams shall be measured in-situ using slug testing, seepage meter testing, or both.

(*ii*) An aquifer performance test representing the proposed withdrawal location has been completed.

(*iii*) An analysis shall be conducted to calculate streamflow depletion using the applicable method of Hunt,

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1999; Hunt, 2003; Ward and Lough, 2011; or a similar peer-reviewed model that assesses potential stream depletion. The analysis may also be conducted on existing withdrawals in the same water management unit or units as the proposed withdrawal if applicable data are available. This may be used to provide additional evidence as needed to demonstrate a proposed withdrawal is unlikely to cause an adverse resource impact.

(m) "Theis, 1935" means Theis, 1935: "The Relation Between the Lowering of the Piezometric Surface and the Rate and Duration of Discharge of a Well Using Groundwater Storage".

(n) "Ward and Lough, 2011" means Ward and Lough, 2011: "Stream Depletion from Pumping a Semiconfined Aquifer in a Two-Layer Leaky Aquifer System".

History: Add. 2008, Act 181, Imd. Eff. July 9, 2008;—Am. 2018, Act 209, Eff. June 22, 2018.

Popular name: Act 451

Popular name: NREPA

324.32706d Collection of stream or river flow measurements by persons other than department; development and use of protocol; training program.

Sec. 32706d. (1) The department shall develop a protocol for the collection of stream or river flow measurements by persons other than the department for use by the department in the administration of this part. The protocol may specify a minimum number of measurements, stream or river flow and weather conditions when the measurements are to be made, and any other conditions necessary to ensure the adequacy and quality of the measurements. The protocol shall ensure that stream or river flow measurements collected for this purpose meet the same data quality standards as stream or river flow measurements collected by the United States geological survey. The department shall consult with the United States geological survey and other recognized scientific experts in developing this protocol.

(2) The department may use stream or river flow data collected using the protocol under subsection (1) in conducting site-specific reviews, in making water withdrawal permit decisions under section 32723, in issuing permits under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, in updating the water withdrawal assessment tool as appropriate, or in other actions requiring an evaluation of stream or river flow.

(3) The department may establish a program to train and certify individuals in the collection of stream or river flow measurements. The department shall charge a fee sufficient to reimburse the department for the cost of a program developed under this subsection. The department may enter into a cooperative agreement with the United States geological survey to provide training and certification under this section.

History: Add. 2008, Act 181, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32706e Cumulative withdrawals; determination of adverse impact.

Sec. 32706e. The department shall determine whether an adverse resource impact has occurred under this part and whether a withdrawal is a zone A, a zone B, a zone C, or a zone D withdrawal under this part based upon cumulative withdrawals affecting the same stream reach. In accounting for these cumulative withdrawals, the department shall apply both of the following:

(a) Beginning on October 1, 2008, the department shall begin water withdrawal accounting for cumulative withdrawals affecting the same stream reach.

(b) Beginning on February 1, 2009, the department shall adjust the water withdrawal accounting under subdivision (a) such that if cumulative withdrawals beginning on October 1, 2008 have removed a sufficient flow of water from a stream reach to change the zone classification of that stream reach, the department shall reset the water withdrawal accounting benchmark for that stream reach as follows:

(*i*) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone B withdrawal, the accounting benchmark shall be reset at the beginning point for zone B withdrawals.

(*ii*) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone C withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals.

(*iii*) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone D withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals. If there is not a zone C for the classification of the stream reach, the water withdrawal accounting benchmark shall be reset at the beginning point for zone B withdrawals.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

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324.32707 Reporting requirements; forms; water use reporting fees.

Sec. 32707. (1) Except as provided in subsections (2) and (3), a person who is required to register under section 32705 or holds a permit under section 32723 shall file a report annually with the department on a form provided by the department. Reports shall be submitted by April 1 of each year. Except as provided in subsection (8), reports shall include the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis.

(b) The source or sources of the water supply.

(c) The use or uses of the water withdrawn.

(d) The amount of consumptive use of water withdrawn.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(g) Other information specified by rule of the department.

(h) At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if applicable, a description of the system capacity.

(i) At the discretion of the registrant or permit holder, the amount of water returned to the source watershed.

(j) Beginning in 2010, an acknowledgment that the registrant has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, satisfies the reporting requirements of this section.

(3) The owner of a farm who reports water use under section 32708 is not required to report under subsection (1).

(4) The department may, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).

(5) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.

(6) Information described in section 32701(d)(*i*)(B) that is provided to the department under subsection (1)(h) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed unless the department determines that the withdrawal is causing an adverse resource impact.

(7) Except as otherwise provided in this subsection, a person who files an annual report or notification under this section shall annually remit a water use reporting fee of $200.00 to the department. Water use reporting fees shall be remitted to the department in conjunction with the annual report or notification submitted under this section. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. A water use reporting fee is not required for a report or notification related to a farm that reports withdrawals under section 32708 or for a report under subsection (8).

(8) A person who withdraws less than 1,500,000 gallons of water in any year shall indicate this fact on the reporting form and is not required to provide information under subsection (1)(a) or (d). A person who withdraws less than 1,500,000 gallons of water in any year is not required to pay the water use reporting fee under subsection (7).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32708 Water use conservation plan; formula or model to estimate consumptive use of withdrawals for agricultural purposes; inclusion of information in statewide groundwater inventory and map; disclosure.

Sec. 32708. (1) The owner of a farm that is registered under this part who makes a withdrawal for an agricultural purpose, including irrigation for an agricultural purpose, may report the water use on the farm by annually submitting to the department of agriculture a water use conservation plan. Conservation plans shall

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be submitted by April 1 of each year. The water use conservation plan shall include, but need not be limited to, all of the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.

(b) The type of crop irrigated, if applicable.

(c) The acreage of each irrigated crop, if applicable.

(d) The source or sources of the water supply.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the water withdrawn is not used entirely for irrigation, the use or uses of the water withdrawn.

(g) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(h) Applicable water conservation practices and an implementation plan for those practices. Beginning in 2010, the water use conservation plan shall include an acknowledgment that the owner of the farm has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(i) At the discretion of the registrant, the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity.

(2) The department and the department of agriculture in consultation with Michigan state university shall validate and use a formula or model to estimate the consumptive use of withdrawals made for agricultural purposes consistent with the objectives of section 32707.

(3) Subject to subsection (4), information provided to the department of agriculture under subsection (1)(a), (d), and (e) shall be forwarded to the department for inclusion in the statewide groundwater inventory and map prepared under section 32802.

(4) Information provided under subsection (1)(a), (e), and (i) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department, the department of agriculture, or the department of natural resources unless the department determines that the withdrawal is causing an adverse resource impact.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

Popular name: Act 451

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324.32708a Generic water conservation measures; preparation; posting on website; submission of water conservation measures by water user's sector; acceptance by department; water conservation measures for agricultural purposes; report; notification of zone C withdrawal; definitions.

Sec. 32708a.

(1) Not later than March 31, 2009, the department shall prepare, based upon recommendations from representative trade associations, a set of generic water conservation measures that are applicable to all persons making large quantity withdrawals. The department shall post these generic water conservation measures on its website.

(2) Subject to subsection (3), each water user's sector may prepare and submit to the department water conservation measures that are applicable for water users within its sector. Upon receipt of water conservation measures from a water user's sector, the department shall review the water conservation measures, and, if the department determines that those water conservation measures are appropriate for that sector, the department shall accept those water conservation measures. Upon acceptance, the department shall post the water conservation measures on its website and those water conservation measures shall supersede the generic water conservation measures prepared under subsection (1) for water users within that sector. If the department determines that the water conservation measures are not appropriate for the water user's sector, the department shall provide comments to the water user's sector and suggestions that would result in the department's acceptance of the water conservation measures. A water user's sector may resubmit water conservation measures in response to the department's comments and suggestions.

(3) Water conservation measures for agricultural purposes shall be developed and approved by the commission of agriculture and shall be updated annually as part of the process for review and update of generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474. Water conservation measures approved under this subsection shall be posted on the

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department of agriculture's website and shall be forwarded to the department for posting on its website.

(4) By April 1, 2010, the department shall report to the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment on the status of the preparation and acceptance of water user sector conservation measures.

(5) If the department receives a registration for a zone C withdrawal, the department shall notify all other registrants and permit holders whose withdrawals are from the same water source as the zone C withdrawal of the status of the water source. Upon receipt of notification under this subsection, each of these registrants and permit holders shall review and consider implementing the applicable water conservation measures prepared under this section.

(6) Compliance with water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law.

(7) As used in this section:

(a) "Permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) "Water conservation measures" means environmentally sound and economically feasible water conservation measures.

History: Add. 2006, Act 35, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32709 Informational materials.

Sec. 32709. The department may contract for the preparation and distribution of informational materials to members of the public related to any of the following:

(a) The purposes, benefits, and requirements of this part.

(b) Information on complying with the registration requirement of this part and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2008, Act 182, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32710 Duties of department; electronic mail notification of withdrawals; formation of water resources assessment and education committee.

Sec. 32710. (1) The department shall do all of the following:

(a) Cooperate with the states and provinces in the Great Lakes region to develop and maintain a common base of information on the use and management of the water of the Great Lakes basin and to establish systematic arrangements for the exchange of this information.

(b) Collect and maintain information regarding the locations, types, and quantities of water use, including water withdrawals and consumptive uses, in a form that the department determines is comparable to the form used by other states and provinces in the Great Lakes region.

(c) Collect, maintain, and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region.

(d) Cooperate with other states and provinces in the Great Lakes region in developing a long-range plan for developing, conserving, and managing the water of the Great Lakes basin.

(e) Participate in the development of a regional consultation procedure for use in exchanging information on the effects of proposed water withdrawals and consumptive uses from the Great Lakes basin.

(f) Develop procedures for notifying water users and potential water users of the requirements of this part.

(g) If the department receives a registration for a zone B or a zone C withdrawal or issues a permit under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, for a zone B or zone C withdrawal, place a notice on the department's website and notify by electronic mail all of the following that have requested under subsection (2) an electronic mail notification:

(*i*) Conservation districts.

(*ii*) Regional planning agencies.

(*iii*) Watershed management planning committees.

(*iv*) Storm water committees established under part 31.

(*v*) The chief elected officials of the local units of government.

(*vi*) Community supplies owned by political subdivisions.

(*vii*) A water users committee established under section 32725.

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(2) An organization listed in subsection (1)(g) that wishes to receive an electronic mail notification of withdrawals described in subsection (1)(g) that are located in its vicinity shall provide to the department an electronic mail address.

(3) Upon receipt of notification from the department under subsection (1)(g), the notified entities may form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The department shall assist in the formation of these water resources assessment and education committees and may provide them with technical information regarding water use and capacity within their vicinity, aggregated at the stream reach level. Meetings of water resources assessment and education committees shall be open to the general public. A water resources assessment and education committee formed under this subsection may provide educational materials and recommendations regarding any of the following:

(a) Long-term water resources planning.

(b) Use of conservation measures.

(c) Drought management activities.

(d) Other topics related to water use as identified by the committee.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2008, Act 184, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32711, 324.32712 Repealed. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

Compiler's note: The repealed sections pertained to an exemption from water withdrawal reporting requirements for a public water supply and the prohibition on the department to mandate a permit or regulate water withdrawal.

Popular name: Act 451

Popular name: NREPA

324.32713 Civil action; commencement; civil fine; recovery of surveillance and enforcement costs.

Sec. 32713. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a rule promulgated under this part, including falsifying a record submitted under this part. An action under this section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), the court may impose a civil fine as follows:

(a) For a person who knowingly violates section 32721 or 32723 or the terms of a permit issued under section 32723, a civil fine of not more than $10,000.00 per day of violation.

(b) For all other violations of this part, a civil fine of not more than $1,000.00.

(3) In addition to a fine imposed under subsection (2), the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 186, Eff. Oct. 7, 2008.

Popular name: Act 451

Popular name: NREPA

324.32714 Water use protection fund; creation; disposition of assets; investments; money remaining in fund; expenditures.

Sec. 32714. (1) The water use protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund, and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse into the general fund.

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

(a) The implementation and administration of this part.

(b) The preparation of the statewide groundwater inventory and map under section 32802.

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(c) The expenses of the groundwater conservation advisory council under part 328.

(d) The implementation and administration of part 317.

History: Add. 1996, Act 434, Imd. Eff. Dec. 2, 1996;—Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

Popular name: Act 451

Popular name: NREPA

324.32721 Large quantity withdrawal; prohibition; exception; certain large quantity withdrawals subject to definition of adverse resource impact existing on February 28, 2006.

Sec. 32721. (1) A person shall not make a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact.

(2) This section does not apply to the baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal that existed on February 28, 2006.

(3) This section does not apply to a withdrawal that is utilized solely for fire suppression.

(4) A person who developed the capacity to make a new or increased large quantity withdrawal on or after February 28, 2006 and prior to February 1, 2009 or who received a determination under former section 32724 during that period is subject to the definition of adverse resource impact that existed on February 28, 2006.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32722 Presumption.

Sec. 32722. (1) For new or increased large quantity withdrawals developed on or after February 28, 2006 and prior to the implementation date of the assessment tool under section 32706a, there is a rebuttable presumption that the withdrawal will not cause an adverse resource impact in violation of section 32721 under either of the following circumstances:

(a) The location of the withdrawal is more than 1,320 feet from the banks of an affected stream reach.

(b) The withdrawal depth of the well is at least 150 feet.

(2) If the assessment tool determines that a withdrawal is a zone A or a zone B withdrawal and is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis for the assessment tool's determination will not cause an adverse resource impact in violation of section 32721.

(3) If the department determines, based upon a site-specific review, or in connection with a permit or approval issued under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, that a withdrawal is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis of the department's determination will not cause an adverse resource impact in violation of section 32721.

(4) A presumption under this section is not valid if the capacity to make the withdrawal is not developed within 18 months after the withdrawal is registered. A presumption under this section may be rebutted by a preponderance of evidence that a new or increased large quantity withdrawal from the waters of the state has caused or is likely to cause an adverse resource impact.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32723 Water withdrawal permit; persons required to obtain; application; fee; issuance; conditions; revocation; petition for contested case hearing; exemptions from permit requirements.

Sec. 32723. (1) Except as provided in subsection (13), the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who proposes to develop withdrawal capacity to make a new withdrawal of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(b) A person who proposes to develop increased withdrawal capacity beyond baseline capacity of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(c) A person who proposes to develop withdrawal capacity to make a new or increased large quantity withdrawal of more than 1,000,000 gallons of water per day from the waters of the state to supply a common

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distribution system that a site-specific review has determined is a zone C withdrawal.

(d) A person who proposes to develop a new or increased withdrawal capacity that will result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

(2) A person shall apply for a water withdrawal permit under this section by submitting an application to the department containing the information described in section 32706c(1)(a) to (e) and an evaluation of existing hydrological and hydrogeological conditions. If the applicant proposes to undertake a preventative measure along with the withdrawal, the property owner shall provide the department with a detailed description of the preventative measure and relevant information as to how the preventative measure will be implemented. In addition, the applicant shall submit an application fee in the amount of $2,000.00. The department shall transmit application fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(3) An application submitted under subsection (2) is considered to be administratively complete effective 30 days after it is received by the department unless the department notifies the applicant, in writing, during this 30-day period that the application is not administratively complete or that the fee required to be accompanied with the application has not been paid. If the department determines that the application is not administratively complete, the notification shall specify the information necessary to make the application administratively complete. If the department notifies the applicant as provided in this subsection, the 30-day period is tolled until the applicant submits to the department the specified information or fee.

(4) The department shall provide public notification of its receipt of applications under this section and shall provide a public comment period of not less than 45 days before applications are acted upon under subsection (5).

(5) The department shall make a decision whether to grant or deny a water withdrawal permit under this section within 120 days of receipt of an administratively complete application.

(6) The department shall issue a water withdrawal permit under subsection (1)(a), (b), or (c) if all of the following conditions are met:

(a) All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.

(b) The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative adverse resource impacts under this subdivision shall be evaluated by the department based upon available information gathered by the department.

(c) Subject to section 32726, the withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, state, and federal laws as well as all legally binding regional interstate and international agreements, including the boundary waters treaty of 1909.

(d) The proposed use is reasonable under common law principles of water law in Michigan.

(e) For permit applications received on or after January 1, 2009, the applicant has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector under section 32708a or has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

(f) The department determines that the proposed withdrawal will not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

(7) The department shall issue a water withdrawal permit under subsection (1)(d) if the transfer complies with section 4.9 of the compact.

(8) In reviewing a proposed preventative measure, the department shall consider the effect of the preventative measure on preventing an adverse resource impact by diminishing the effect of the withdrawal on stream or river flow or the temperature regime of the stream or river. If the department approves a preventative measure in conjunction with a water withdrawal permit under this section, the department shall enter into a legally enforceable implementation schedule for completion of the preventative measure.

(9) A proposed use for which a water withdrawal permit is issued under this section shall be considered to satisfy the requirements of section 4.11 of the compact.

(10) A permit issued under part 31 pursuant to 33 USC 1326(b) shall be considered sufficient to demonstrate that there will not be an adverse resource impact under section 32721 and satisfies the conditions for a water withdrawal permit under this section. Upon receipt of an application under this section and evidence that the applicant holds a part 31 permit described in this subsection, the department shall grant the applicant a water withdrawal permit under this subsection.

(11) The department may revoke a water withdrawal permit issued under this section if the department determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

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(12) A person who is aggrieved by a determination of the department under this section related to a water withdrawal permit may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the water withdrawal permit may be rejected by the department as being untimely. The department shall issue a final decision on a petition for a contested case hearing within 6 months after receiving the petition. A determination, action, or inaction by the department following a contested case hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(13) The following withdrawals are not required to obtain a water withdrawal permit under this section:

(a) A withdrawal by a community supply that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) Seasonal withdrawals of not more than 2,000,000 gallons of water per day average in any consecutive 90-day period to supply a common distribution system unless the withdrawals result in a diversion.

(c) A withdrawal for the production of bottled drinking water approved by the department under a water source review conducted under section 17 of the safe drinking water act, 1976 PA 399, MCL 325.1017.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 180, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32724 324.32724 Repealed. 2008, Act 181, Imd. Eff. July 9, 2008.

Compiler's note: The repealed section pertained to persons exempt from permit requirements.

Popular name: Act 451

Popular name: NREPA

324.32725 Water users committee; establishment; purpose; composition; notice of withdrawal; occurrence of adverse resource impacts; recommended solution proposed by department; order by director; petition; "unverified petition" and "permit holders" defined.

Sec. 32725. (1) All persons making large quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A water users committee may be composed of all registrants, permit holders, and local government officials within the watershed. Upon establishment of a water users committee, a participating local government official may create an ad hoc subcommittee of residents of that local unit of government to provide that local government official with information and advice on water resources, water use, and trends in water use within the local unit of government.

(2) If the department authorizes a zone B withdrawal in a cold-transitional river system or a zone C withdrawal, the department shall notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority under this section to establish a water users committee and may provide them technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

(3) If the department determines by reasonable scientifically-based evidence that adverse resource impacts are occurring or are likely to occur from 1 or more large quantity withdrawals, the department shall notify the water users committee in the watershed or shall convene a meeting of all registrants and permit holders within the watershed and shall attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

(4) If, within 30 days after the department has notified the water users committee or convened the meeting under subsection (3), the registrants and permit holders are not able to voluntarily agree to measures that would prevent adverse resource impacts, the department may propose a solution that the department believes would equitably resolve the situation and prevent adverse resource impacts. The recommended solution is not binding on any of the parties.

(5) The director may, without a prior hearing, order permit holders to immediately restrict a withdrawal if the director determines by clear and convincing scientific evidence that there is a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall specify the date on which the withdrawal must be restricted and the date on which it may be resumed. An order issued under this section shall remain in force and effect for not more than 30 days and may be renewed for an additional 30 days if the director determines by clear and convincing scientific evidence that conditions continue to pose a substantial and imminent threat that the withdrawal is causing or is likely to cause an

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adverse resource impact. The order shall notify the person that the person may request a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearing shall be held within 10 business days following the request, unless the permittee requests a later date. As an alternative to requesting a contested case hearing, a person subject to an order under this section may seek judicial review of the order as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(6) A registrant or permit holder may submit a petition to the director alleging that adverse resource impacts are occurring or are likely to occur from 1 or more water withdrawals. The director shall either investigate the petition or forward the petition to the director of the department of agriculture if the water withdrawals are from an agricultural well. The petition shall be in writing and shall include all the information requested by the director or the director of the department of agriculture, as appropriate.

(7) A person who submits more than 2 unverified petitions under this section within 1 year may be ordered by the director to pay for the full costs of investigating any third or subsequent unverified petition. As used in this subsection, "unverified petition" means a petition in response to which the director determines that there is not reasonable evidence to suspect adverse resource impacts.

(8) As used in this section, "permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

History: Add. 2006, Act 36, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 184, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32726 Local ordinance.

Sec. 32726. Except as authorized by the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

Popular name: Act 451

Popular name: NREPA

324.32727 Exemptions; compilation and sharing of certain data.

Sec. 32727. (1) The following withdrawals are exempt from the requirements of this part unless they result in a diversion:

(a) A withdrawal undertaken as part of an activity authorized by the department under part 111, 115, 201, 213, or 615.

(b) A withdrawal undertaken as part of an activity authorized by the United States environmental protection agency under either of the following:

(*i*) The comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510.

(*ii*) The resource conservation and recovery act of 1976, Public Law 94-580.

(c) A withdrawal that is undertaken for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

(d) A hydroelectric facility authorized under section 12 of chapter 264 of the act of March 3, 1909, commonly known as the river and harbor act of 1909, 35 Stat. 821.

(e) A hydroelectric facility authorized under section 1075(c) of the intermodal surface transportation efficiency act of 1991, Public Law 102-240.

(f) A hydroelectric facility authorized under Public Law 85, chapter 1368, 34 Stat. 102.

(g) Removal of water from an artificially created surface water body that has as its primary source of water either of the following:

(*i*) A withdrawal that is not a new or increased large quantity withdrawal.

(*ii*) A registered new or increased large quantity withdrawal that has been determined by the assessment tool, a site-specific review, or a permit issued under section 32723 to be a withdrawal that is not likely to cause an adverse resource impact.

(h) A withdrawal from a noncommercial well located on the following residential property:

(*i*) Single-family residential property unless that well is a lake augmentation well.

(*ii*) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

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(2) The director of the department shall ensure that data in the possession of the state related to withdrawals that are not regulated under this part are compiled and shared with departmental personnel responsible for implementing this part.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 183, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32728 Construction and scope of act; rules.

Sec. 32728. (1) This part shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or property rights or the applicability of other laws providing for the protection of natural resources or the environment or limit, waive, cede, or grant any rights or interest that the state possesses as sovereign for the people of the state in the waters or natural resources of the state.

(2) This part does not limit the right of a person whose interests have been or will be adversely affected to institute proceedings in circuit court against any person to protect such interests.

(3) Except as specifically authorized under this part, this part does not authorize the promulgation of rules.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 185, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32729 Fees not authorized; exception.

Sec. 32729. Except as specifically authorized under this part, this part does not authorize the assessment of fees.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

324.32730 Compact; implementation.

Sec. 32730. The compact shall be implemented as follows:

(a) Except as specifically provided in this part, water withdrawals originating within this state shall be regulated exclusively under this part.

(b) A proposed use for which a water withdrawal permit is issued under section 32723 shall be considered to satisfy the requirements of section 4.11 of the compact.

(c) The 2008 amendments to this part, the 2008 amendments to part 328, and the 2008 amendments to sections 4 and 17 of the safe drinking water act, 1976 PA 399, MCL 325.1004 and 325.1017, are intended to fully implement the compact in this state. For purposes of section 9.1 of the compact, all acts and parts of acts that were inconsistent with the compact on the effective date of the amendatory act that added this section have been modified, as necessary, to be consistent with the compact, and therefore section 9.1 does not repeal any acts or parts of acts.

(d) If the council proposes a revision to the standard of review and decision under section 3.1 and 3.3 of the compact, the governor shall notify the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment. A regulation adopted pursuant to section 3.1 and 3.3 of the compact that amends the standard of review and decision shall not be deemed duly adopted in accordance with the statutory authorities and applicable procedures of this state unless the regulation is approved by the legislature and enacted into law.

History: Add. 2008, Act 190, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

PART 328
AQUIFER PROTECTION

324.32801 Definitions.

Sec. 32801. As used in this part:

(a) "Annex 2001" means the Great Lakes charter annex signed by the governors and premiers of the Great Lakes region on June 18, 2001.

(b) "Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding groundwater to a water well in sufficient quantities that can be withdrawn.

(c) "Assessment tool" means the water withdrawal assessment tool provided for in part 327.

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(d) "Base flow" means groundwater discharge to rivers and streams.

(e) "Conflict areas" means an aquifer or a portion of an aquifer in which the department has determined that there is reasonable, scientifically based evidence of a pattern of groundwater withdrawal conflicts or a single extended groundwater withdrawal conflict.

(f) "Council" means the water use advisory council created under section 32803.

(g) "Department" means the department of environmental quality.

(h) "Director" means the director of the department.

(i) "Groundwater" means water below the land surface in a zone of saturation.

(j) "Groundwater withdrawal conflict" means the failure of an existing water well that was constructed in compliance with part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771, to furnish its normal supply of groundwater because of a progressive decline of the static water level within the aquifer due to the withdrawal of groundwater from the aquifer by a high-capacity well or sump, as determined based on reasonable, scientifically based evidence.

(k) "Static water level" means the distance between the ground surface and the water level within a well that is not being pumped.

History: Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2008, Act 189, Imd. Eff. July 9, 2008;—Am. 2018, Act 509, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.32802 Groundwater data; collection and compilation into statewide groundwater inventory and map; update; availability to public.

Sec. 32802. (1) Not later than 2 years after the effective date of the amendatory act that added this section, the department shall collect and compile groundwater data into a statewide groundwater inventory and map. The department shall use existing sources of groundwater data where those data are available, including information reported under part 327, information reported under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and information collected under the groundwater dispute resolution program created in part 317, but may supplement those data through additional studies if those data are incomplete. Following completion of the initial statewide groundwater inventory and map, the department shall update the statewide groundwater inventory and map as new information becomes available. The department shall include data on all of the following in the statewide groundwater inventory and map:

(a) Location and water yielding capabilities of aquifers in the state.

(b) Aquifer recharge rates in the state, if available to the department.

(c) Static water levels of groundwater in the state.

(d) Base flow of rivers and streams in the state.

(e) Conflict areas in the state.

(f) Surface waters, including designated trout lakes and streams, and groundwater dependent natural resources, that are identified on the natural features inventory.

(g) The location and pumping capacity of all of the following:

(*i*) Industrial or processing facilities registered under section 32705 that withdraw groundwater.

(*ii*) Irrigation facilities registered under section 32705 that withdraw groundwater.

(*iii*) Public water supply systems that have the capacity to withdraw over 100,000 gallons of groundwater per day average in any consecutive 30-day period.

(h) Aggregate agricultural water use and consumptive use, by township.

(2) The department shall make the statewide groundwater inventory and map available to the general public.

History: Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003.

Popular name: Act 451

Popular name: NREPA

324.32803 Water use advisory council; creation; qualifications and appointment of members; appointment of technical advisors; duties of council; report.

Sec. 32803. (1) The water use advisory council is created within the department. The council shall consist of all of the following members:

(a) Four individuals appointed by the senate majority leader as follows:

(*i*) One individual representing business and manufacturing interests.

(*ii*) One individual representing public utilities.

(*iii*) One individual representing a statewide angler association.

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(*iv*) One individual representing a statewide agricultural organization.

(b) Four individuals appointed by the speaker of the house of representatives as follows:

(*i*) One individual representing registered well drilling contractors with hydrology and drilling field experience.

(*ii*) One individual representing local units of government.

(*iii*) One individual representing agricultural irrigators.

(*iv*) One individual representing wetlands conservation organizations.

(c) Five individuals appointed by the governor as follows:

(*i*) One individual representing municipal water suppliers.

(*ii*) One individual representing a statewide conservation organization.

(*iii*) One individual representing a statewide riparian landowners association.

(*iv*) One individual representing professional hydrologists and hydrogeologists, as defined in section 32706c, with hydrogeology field experience.

(*v*) One individual representing Indian tribes.

(d) Four individuals appointed by the director as follows:

(*i*) One individual representing nonagriculture irrigators.

(*ii*) One individual representing the aggregate industry.

(*iii*) One individual representing environmental organizations.

(*iv*) One individual representing local watershed councils.

(e) Six individuals serving as ex officio, nonvoting members, representing the department, the department of agriculture and rural development, the department of natural resources, the office of the Great Lakes, the Michigan geological survey, and the attorney general.

(2) The appointments to the council under subsection (1) shall be made not later than 60 days after the effective date of the 2018 amendatory act that amended this section. The individual making the appointment under subsection (1) shall give consideration and deference to individuals currently serving on the department's water use advisory council.

(3) An individual appointed to the council shall serve for a term of 4 years, and may be reappointed. Individuals appointed to the council serve without compensation. A vacancy on the council shall be filled in the same manner as the original appointment.

(4) The council may elect co-chairs, form committees, set meeting schedules and work plans to address the council's responsibilities as provided by law, address charges from the department, and establish priorities. Members of the council may participate in any committees created by the council. Members of the council shall strive to make recommendations by consensus vote, and may submit opposition statements that must be included in the council's report under subsection (7).

(5) The council may appoint technical advisors with specific scientific, technical, legal, and similar expertise relevant to the council's responsibilities. Technical advisors may participate in any council meetings, committees, or subgroups created by the council but shall not vote on recommendations made by the council to the department or legislature under subsection (7).

(6) A meeting of the council must be held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

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

(a) Make recommendations to the department, the department of agriculture and rural development, the department of natural resources, and the legislature on the implementation of part 327, including all of the following:

(*i*) Strategies for collection, verification, and use of data, including geology, aquifer characteristics, and groundwater and surface water hydrology.

(*ii*) Improvement, verification, regionalization, and integration of models used in the water withdrawal assessment tool and site-specific review, including models developed by private and public entities, organizations, or individuals.

(*iii*) Identification of research, public-private partnerships, training, and changes to the water withdrawal assessment tool needed to improve the department's ability to implement part 327 and to improve the water withdrawal assessment process under part 327.

(b) Study and make recommendations, as needed or as requested by the relevant standing committees of the legislature or the department, regarding the development and refinement of the water withdrawal assessment process under part 327.

(c) Make recommendations on reconciling conflicts in state laws related to the use of the waters of the state.

(d) At least every 2 years after the effective date of the 2018 amendatory act that amended this section,

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provide a report to the senate majority leader, the speaker of the house of representatives, and the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment that makes recommendations regarding how the water withdrawal assessment process under part 327 could be improved. The report shall contain specific recommendations on the use of the assessment tool, the site-specific review process, the permitting process, the staffing, budgetary, software, and other resources required by the departments to successfully implement part 327, and any other measure that the council determines would improve the water withdrawal assessment process under part 327.

History: Add. 2003, Act 148, Imd. Eff. Aug. 8, 2003;—Am. 2006, Act 34, Imd. Eff. Feb. 28, 2006;—Am. 2008, Act 189, Imd. Eff. July 9, 2008;—Am. 2018, Act 509, Imd. Eff. Dec. 28, 2018.

Compiler's note: For abolishment of the groundwater conservation advisory council and transfer of its powers and duties to the department of environmental quality, see E.R.O. No. 2007-5, compiled at MCL 324.99907.

For transfer of powers and duties of water resources conservation advisory council from department of natural resources to natural resources commission, and abolishment of the advisory council, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

Popular name: Act 451

Popular name: NREPA

PART 329
GREAT LAKES PROTECTION

324.32901 Definitions.

Sec. 32901. As used in this part:

(a) "Board" means the Michigan Great Lakes protection fund technical advisory board created in section 32908.

(b) "Fund" means the Michigan Great Lakes protection fund created in section 32905.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For the type III transfer of the office of the great lakes within the department of natural resources to the new office of the great lakes within the department of environment, great lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

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324.32902 Legislative findings.

Sec. 32902. The legislature finds that:

(a) The Great Lakes are a valuable resource providing an important source of food, fresh water, recreation, beauty, and enjoyment.

(b) The ecosystems of the Great Lakes, which provide sustenance and recreation to the people of this state and other states and nations, have been severely affected and are continually threatened by the introduction of foreign species into the lakes and by pollution of the Great Lakes waters.

(c) Careful management of the Great Lakes will permit the rehabilitation and protection of the lakes, their waters, and their ecosystems, while continuing and expanding their use for industry, food production, transportation, and recreation.

(d) This state, because it is surrounded by the Great Lakes and because the Great Lakes contribute in innumerable ways to the state's economy, recreation, and way of life, must act as a steward for the protection, enhancement, and wise utilization of the Great Lakes.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32903 Office of the Great Lakes; establishment; purpose; duties.

Sec. 32903. The office of the Great Lakes is established within the department of natural resources and is designated as the lead agency within state government for the development of policies, programs, and procedures to protect, enhance, and manage the Great Lakes. The office of the Great Lakes shall do all of the following:

(a) Advise the governor, the director, and the directors of other appropriate state departments on appropriate steps needed to coordinate state policy and state actions on the Great Lakes and to implement an ecosystem approach to this state's Great Lakes policies.

(b) Provide representation at the national level for this state's Great Lakes interests.

(c) Represent this state before Great Lakes policy development bodies such as the international joint commission.

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(d) Ensure adequate research and staff work to maintain this state's regional leadership in resolving Great Lakes problems.

(e) Promote the wise use of the ports of this state and Great Lakes water transportation.

(f) Promote the Great Lakes tourism industry.

(g) Advocate the interests of this state in actions, policies, and legislation affecting the Great Lakes proposed in other Great Lakes states, Canadian provinces, Great Lakes policy development bodies, and the federal government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For transfer of the office of the Great Lakes from department of environmental quality to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of office of Great Lakes from department of natural resources and environment to department of environmental quality, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

For transfer of office of the Great Lakes from department of environmental quality to department of natural resources, see E.R.O. No. 2017-5, compiled at MCL 324.99922.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

324.32904 Reports, analysis, and inventory to be submitted by governor to legislature.

Sec. 32904. The governor, with the assistance of the office of the Great Lakes, shall prepare and submit to the legislature the following:

(a) An annual report, submitted by December 31 of each year, on the state of the Great Lakes.

(b) A comprehensive analysis, in the governor's annual budget message, of all the funds from state and federal sources that the governor recommends be expended for the protection, enhancement, and management of the Great Lakes.

(c) A comprehensive inventory, submitted by August 2, 1986, of all state, federal, interstate, and international agencies, programs, and projects associated with the protection, enhancement, and management of the Great Lakes.

(d) A report, submitted by February 2, 1987, on the status of the agreement between the United States and Canada known as the Great Lakes water quality agreement of 1978, and recommending steps to be taken to execute the state's obligations in that agreement and to promote the state's role and objectives in the renegotiation of that agreement.

(e) A report, submitted by August 2, 1987, listing the priority research needs with respect to the Great Lakes.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

324.32905 Michigan Great Lakes protection fund; creation; sources of money; investment of fund; crediting interest and earnings to fund; money not to revert to general fund; annual report.

Sec. 32905. (1) The Michigan Great Lakes protection fund is created in the state treasury.

(2) The fund shall receive money from the following sources:

(a) Money received by the state from the Great Lakes protection fund authorized in part 331.

(b) Gifts and contributions to the fund.

(c) Other sources provided by law.

(3) The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

(4) The state treasurer shall annually report to the board and the department on the amount of money in the fund.

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History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32906 State treasurer to credit money to fund.

Sec. 32906. The state treasurer shall credit all money the state receives from the Great Lakes protection fund as authorized in part 331 to the fund.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32907 Use of money in fund.

Sec. 32907. Money in the fund shall be used only for programs or grants to supplement existing Great Lakes research and protection programs consistent with the purposes of part 331 including, but not limited to, the following:

(a) Research on the economic, environmental, and human health effects of contamination in the Great Lakes.

(b) The collection and analysis of data on the Great Lakes.

(c) The development of new or improved environmental cleanup technologies.

(d) Research to assess the effectiveness of pollution control policies.

(e) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(f) Other programs consistent with the purposes of part 331.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32908 Michigan Great Lakes protection fund technical advisory board; creation; appointment, qualifications, and terms of members; removal of member; election of chairperson; meetings; public notice; member not to receive grant.

Sec. 32908. (1) The Michigan Great Lakes protection fund technical advisory board is created within the department. The board shall consist of the following members:

(a) An individual appointed by the department who has knowledge or expertise in Great Lakes water issues.

(b) An individual appointed by the department who has knowledge or expertise in the effects of air pollution on the Great Lakes.

(c) Six individuals appointed by the department as follows:

(*i*) One individual from an environmental organization.

(*ii*) One individual from a business or industry related to the Great Lakes.

(*iii*) One individual who has performed research related to the water quality of the Great Lakes.

(*iv*) One individual who has performed research related to public health concerns associated with the Great Lakes.

(*v*) One individual who has knowledge or expertise in the demographics of the Great Lakes region or the climatology of the Great Lakes region.

(*vi*) One individual who represents the hazardous substance research center.

(2) A member of the board shall serve for a term of 3 years. However, of the first appointments to the board by the department under subsection (1)(c), 3 shall be appointed to serve 2-year terms and 3 shall be appointed to serve 1-year terms.

(3) A member of the board may be removed for inefficiency, neglect of duty, or malfeasance in office by the body that appointed him or her.

(4) The board shall elect a chairperson from among its members. The board shall meet at the call of the chairperson at least annually. A meeting of the board shall be held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(5) A member of the board shall not receive a grant under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.32909 Duties of board generally.

Sec. 32909. The board shall do both of the following:

(a) Advise this state's representatives on the board of directors of the Great Lakes protection fund authorized in part 331.

(b) Consult with the technical advisory committee of the Great Lakes protection fund.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32910 Programs and grants to be funded; advice to department; compilation and submission of list; statement of guidelines; appropriation.

Sec. 32910. (1) The board shall annually advise the department on the programs or grants that should be funded under this part and shall submit a list of these programs or grants to the department for its approval. This list shall be compiled in order of priority. Upon approval of the list, the department shall submit the list to the legislature in January of each year.

(2) The department and the board shall include with each list submitted under subsection (1) a statement of the guidelines used in listing and assigning the priority of the proposed programs or grants.

(3) The legislature shall annually appropriate money from the Michigan Great Lakes protection fund and from the Great Lakes spill prevention research fund for programs or grants pursuant to this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.32911 Great Lakes spill prevention research fund; creation; appropriations, gifts, and contributions; investments; disposition of interest and earnings; reversions; use of money; definitions.

Sec. 32911. (1) The Great Lakes spill prevention research fund is created in the state treasury.

(2) The research fund may receive money as appropriated by the legislature, from gifts and contributions to the fund, and as otherwise provided by law. The state treasurer shall direct the investment of the research fund. Interest and earnings of the research fund shall be credited to the research fund. Money in the research fund at the close of the fiscal year shall remain in the research fund and shall not revert to the general fund.

(3) Money in the research fund shall be used only for the following purposes:

(a) Research into the prevention of spills during the transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(b) Research on selected pollution incidents to determine causal factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes.

(c) Research into a total systems approach to address Great Lakes pollution problems that include human factors and socio-technical considerations.

(d) Research into the role of human factors in spills of hazardous materials on the Great Lakes and major tributaries of the Great Lakes, including human factors in pollution alarms, pollution monitoring systems, and instrumentation.

(e) Research into the deployment of existing and new technology related to transportation of hazardous materials on the Great Lakes and major tributaries of the Great Lakes and the appropriate allocation of functions between individuals and machines.

(f) Research to determine the relative contribution of spills of hazardous materials into the Great Lakes and major tributaries of the Great Lakes to the total pollution of the Great Lakes basin.

(g) Research on and modeling of spills to determine their effect on water intakes.

(4) As used in this section:

(a) "Great Lakes" means the Great Lakes and their connecting waterways over which the state has jurisdiction.

(b) "Hazardous material" means a chemical or other material which is or may become injurious to the public health, safety, or welfare, or to the environment.

(c) "Major tributary of the Great Lakes" means a river that flows into the Great Lakes that has a drainage area in excess of 700 square miles or has a drainage area that contains a population of 1,000,000 or more individuals.

(d) "Research fund" means the Great Lakes spill prevention research fund created in subsection (1).

(e) "Spill" means any leaking, pumping, pouring, emptying, emitting, discharging, escaping, leaching, or

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disposing of a hazardous material in a quantity which is or may become injurious to the public health, safety, or welfare or to the environment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 331
REGIONAL GREAT LAKES PROTECTION FUND

324.33101 Definitions.

Sec. 33101. As used in this part:

(a) "Agreement" means the document entitled "Great Lakes protection fund agreement" signed by the governor on February 26, 1989.

(b) "Great Lakes protection fund" or "fund" means the Great Lakes protection fund approved in the agreement.

(c) "Great Lakes toxic substance control agreement" means the document entitled "Great Lakes toxic substance control agreement" signed by the governor on May 21, 1986.

(d) "Great Lakes water quality agreement of 1978" means the "Great Lakes water quality agreement of 1978" between the United States and Canada signed November 22, 1978, including the phosphorous load reduction supplement signed October 7, 1983, and as amended by protocol signed November 18, 1987.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

324.33102 Legislative findings and declaration.

Sec. 33102. The legislature finds and declares that:

(a) The Great Lakes protection fund has been created to advance the principal goals and objectives of the Great Lakes toxic substances control agreement and the Great Lakes water quality agreement of 1978.

(b) The Great Lakes protection fund has been created to finance and support state and regional projects for the protection, research, and cleanup of the Great Lakes.

(c) There is a need for a stable and predictable funding commitment for the preservation of Great Lakes water quality.

(d) The protection of the Great Lakes is of paramount public concern in the interest of the health, safety, and general welfare of the citizens of the state and the participation of the state in the Great Lakes protection fund will assist in achieving this protection.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

324.33103 Great Lakes protection fund; formation and operation; agreement; appointment of members to board of directors.

Sec. 33103. (1) The governor, on behalf of this state, may take all steps necessary to join with other states in the formation and operation of the Great Lakes protection fund provided that the fund does all of the following:

(a) Provides for the fund to receive money from each of the participating states and to expend only the interest and earnings of the fund for the purposes of subdivision (b).

(b) Provides for the funding of activities related to Great Lakes research and protection including but not limited to:

(*i*) Research on the economic, environmental, and human health effects of contamination in the Great

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Lakes.

(*ii*) The collection and analysis of data on the Great Lakes.

(*iii*) The development of new or improved environmental cleanup technologies.

(*iv*) Research to assess the effectiveness of pollution control policies.

(*v*) The assessment of the health of Great Lakes fish, waterfowl, and other organisms.

(2) The governor shall do all things necessary to implement the agreement.

(3) The governor shall appoint members to the board of directors of the Great Lakes protection fund in accordance with the agreement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of the Office of the Great Lakes, including but not limited to the authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

For the type III transfer of the office of the Great Lakes within the department of natural resources to the new office of the Great Lakes within the department of environment, Great Lakes, and energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

Popular name: Act 451

Popular name: NREPA

324.33104 Withdrawal of participation in fund; dissolution of fund and distribution of assets; agreement to extend deadline.

Sec. 33104. (1) If, by February 28, 1991, fewer than 4 states whose representatives signed the agreement have enacted legislation and provided funding as required by the agreement to participate in the fund, the governor shall take all steps necessary to withdraw the participation of the state in the fund, to dissolve the fund, and to equitably distribute the assets of the fund.

(2) If 2/3 of the states whose representatives signed the agreement agree to extend the deadline provided in subsection (1), the governor shall not withdraw the participation of the state during the extension period.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33105 Delegation of responsibilities.

Sec. 33105. The governor may delegate his or her responsibilities under this part to the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 333
COASTAL BEACH EROSION

324.33301 Coastal beach erosion or protection; expenditures authorized.

Sec. 33301. Any political subdivision of the state, by resolution of its legislative body adopted by a majority vote of its full membership, is authorized to make expenditures from its general fund, contingent fund, or from any special funds available for the purposes described in this section, to undertake, either independently or in cooperation with any other political subdivision or with any agency of the state or federal government, investigative or study functions related to coastal beach erosion or protection.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 337
FLOOD, DRAINAGE, AND BEACH EROSION CONTROL

324.33701 Flood, drainage, or beach erosion control; lands; acquisition; contract with federal government; terms.

Sec. 33701. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of the members of the county board of commissioners, is authorized to acquire any and all interests in lands necessary to any flood control, drainage, or beach erosion control project and is authorized to contract with the federal government or any agency of the federal government, whereby the federal government or agency will pay the whole or a

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part of the cost of flood control, drainage control, or beach erosion control projects or will perform the whole or any part of the work connected with the project, or both, which contract may include any specific terms, including, but not limited to, the holding and saving of the United States free from damages due to the construction works, required by act of congress or federal regulation as a condition for participation on the part of the federal government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.33702 Relief from assessment.

Sec. 33702. A contract entered into under section 33701 may provide that payments made or work done by the federal government or agency of the federal government relieves it in whole or in part from assessment for the cost of the project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.33703 Contract; provisions.

Sec. 33703. A contract entered into under section 33701 may provide for the granting, without cost to the United States, of all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided by act of congress or federal regulation. Such a contract may also provide for the maintenance and operation of the project after completion in accordance with regulations prescribed by the secretary of the army.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33704 Expenditures from municipal or county funds.

Sec. 33704. The township board of any township, the legislative body of any incorporated city or incorporated village, or the county board of commissioners of any county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized in connection with any contract entered into under section 33701 to make expenditures from its general fund, contingent fund or from any special funds available.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33705 Assurances to federal government.

Sec. 33705. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, pursuant to a resolution adopted by a 2/3 vote of its members, is authorized to grant to the United States assurances as are required by federal flood control acts, by amendments to those acts, and by such other federal acts existing, or which may be enacted in the future, authorizing expenditure of federal funds for flood control, drainage, or beach erosion control projects.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33706 Joint contracts for implementation of part.

Sec. 33706. The township board of any township, the legislative body of any incorporated city or incorporated village, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may provide for joint participation and a joint contract or contracts in

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implementing this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33707 Contracts; borrowing funds from federal government.

Sec. 33707. Contracts entered into under this part involving the financial ability of the incorporated city, incorporated village, township, or county to meet all obligations and liabilities imposed by the contracts as to cost of lands, easements, rights-of-way, construction, or the maintenance and operation costs of the project or projects are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Any incorporated city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners, authorized to contract with the federal government or any agency of the federal government under this part, may borrow funds from the federal government or any agency of the federal government to implement this part, which borrowings shall be subject to existing statutes and charter limitations that are applicable to the borrowing. The revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, applies to those borrowings.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 219, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.33708 Interest in lands; easement for flood plain; acquisition; declared public purposes.

Sec. 33708. For the accomplishment of the purposes of this part, any city, incorporated village, township, or board of county road commissioners may acquire any interest in land necessary to any flood control, drainage, or beach erosion control project, or to preserve flood plains, by purchase, gift, exchange, condemnation, or otherwise. If an easement to preserve a flood plain is acquired, the acquiring agency, in any instrument conveying such right or in any eminent domain proceedings instituted therefor, may acquire the further right to use the land subject to the easement, or any part of the easement, for any other public purpose, but only to the extent that the other uses are specifically enumerated in the conveyance or eminent domain proceedings. The legislative body of any city, incorporated village, or township, or the board of county road commissioners of any county when directed by the county board of commissioners of the county, may institute and prosecute proceedings under the power of eminent domain in accordance with the laws of the state or any local charter relative to condemnation. Two or more adjoining cities, villages, or townships are authorized to maintain proceedings in accordance with the procedure prescribed by Act No. 81 of the Public Acts of 1925, being sections 123.71 to 123.73 of the Michigan Compiled Laws. The purposes contemplated by this part are declared to be public purposes within the meaning of the constitution, state laws, and charters relative to the power of eminent domain.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 339
CONTROL OF CERTAIN STATE LANDS

324.33901 Unpatented overflowed lands, made lands, and Lake St. Clair bottomlands; authority of department.

Sec. 33901. All of the unpatented overflowed lands, made lands, and Lake St. Clair bottomlands belonging to this state or held in trust by this state as provided in this part shall be held, leased, disposed of by deed, and controlled by the department in the manner provided in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33902 Powers of department to convey lands; dedication of unleased lands for recreational uses.

Sec. 33902. The department shall not deed or convey the lands described in section 33901 except as provided in sections 33903 to 33911. The department may dedicate unleased lands of the character described in section 33901 for public hunting, fishing, and other recreational uses.

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History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33903 Conveyance of certain leased lands by department; rights reserved.

Sec. 33903. The department, upon application of any person who, on the effective date of the 2006 amendatory act that amended this section, holds a lease of any portion or portions of land from this state pursuant to former 1913 PA 326, or this part, or upon application by that person's heirs or assigns, shall execute and deliver to the applicant or his or her heirs or assigns a deed conveying to him or her all of the right, title, and interest of this state in and to the lands described in this section, subject to the paramount rights of navigation, hunting, and fishing that remain in the general public and in the government as now existing and recognized by law. The deeds shall contain the provisions as to residency and club use and occupancy as now set forth in all leases previously granted under former 1913 PA 326. An application under this section must be filed at least 1 year before the date on which the lease expires.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33904 Deeds; prerequisites to granting.

Sec. 33904. Before the department grants a deed, there shall be presented evidence that the applicant requesting the deed is the lessee of the land, that the land is part of the lands described in section 33903, and that all taxes on the land are paid. All property deeded under this part is thereafter subject to the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and the recording laws of this state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33905 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed section pertained to sale of leased lands in St. Clair Flats.

Popular name: Act 451

Popular name: NREPA

324.33906 St. Clair Flats lands; conflicting claims; determination; appeal.

Sec. 33906. In all cases where there is a contest or conflict between applicants for a deed to the same piece or parcel of land growing out of errors of description, overlapping descriptions, prior leases, or otherwise, the conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner provided for in taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a deed under this part, whether in case of conflict, contest, or otherwise, shall have a right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of the courts shall be in accordance with the statutes providing for appeals from district courts of this state, or to take such other action at law or in equity as provided by the statutes and laws of the state of Michigan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33907 St. Clair Flats area; rules.

Sec. 33907. The department may promulgate and enforce rules as it considers necessary for the preservation and use of the paramount right of navigation, hunting, and fishing covering the entire St. Clair Flats area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33908 Receipts; credit of consideration and fees to land and water management permit fee fund.

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Sec. 33908. The consideration received for the execution and delivery of deeds under this part and all fees collected under this part shall be forwarded to the state treasurer and credited to the land and water management permit fee fund created in section 30113.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33909 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed section pertained to conveyance and sale of lots in St. Clair Flats.

Popular name: Act 451

Popular name: NREPA

324.33910 Water highway lands; lease; conveyance to contiguous lessees.

Sec. 33910. The department, in its discretion, upon application of a person holding a lease or deed under this part to any lands lying contiguous to a water highway as surveyed under former 1899 PA 175, if it is determined that the water highway is no longer needed for navigation, ingress, and egress to surveyed lots, or for any public use, whether dredged or not, may execute and deliver to the applicant a deed subject to all the applicable conditions and provisions of sections 33902 to 33908, to all of the right, title, and interest of the state in and to 1/2 of the surveyed width of that portion of the water highway as lies contiguous to land held under lease or deed by the applicant.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33911 Granting deeds to certain property; requirements.

Sec. 33911. (1) Upon application of a person that holds a lease from this state of any portion or portions of the real property described in this part, the department may execute and deliver to the applicant a deed conveying all of the right, title, and interest of this state in and to that real property, subject to the paramount rights of hunting, fishing, and navigation, which remain in the general public and in the government as recognized by law. The deeds shall contain the same provisions as to use and occupancy now set forth in all the leases previously granted under former 1913 PA 326 or under this part. The department shall not grant a deed under this part unless the lessee of the subject property agrees to cancel the lease and relinquishes all rights under the lease.

(2) The department shall not grant a deed under this part for a lot that contains a structure unless the structure and the lot subject to the deed, including seawalls where present, comply with the applicable township building code and county and state sanitation codes and part 325, and the structure is located on a parcel of land that is adequately protected from erosion.

(3) A deed granted under this part shall not include a portion of the original lease that is submerged or lies below the elevation of 575.3 International Great Lakes Datum (IGLD 1985). The department of environmental quality shall perform a site inspection and set stakes, if necessary, to identify the boundaries of the area of the leased lot to be deeded. The applicant shall provide a boundary survey, completed by a professional surveyor, that delineates the area of the real property to be deeded. The state shall retain proprietary ownership in trust over the portion of the leased lot below the ordinary high-water mark of Lake St. Clair at the time of the conveyance.

(4) A deed shall not be granted under this part at less than the estimated land value of the real property as determined by the township in which the real property is located. Appraisal procedures and practices may include utilizing independent fee appraisal contractors. The appraisal shall not include improvements such as buildings, seawalls, and docks. Credit shall not be granted to the lessee for the years remaining on an unexpired lease when determining the sale value to the state. The applicant shall remit the full consideration within 1 year after being notified in writing of the selling price by the department. If the applicant does not remit the full consideration for the deed within 1 year, the department shall close the file and a new application must be submitted.

(5) If the applicant is not satisfied with the fair market value determined by the department under subsection (4), the applicant, within 30 days after receiving the determination, may submit a petition in writing to the circuit court in the thirty-first judicial circuit, and the court shall appoint an appraiser or appraisers from the department's approved listing to conduct an appraisal of the parcel. The decision of the court is final. The applicant shall pay all costs associated with this additional appraisal.

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(6) A request for a deed shall be on a form provided by the department of environmental quality and shall be accompanied by an application fee of $500.00.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33912 Rental valuation periods; determination; improvements; maximum increase; gross sum.

Sec. 33912. Whenever any person is entitled under this part to lease for the period of 99 years, the department shall divide the term of 99 years into 2 periods of 50 and 49 years each, to be known as rental valuation periods, and the consideration or rental to be paid by the lessee for the first period of 50 years is to be determined by the department at the time such lessee is adjudged entitled to the lease. At the expiration of the first period of 50 years, the department shall redetermine the rental value or consideration to be paid by the lessee for the next succeeding rental period of 49 years until the expiration of the full term of the lease. However, the department, in determining the rental value to be paid by the lessee, shall consider the value of the land only and shall not increase the rental value or consideration for any of the rental periods because of the improvements that may have been made on any of the premises by a lessee. In determining the rental value or consideration to be paid by the lessee for the second valuation period of 49 years, the department shall not increase the rental value or consideration to any sum in excess of double the rental value or consideration determined for the first valuation period of 50 years. The consideration so fixed shall, as applied to the claimants coming within the provisions of this section, be a gross sum and not an annual rental.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33913-324.33915 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed sections pertained to rental valuation periods, applications for leases, and uncontested applications.

Popular name: Act 451

Popular name: NREPA

324.33916 Former lease holder as trespasser; recovery of possession by state.

Sec. 33916. If a lease under this part expires and a deed is not issued under this part to the former lease holder, the former lease holder shall be considered to be a trespasser, and an action may be brought in the circuit court for the county in which that land is located, in the name of the people of this state, by the attorney general of this state, to recover possession of that land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33917-324.33920 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed sections pertained to form of lease, fixing rental value, occupants or claimants in possession of lands, and leasing certain lands.

Popular name: Act 451

Popular name: NREPA

324.33921 Rights of lessees subject to certain public rights.

Sec. 33921. The rights of lessees under this part shall be subject to the paramount right of navigation, hunting, and fishing, which rights are to remain in the general public and in the government as now existing and recognized by law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33922, 324.33923 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed sections pertained to possessor or occupant of lands, and application or right to lease.

Popular name: Act 451

Popular name: NREPA

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324.33924 Definitions.

Sec. 33924. As used in this part:

(a) "Department" means the department of natural resources unless expressly indicated otherwise.

(b) "Possession", "occupancy", and "improvement" include dredging or ditching, the throwing up of embankments, sheetpiling, filling in, the erection of fences, a boathouse, land made by dredging and filling, or building structures.

(c) "Person" means an individual, partnership, corporation, association, or other nongovernmental legal entity.

(d) "Well maintained" means that any structure on the land complies with township building codes and current county and state sanitation codes and part 325 and that the land is adequately protected from erosion.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33925 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed section pertained to application to lease.

Popular name: Act 451

Popular name: NREPA

324.33926 Surveys governing terms of part.

Sec. 33926. In describing the lands that may be leased under this part, the department shall be governed by maps, plats, and field notes of surveys made by the United States surveyors or by this state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33927 Ascertainment of rights by department; hearing; powers of department.

Sec. 33927. The department shall ascertain and decide upon the rights of persons claiming the benefit of this part, and it may hear and decide in a summary manner all matters respecting such applications or claims, except as otherwise provided in this part, and to that end may compel the attendance of witnesses and receive testimony by deposition or otherwise as may be produced, and determine thereon, according to equity and justice, the validity and just extent of the claim and respective rights of conflicting claimants making application for a lease. It shall cause minutes of the filing of such claims and all its proceedings to be entered in a book kept for that purpose and keep a record of the evidence from which its decisions are made, and it is authorized when it considers it necessary, or upon request of any of the claimants, to employ a stenographer to assist the department. The department may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of papers upon any hearing before the department under this part. In case of disobedience on the part of any person or persons, or willful failure to appear pursuant to any subpoena issued by the department, or upon refusal of any witnesses to testify regarding any matter pending before the department or to produce books and papers which he or she is required by the department to produce, the circuit court of any county in this state, upon the application of the department, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein, and in addition the department shall have the powers vested in the circuit court to compel witnesses to testify to any matter pending before the department, and each witness who appears before the department by its order or subpoena shall receive for his or her attendance the fees and mileage provided witnesses in civil cases in circuit courts, said fees to be paid by the party calling such witnesses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33928 Conflicting claims; determination by department; hearing; notice; depositions; appeal.

Sec. 33928. In all cases where there is a contest or conflict between applicants for a lease to the same piece or parcel of land growing out of a prior occupation or improvements, such conflicting claims shall be determined by the department at a meeting scheduled by the department after notice to each of the claimants of the time and place of hearing, and in such cases depositions may be taken by any claimant in the manner

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provided for taking depositions in the circuit courts of this state. Any party considering himself or herself aggrieved by any decision of the department refusing to grant him or her a lease under the provisions of this part, whether in case of conflict, contest, or otherwise, has the right of appeal to the circuit court for the county in which the land is situated, and the proceedings to take the appeal and the trial of the appeal in any of those courts shall be in accordance with the statutes providing for appeals from district courts of this state, or the aggrieved party may take such other action at law or in equity as provided by the statutes and laws of this state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33929 State leased lands; sale or transfer of lease; statement of purpose; approval by department; record of assignment.

Sec. 33929. (1) Each sale or transfer of a lease shall contain a specific statement of the purpose for which the property leased is to be used by the purchaser or assignee. A sale or transfer of a lease for other than club or residence purposes is not valid unless and until the sale or transfer is approved by the department of environmental quality.

(2) Before selling or transferring a property that is subject to a lease under this part, the parties involved shall apply to the department of environmental quality for approval of the transfer of the lease to the purchaser. The application shall be made on a form provided by the department of environmental quality and shall be accompanied by a fee of $250.00. Upon approval by the department of environmental quality, an assignment of lease form shall be recorded with the county register of deeds.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33930-324.33932 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed sections pertained to state leased lands and disposition of money received from leasing.

Popular name: Act 451

Popular name: NREPA

324.33933 State leased lands; taxes; assessment.

Sec. 33933. The lessee's interest in all leases made under this part shall be assessed as real estate by the assessing officer of the township, city, or village in which the lands leased may be located, and the levy and collection of taxes so assessed on said lessee's interest shall be made and collected in the same manner and subject to the law now in force for the levy and collection of taxes upon real estate, and the assessing officers in determining the value of such leasehold interest for taxation purposes shall take into consideration the value of the land together with the improvements on the land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.33934 State leased lands; tax default; procedure for payment; forfeiture of lease; co-owners; partial payment of taxes; certificate of cancellation.

Sec. 33934. (1) If default is made in the payment of taxes to the treasurer of the township, city, or village in which the lands leased are located, the same shall be returned to the county treasurer according to and subject to the provisions of law for the return and collection of unpaid taxes assessed upon real estate. The treasurer of the township, city, or village, at the same time that he or she makes returns to the county treasurer, shall make and transmit to the department a list of the lands so delinquent for taxes and the amount of taxes delinquent upon each description in the list. The county treasurer shall, at the same time he or she makes his or her return of delinquent lands to the department of treasury, make a similar return to the department of all such leasehold interests, the taxes upon which have not been collected, with a statement of the amount thereof. The county treasurer shall not receive payment of the amount of any taxes assessed upon such leasehold interests; but such taxes when returned delinquent by the township treasurer shall be payable only to the department. The department shall provide suitable books and enter in those books the description of every leasehold interest so returned and the taxes thereon. The person holding such interest in any parcel of this land may pay to the department at any time within 1 year after the same becomes a lien on the premises,

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the taxes assessed thereon, with interest at the rate of 1/2 of 1% per month or fraction thereof, with 4% as a collection fee, from the first day of March last preceding. However, if the taxes are not paid within this time period, the leasehold interest is forfeited because of the nonpayment of the taxes, and within its discretion the department may release the premises to any person for any term of years not exceeding 99 years, upon that person paying to the department all unpaid taxes on the land, together with such rental as may be determined upon under this part by the department.

(2) If the leasehold interest is owned by 2 or more persons, and any 1 or more of the persons neglect or refuse to pay his or her or their proportionate share of the taxes assessed against the leasehold at the date when the taxes become due and payable, then any 1 or more of the owners may pay his or her or their proportionate share of the taxes, and the county treasurer, in his or her return of delinquent lands to the department, shall indicate partial payments of taxes credited to the owner or owners making them. Any owner not having made payment of his or her proportionate share of the taxes may, at any time within 1 year after the taxes have become a lien on the premises, pay to the department his or her proportionate share of the taxes with interest at the rate of 1% per month or fraction thereof, from the first day of March last preceding. If the proportionate share of taxes of any such owner is not paid within this time period, the interest of the owner in the leasehold is forfeited because of the nonpayment of the taxes, and thereafter within 30 days, such of the owners as have paid their proportionate share of the taxes, upon payment to the department of the amount of the taxes remaining due with interest accrued to the date of forfeiture, shall be entitled to conveyances by the department of the interests in the leasehold that have been forfeited. The interest thus conveyed shall be allotted equally among those owners who shall pay the delinquent taxes with interest as provided in this section.

(3) If default is made by any lessee in the payment of taxes, he or she shall be notified in writing by the department at least 3 months before the date of final forfeiture of the amount due and the penalty for nonpayment and the date upon which forfeiture is to occur.

(4) Upon payment to the department of taxes and interest as provided in this section, the payment amount shall be credited to the county in which such leasehold interests were assessed, in the same manner as taxes and interest are now credited to counties on part-paid state lands.

(5) Immediately upon formal determination by the department that a lease has been forfeited under this part, a certificate of cancellation of the lease shall be executed under the seal of the department and shall be forwarded to the register of deeds of the county where the land is situated. Upon receipt of this certificate, the register of deeds shall at once cause it to be recorded in a suitable book to be provided by the register of deeds. If the lease is of record in the register of deeds, the register of deeds shall note on the lease the fact that a certificate of cancellation has been issued and shall also note the citation to the record of such certificate.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 356, Imd. Eff. May 23, 2002.

Popular name: Act 451

Popular name: NREPA

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324.33935 State leased lands; nonpayment of taxes; report.

Sec. 33935. Each county treasurer shall report to the department all descriptions of parcels of property subject to this part that have been returned for nonpayment of taxes, if those taxes have not been paid within 6 months after being returned for nonpayment of taxes. The report shall be made by the treasurer within 30 days after the 6-month period has expired. Land leased or deeded under this part that is returned to state ownership through purchase, gift, devise, lease expiration, or tax reversion shall not be re-leased or sold by the state if that land is not well maintained.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.33936-324.33939 Repealed. 2006, Act 496, Imd. Eff. Dec. 29, 2006.

Compiler's note: The repealed sections pertained to unpatented overflowed lands, supervisor of wells, removal of natural materials from or beneath Great Lakes bottomlands, and violation of MCL 324.33938.

Popular name: Act 451

Popular name: NREPA

PART 341
IRRIGATION DISTRICTS

324.34101 Irrigation districts; conditions and limitations for withdrawal of waters from Great

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Lakes; enforcement of section.

Sec. 34101. (1) This part is applicable in counties with a population of 400,000 or less to the use of water from the Great Lakes only, which for the purposes of this part include those portions of those lakes and streams tributary to the Great Lakes where the natural water levels are controlled by and at essentially the same water level as the Great Lake involved.

(2) Water shall not be withdrawn from the Great Lakes if it is being used within the confines of an irrigation district under this part which cannot reasonably be expected to benefit agricultural crops or other agricultural operations for improvement of the food supply and water shall not be withdrawn from the Great Lakes under this part at any place or at any time or in any amount or amounts for a single irrigation district or for the sum of all irrigation districts and water from the Great Lakes shall not be stored or transmitted by or for any irrigation district, authorized to be created by this part, in any manner or by any means or with the aid of any dam or other device that does 1 or more of the following:

(a) Will materially injure other users of the waters of the Great Lakes and connecting channels.

(b) Will significantly affect the levels of the Great Lakes and prejudice the state in its relations with other states bordering on the Great Lakes.

(c) Will adversely affect the state in its development and maintenance of fish and wildlife resources.

(d) Will be detrimental to the health and welfare of the people of the state.

(3) The department shall enforce and implement the conditions and limitations of this section in performing all duties placed upon it by the terms of this part, and for this purpose the department may call upon any officer, board, department, school, university, or other state institution and the officers or employees of any officer, board, department, school, university, or other state institution for assistance considered necessary to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34102 Construction of part.

Sec. 34102. This part shall be liberally construed to promote the public welfare by irrigating lands, improving the existing water supply for the lands or providing new means or methods of water supply, or constructing and completing dams, reservoirs, canals, drains, structures, mechanical devices, levees, dikes, barriers and the use of any pumping equipment, pipelines, or other works or a combination of any or all of the same specified in the petition to be utilized for the preservation or operation of any irrigation system constructed, or proposed to be constructed, for the purpose of irrigation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34103 Previously organized districts; validity, rights, privileges, and obligations; applicability of part.

Sec. 34103. This part does not affect the validity of any district organized under the laws of this state prior to July 10, 1967, or its rights in or to property, or any of its rights or privileges of any kind or nature; but the districts are subject to this part so far as practicable. In addition, this part shall not do any of the following:

(a) Affect, impair, or discharge any contract, obligations, lien, or charge for, or upon which, a district was or might become liable or chargeable if former Act No. 205 of the Public Acts of 1967 had not been passed.

(b) Affect the validity of any bonds which had been issued prior to July 10, 1967.

(c) Affect any action pending on July 10, 1967.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34104 Irrigation district as body corporate; powers; seal; condemnation.

Sec. 34104. An established irrigation district is a body corporate with power to contract, to sue and be sued, and to hold, manage, and dispose of real and personal property, in addition to any other powers conferred upon it by law, and shall continue in existence until such time as the district is dissolved by operation of law. In addition, each established irrigation district may adopt and use a corporate seal, acquire the right to use of water for irrigation purposes, under plans approved by the department, acquire sites for reservoirs and rights-of-way for drains, canals, and laterals, and exercise the right of condemnation pursuant

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to the provisions of Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or under the applicable provisions of sections 75 to 84 of the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.75 to 280.84 of the Michigan Compiled Laws, and shall be considered to be a state agency as that term is used in that act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34105 District contracts with federal government, state, and others; approval by department; state's public trust.

Sec. 34105. As used in this section, "federal government" means the United States and includes any and all agencies of the United States. The irrigation district may contract with the federal government, whereby the federal government will pay the whole or part of the cost of the project or will perform the whole or any part of the work connected with the project, which contract may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government. The irrigation district may also contract with the state or any agency of the state or with any person in respect to any matter connected with the construction, operation, or maintenance of any irrigation works or for providing new means of water supply or the improvement of the existing water supply for the lands within the irrigation district. All contracts and agreements executed under this section shall be subject to the approval of the department. Such a contract or agreement or anything in consequence of such a contract or agreement shall not in any manner infringe upon or invade the state's public trust in its waters.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34106 Grant to United States or irrigation district of right to use rights-of-way in county or intercounty drainage districts; approval; rights of private persons.

Sec. 34106. Subject to the written assignment, consent, and approval of the drain commissioner administering a county drainage district or the written assignment, consent, and approval of the drainage board of an intercounty drainage district, the county drain commissioner and the drainage board of intercounty drainage districts may grant unto the United States or to any irrigation district the right to use all the easements and rights-of-way conveyed to their respective drainage district or to any county lying wholly or in part in such districts for the construction, use, and maintenance of any county or intercounty drain by the United States or any irrigation district in connection with any irrigation project undertaken by the irrigation district, solely or in cooperation with the United States or any other federal department or agency. Private rights of persons acquired by reason of the establishment and construction of the drain or part of the drain shall not be interfered with or in any way impaired by the use of the drain for irrigation purposes within the scope of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34107 Dams for irrigation; approval.

Sec. 34107. A dam for irrigation purposes shall not be constructed unless the dam is approved in a manner provided by law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34108 Grants of federal, state, and private aid for irrigation projects.

Sec. 34108. An irrigation district may apply for and accept grants or any aid which the United States government or any agency of the United States government, the state or any of its political subdivisions, or any person may authorize to be made or given in aid of an irrigation project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34109 Irrigation districts; petitions for formulation or improvement; contents;

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circulation; signatures.

Sec. 34109. (1) Whenever a majority of freeholders owning lands in a proposed irrigation district who represent 1/3 or more of the area of lands within the district, or whenever freeholders owning lands who represent more than 1/2 the area of lands within the district, desire to provide for the irrigation of the lands; to improve the existing water supply for the lands or provide a new water supply system for the lands; to purchase, extend, operate, or maintain constructed irrigation works; or to cooperate with the United States for the assumption as principal or guarantor of indebtedness to the United States on account of district lands, they may file in the office of the county drain commissioner of the county that embraces the largest acreage of the district a petition, hereinafter referred to as the "petition", which shall include all of the following:

(a) The name of the proposed irrigation district.

(b) The necessity of the proposed work, describing the necessity.

(c) The object and purpose of the system proposed to be constructed, together with a general description of the system.

(d) A general description of the lands proposed to be included in the district, accompanying the petition shall be a preliminary engineering report on the feasibility of the project, including a report on the sufficiency of its water supply; the approximate area of irrigable land within the district, including an estimate of the cost of construction.

(e) The names of all freeholders owning lands in the proposed district, when known.

(f) Whether or not the petitioners desire and propose to cooperate with the United States.

(g) A general plea for the organization of the district.

(2) The petitions for the organization of the same district may be circulated and may be filed in more than 1 counterpart and, when filed, shall together be regarded as a single petition having as many signers as there are separate signers on the several petitions filed. All petitions for the organization of the district filed prior to the hearing on the petition shall be considered by the irrigation board the same as if filed with the first petition placed on file, and the signatures contained on those petitions shall be counted in determining whether sufficient persons have signed the petition.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34110 Irrigation districts; affidavit of signers of petitions; evidence.

Sec. 34110. The affidavit of 1 or more of the signers of the petition stating that they have examined it and are acquainted with the locality of the district and that the petition is signed by a sufficient number of persons owning lands in the district may be taken by the irrigation board as sufficient evidence of the facts stated in the petition.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34111 Irrigation districts; lands included.

Sec. 34111. The lands proposed to be included in any irrigation district need not be contiguous if the benefit of the proposed work in each part will exceed the costs of the proposed work in each part; and lands within any city, village, or township may be included within the limits of any irrigation district if the creation of the irrigation district will benefit the lands within the city, village, or township in any amount equal to or in excess of the amount of assessment for construction against the lands therein.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34112 Irrigation board; creation; membership; chairperson; availability of writings to public; minutes; records and files; member as commissioner of irrigation and public officer; presumption; contested report or action; burden of proof; exception.

Sec. 34112. (1) There is created for each irrigation district petitioned for under this part an irrigation board to consist of the drain commissioner of each county involved in the project in which the lands of the proposed irrigation district are located, the director of the department of agriculture, and the chairperson of the directors of each soil conservation district involved in the project in which the lands of the proposed irrigation district are located. The director of the department of agriculture may designate a representative from the department

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of agriculture and the chairperson of the directors of each soil conservation district may designate a representative from the directors of the soil conservation district to serve in their place as members of the irrigation board. The county drain commissioner of the county in which the largest amount of irrigation district land is contained shall serve as chairperson of the irrigation board.

(2) A writing prepared, owned, used, in the possession of, or retained by the irrigation board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The chairperson of the irrigation board shall keep minutes of the proceedings of the irrigation board, and records and files of the board shall be kept in his or her office.

(3) A member of the irrigation board shall be known as a commissioner of irrigation. A commissioner of an irrigation district is a public officer. The presumption shall be in favor of the regularity and validity of the official act of a commissioner of irrigation. When a report of the commissioners of an irrigation district or action is contested, the burden of proof shall rest upon the contestant. This subsection shall not apply to an action brought with respect to a failure to comply with Act No. 442 of the Public Acts of 1976, as prescribed in subsection (2), or a failure to comply with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34113 Commissioners of irrigation; oath of office; annual accounts.

Sec. 34113. Before entering upon their duties, commissioners shall take and subscribe the constitutional oath of office. The commissioners shall make a true account of their activities to the department at least once annually.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34114 Control over withdrawals and operations; rules; orders; expenses.

Sec. 34114. (1) The department shall maintain superintending control over withdrawals and operations of each irrigation district formed under this part and may promulgate rules to implement this authority.

(2) The department may enforce the limitations and conditions of section 34101 by order prohibiting the further withdrawal of water or by taking other action as is authorized by this part or any other act or law. Each irrigation district shall reimburse the department for any reasonable and necessary expense incurred by the department in maintaining superintending control over that district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34115 Irrigation board; conducting business at public meeting; notice; calling and notice of meetings; affidavit as proof of mailing; waiver of additional notice; quorum; adjournment; action by board; signing of orders.

Sec. 34115. (1) The business that the irrigation board may perform shall be conducted at a public meeting of the irrigation board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A meeting of the irrigation board may be called by the chairperson or by 2 members of the irrigation board. In addition to the notice prescribed in subsection (1), notice setting forth the time and place of the meeting shall be sent by certified mail to each member. That notice shall be mailed not less than 5 days before the meeting. The affidavit of the chairperson as to this mailing shall be conclusive proof of the mailing.

(3) The notice of a meeting prescribed in subsection (2) is not required if all members are present. A member of the board may waive the additional mailed notice of a meeting, either before or after the meeting.

(4) A majority of the members of the board constitutes a quorum for the transaction of business, but a lesser number may adjourn the meeting. Unless otherwise provided in this part, an action shall not be taken by the board except by a majority vote of the board's members. The adjournment of the hearing need not be advertised. Each order issued by the irrigation board shall be signed by the chairperson.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.34116 Proceedings upon petition for establishment of irrigation districts; meetings; filing and examination of petition; report; expenses and compensation.

Sec. 34116. (1) Upon receipt of a petition for the establishment of an irrigation district, the county drain commissioner shall call the first meeting of the irrigation board. A copy of the petition and duplicates of all maps and other papers filed with the petition shall be filed with the department at least 4 weeks before the date set for the public hearing on the petition. The department shall examine the petition, maps, and other papers and, if it considers it necessary, examine the proposed district, the irrigation works proposed to be constructed, or the location of the irrigation works to be constructed, and prepare a report covering those features of the proposed irrigation project that relate to section 34101 and other matters as the department considers advisable. The department shall submit the report to the irrigation board at the meeting set for the hearing of the petition. All reasonable and necessary expenses incurred by the department in making the report shall be paid for by the persons signing the petition.

(2) Any additional compensation for services rendered on behalf of an irrigation district by members of the irrigation board in addition to official duties of the members shall be provided by the respective governmental agencies from which the original compensation for other various duties and services rendered are received.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34117 Irrigation board; first meeting; considerations; naming project and irrigation district; determination of sufficiency of petition and practicability of proposed project; objections; hearing; notice; report of department; final order of determination; order of department; eliminating or adding land in irrigation district; rehearing; legal establishment of irrigation district.

Sec. 34117. (1) The irrigation board at its first meeting shall consider the petition for the project, make a tentative determination as to the sufficiency of the petition and the practicability of the proposed irrigation project, and make a tentative determination of the area to be assessed. The irrigation board shall give a name to the project and to the irrigation district.

(2) After the irrigation board has made the determination regarding sufficiency of the petition and practicability of the proposed project, it shall set a time and place to hear objections to the proposed irrigation project and the petition for the project, and to consider the matter of assessing the cost of the irrigation project in the affected lands.

(3) In addition to the public notice prescribed in section 34115(1), additional notice of the hearing shall be published twice in the county in not less than 1 newspaper published in the county and designated by the irrigation board, with the first publication not less than 20 days before the hearing. Notice of the hearing shall also be given to property owners in the assessment district pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The irrigation board may provide a form to be substantially followed in giving this notice.

(4) At the hearing, the department shall submit its report on the petition, and any person is entitled to be heard. After the hearing, the irrigation board shall make a determination as to the sufficiency of the petition, the practicability of the irrigation project, and whether the irrigation project should be constructed. If the department determines that the project should be constructed, it shall issue an appropriate final order of determination.

(5) A final order of determination establishing an irrigation district shall not be issued by the irrigation board until the board has been served with an order by the department stating that the department has determined that the proposed irrigation by the proposed irrigation district, as set forth in the petition, supporting papers, and examinations specified in section 34116, is feasible and within the purpose of this part and that the project can be constructed and operated in a manner that would not violate the conditions and limitations of section 34101. If the department by its order determines that the proposed irrigation district cannot be established without violating a condition or limitation of section 34101, its order shall be final and further action for the formation of the proposed irrigation district shall not be taken by the irrigation board. Land in the irrigation district shall not be eliminated from or added to that land tentatively determined to be assessed without a rehearing after notice, as provided in this section. The irrigation district is legally established after entry of the final order of determination.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.34118 Plans, specifications, and costs; estimates of proposed irrigation projects.

Sec. 34118. The irrigation board shall proceed to secure from a competent engineer plans and specifications and an estimate of the cost of the proposed irrigation project which, when adopted by the board, shall be filed with the chairperson.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34119 Design plans of irrigation works; commissioner's alteration or deviation; approval of department.

Sec. 34119. The commissioners shall not be confined to the points of location, commencement, routes, or termini of the drains, reservoirs, dams, canals, ditches, pumps, or other work, or the number, extent, or size of the same, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in the manner that they determine is best to promote the public welfare and to benefit the lands of the parties interested with the least damage and greatest benefit to all lands affected thereby. All alterations or deviations in the design plans of the irrigation works shall have the final approval of the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34120 Acquisition of lands or rights-of-way.

Sec. 34120. The irrigation board shall proceed to secure the lands or rights-of-way necessary for the irrigation project. If the lands or rights-of-way cannot be secured by negotiation, then the irrigation board may proceed under section 34104.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34121 Advertisement for bids for construction; acceptance and rejection of bids; readvertisement.

Sec. 34121. The irrigation board shall advertise for bids for construction of the improvements requested in the petition. The contract shall be let to the lowest bidder in accordance with the statutory provisions applicable to award of public contracts, and the irrigation board has the right to reject any and all bids and readvertise the bids.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34122 Costs of irrigation district; computation; approval.

Sec. 34122. Within 10 days after the letting of contracts, or, in case of an appeal, then immediately after the appeal has been decided, the chairperson of the irrigation board shall make a computation of cost of a project under this part, which shall include all preliminary costs, the cost of construction of the improvement, establishment of the special assessment district, the preparation of the tax roll, notices, advertising, printing, financing, legal, professional, engineering, inspection, condemnation expenses, interest on the bonds for the first year if bonds are to be issued and an amount not to exceed 10% of the gross sum to cover contingent expenses, and all other administrative costs incidental to making of the improvement or establishment of the irrigation special assessment district. The chairperson shall submit the computation of cost to the irrigation board for its approval, and, when the computation of cost is approved by the board or amended and approved by the board, it shall become the final computation of cost for the irrigation district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34123 Assessment roll; description of lands benefited; apportionment of costs; objections.

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Sec. 34123. The chairperson of the irrigation board, under the direction of the board, shall make out an assessment roll, entering and describing on the assessment roll all the lots, premises, and parcels of land to be assessed, including on the assessment roll all lands benefited by the construction of the irrigation improvement. The assessments shall be based upon benefits to be derived from the proposed irrigation improvement. The irrigation board shall tentatively establish the percentage of the cost of the irrigation improvement which is to be borne by each of the parcels of land assessed on the special assessment roll. After the tentative apportionments and assessment roll is made, the irrigation board shall set a time and place when and where they will meet and hear any objections to the roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34124 Notice of hearing; publication; form.

Sec. 34124. Notice of hearing shall be given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and also by publication at least twice in a newspaper published and of general circulation in the county, the first publication to be at least 20 days before the time of the hearing. The irrigation board shall provide a form to be substantially followed in giving of the notice.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34125 Hearing on objections; scope of review; equalization.

Sec. 34125. At the hearing, the irrigation board shall hear the proofs and allegations of all parties interested, shall carefully reconsider and review the description of land comprised within the irrigation improvement special assessment district, the several descriptions, and the apportionment of benefits, and shall define and equalize the district as may seem just and equitable.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34126 Special assessment rolls; final orders and confirmation; endorsement; memorandum of installments; conclusiveness.

Sec. 34126. After the hearing, the irrigation board shall enter its final order of apportionment and order of confirmation of the roll and shall make an endorsement upon the roll showing the date of confirmation and when the amount to be raised is to be payable. If the amount is to be payable in more than 1 installment, the irrigation board shall enter on the roll a memorandum of the installments and of the years when the installments shall be spread and shall add a certificate in writing of the determination whether the taxes assessed for benefits shall be paid in 1 or more years. The special assessment rolls shall be dated and signed by the irrigation board and filed on or before the last Wednesday in September of each year in the office of the county clerk of the counties involved. When any improvement special assessment roll is confirmed by the irrigation board, it shall be final and conclusive.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34127 Irrigation special assessments liens.

Sec. 34127. From the date of confirmation of the special assessment roll, all irrigation special assessments constitute a lien upon the respective lots or parcels assessed and, when assessed, shall be charged against the person to whom assessed until paid.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34128 Tax assessment rolls; contents; permanent installment payments.

Sec. 34128. The chairperson of the irrigation board, at the direction of the irrigation board, shall prepare a tax assessment roll in each year for the collection of taxes for the current year and shall certify it to the county clerk on or before the first day of the annual meeting of the county board of commissioners. In each roll, he or

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she shall add to the amount to be collected interest on all unpaid installments to the date of tax collection. To the roll for the last year, he or she shall add a further amount, if any, as may be necessary, together with outstanding uncollected taxes, to pay all outstanding bonds and interest on the bonds to maturity. If the roll is made payable in more than 1 installment, a permanent assessment roll may be maintained in the office of the county treasurer, subject to the direction of the board of county auditors, in counties having such a board, and of the county board of commissioners in other counties, showing the total cost, the number of installments, and the amount of each annual assessment, together with interest charges on the assessment, which shall be carried in a separate column. If the roll is made payable in more than 1 installment, and the total amount of any assessment is $10.00 or less, exclusive of interest, then the assessment shall be payable in 1 installment; but if the assessment exceeds $10.00 and is made payable in more than 1 installment, then no installment, exclusive of interest, shall be less than $10.00, excepting the final installment, which shall be payable in the amount of the actual balance.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34129 Spread of special assessments on local tax rolls; orders by county board of commissioners.

Sec. 34129. The county board of commissioners of the counties involved shall order the spread of all irrigation special assessments on the local tax rolls by the local tax assessing officials pursuant to sections 36 to 38 of the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.36 to 211.38 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34130 Spread of special assessments on local tax rolls; duties of local assessing officers.

Sec. 34130. The supervisor or the village or city assessor shall spread on his or her roll the total amount of all irrigation special assessment taxes determined by the irrigation board and approved by the county board of commissioners to be assessed upon the county, township, city, or village tax roll for the year in which the same was assessed and extending the tax in the same column with the general county, township, city, or village tax. In villages or cities where the municipal taxes are assessed and collected prior to the October meeting of the county board of commissioners, all taxes ordered to be spread against the municipalities shall be spread during the calendar year following the action by the county board of commissioners. The supervisor, assessor, or tax levying official shall spread upon the roll, separately and immediately following the other descriptions, all tracts or parcels of land specified by the irrigation board to be assessed for benefits, and shall place opposite each description, in a column marked "(giving the name or number)..... irrigation special assessment taxes", the amount of taxes apportioned on that tract or parcel of land, as certified to him or her by the county clerk.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34131 Special assessment taxes; interest, charges, collections, disbursement; defense of collector; limitation on actions; payments under protest; liens.

Sec. 34131. All irrigation special assessment taxes assessed under this part shall be subject to the same interest and charges, and shall be collected in the same manner, as state and other general taxes are collected, and collecting officers are vested with the same power and authority in the collection of the taxes as are or may be conferred by law for collecting general taxes. Irrigation special assessment taxes, when collected, shall be returned to the county treasurer to be disbursed by him or her. If a suit is brought against the collector arising out of the collection of an irrigation special assessment tax, the county shall defend the collector in the same manner that he or she has the right to be defended in the collection of general taxes. A suit shall not be instituted to recover any special assessment tax or money paid or property sold therefor, or for damages on account thereof, unless brought within 30 days from the time of payment of the money to, or sale of the property by, the collecting officer. If the tax is paid under protest, the reasons for the protest shall be specified, and the same procedure observed as is required by the general tax law. All taxes levied under this

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part, with all lawful costs, interest, and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner of the lands until they are paid. If the taxes levied by the special assessment irrigation district are not collected by the treasurer of a participating municipality, they shall be returned by him or her, together with the lands upon which they were levied, to the county treasurer in the same return, at the same time, and in the same manner, in every respect, naming in each case the particular irrigation district, as lands are returned for state, county, and township taxes, and the taxes shall follow the lands, the same as all other taxes, and all the general provisions of law for enforcing the payment of township, county, and state taxes shall apply to irrigation special assessment taxes and to the lands returned delinquent for those taxes, in the same manner and with the same effect.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34132 Additional pro rata assessments; limitations.

Sec. 34132. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessments, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessments, then the irrigation board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34133 Invalid assessments; validation procedure; payments applied to reassessments.

Sec. 34133. If, in the opinion of the irrigation board, a special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges an assessment illegal, the irrigation board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on the reassessment and for the collection of the reassessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside in such a manner, if the assessment or part of an assessment has been paid and not refunded, the payment made shall be applied upon the reassessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34134 Irrigation orders to pay charges and to pay easements or rights-of-way; installments; drawing orders on first and succeeding years' assessments; limitations; certification by treasurer.

Sec. 34134. The irrigation board of each special assessment district may issue irrigation orders for the payment of all charges reflected by the computation of costs upon the irrigation fund of each particular district. Irrigation taxes shall not be assessed for benefits received that are to be paid by irrigation orders in excess of 10 annual installments. All irrigation orders for the payment for easements or rights-of-way shall be paid out of the first year's taxes, and the balance of the first year's taxes shall be applied toward payment of the irrigation construction contracts. For the balance due upon such contracts, the irrigation board shall draw irrigation orders payable out of each succeeding year's assessment. An irrigation board shall not draw orders payable in any 1 year for a larger amount than 90% of that year's assessment. Irrigation orders shall be ordered to be paid by the irrigation board only after a certification by the treasurer of the irrigation district that there are sufficient funds in the irrigation district fund to pay the order. The county treasurers of the counties involved in irrigation districts shall keep a record of all receipts and disbursements of all irrigation districts in their respective counties.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34135 Interest on bonds; board of commissioners; resolution pledging full faith and

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credit of county to pay.

Sec. 34135. The county board of commissioners of the county involved by a resolution adopted by a 2/3 vote of its members may pledge the full faith and credit of the county for the prompt payment of the interest on the bonds or evidences of indebtedness issued by the respective irrigation districts under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34136 Operating and maintaining property of irrigation district; fixing and collecting water charges; approval of charges; charges for water services as lien on affected lands; certification of delinquent charges; entering charges on tax roll; enforcement; exaction of other charges; future expenses; assessment; notice of hearing.

Sec. 34136. (1) The irrigation board shall operate and maintain the property of the irrigation district.

(2) The irrigation board may fix and collect water charges to cover the cost of the operation and maintenance of physical structures and administrative expenses of the district in connection with the transportation, impoundment, and utilization of water for irrigation purposes. The charges shall be approved by the majority vote of the irrigation board and shall be made to each user of water.

(3) Charges for water services furnished to a user or to a landowner shall be a lien on the affected lands from the date the charges are due. Charges delinquent for 6 months or more shall be certified annually to the proper tax assessing officer or agency, who shall enter the charges upon the next tax roll against the premises to which the services have been rendered, and the charges shall be collected and the lien shall be enforced in the same manner as provided for the collection of taxes assessed upon the tax roll and the enforcement of the lien. The time and manner of certification and other procedures regarding the collection of the charges and the enforcement of the lien shall be prescribed by the irrigation board in cooperation with the governing bodies of the public corporations in which the lands are located. Instead of or in addition to levying water charges for the operation and maintenance of the properties of the irrigation district, the irrigation board, under the same conditions and for the same purpose, may exact connection, readiness to serve, availability, or service charges to be paid by the users or owners of land utilizing irrigation water for irrigation purposes.

(4) Future necessary expenses incurred in the administration and operation of the district and its properties may be assessed not less than once every 3 years on the basis of benefits derived after notice of the hearing on the maintenance assessment roll is given in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34137 Attack on orders; proceedings by writ of superintending control; legality of irrigation special assessment district and project; assessments; actions.

Sec. 34137. (1) Except as prescribed in subsection (2), the final order of determination, the order of apportionment of benefits, or the order confirming the special assessment roll shall not be subject to attack in a court except by proceedings by writ of superintending control brought within 20 days after the filing of the order in the office of the chairperson of the irrigation board issuing the order. If a proceeding is not brought within the time prescribed, the irrigation special assessment district and project shall be considered to have been legally established, and the legality of the irrigation special assessment district and project and the assessments for the district and project shall not be questioned in an action at law or in equity.

(2) This section shall not prohibit the bringing of an action pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34138 Suspension of water delivery; delinquent irrigation taxes; right-of-way for laterals; condemnation; payment.

Sec. 34138. The irrigation board may, by the adoption of an appropriate order, provide for the suspension of water delivery to any land in the district upon which the irrigation taxes levied and assessed remain due and unpaid for 2 years. The irrigation board shall make all arrangements for right-of-way for laterals from the

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main drain or canal to each tract of land subject to assessment, and when necessary the board shall condemn to procure right-of-way for laterals and make such rules in regard to the payment for the right-of-way as it considers just and equitable.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34139 Irrigation boards; powers and duties.

Sec. 34139. The irrigation board shall manage and conduct the business affairs of the district, make and execute all necessary contracts, employ agents, officers, and employees as may be required and prescribe their duties, establish equitable orders and rules for the distribution and use of water among owners of such lands, and generally perform all acts as are necessary to fully implement this part. The orders and rules with respect to the irrigation district shall be printed in convenient form for distribution to the freeholders in the irrigation district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34140 Right of entry upon land to survey; location of drains; acquisition of property; reservoirs for storage or transfers of Great Lakes water.

Sec. 34140. The irrigation board and its agents and employees may enter upon any land within the district to make surveys, and may locate the line of any drain or canal and the necessary branches of that location. The irrigation board may acquire, either by purchase or condemnation, all lands and other property necessary for the construction, use, maintenance, repair, and improvement of any canal, drain or drains, and lands for reservoirs or dams, for the storage of water, and for all necessary appurtenances thereto. The board may acquire by purchase or condemnation any irrigation works, dams, drains, canals, pumping equipment, pumps, or reservoirs for the use of the district. The irrigation board may construct the necessary dams, reservoirs, and works for the storage or transfer of Great Lakes water for the district, and may perform any lawful act necessary to furnish water to each landowner in the district for irrigation purposes.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34141 Advancement of money to pay costs; reimbursement by irrigation special assessment district; obligations.

Sec. 34141. Any person may advance money for the payment of any part of the cost of a project and shall be reimbursed by the irrigation special assessment district, with or without interest as may be agreed, when funds are available for that purpose. The obligation of the irrigation special assessment district to make the reimbursement may be evidenced by a contract or note, which contract or note may pledge the full faith and credit of the irrigation special assessment district and may be made payable out of the assessments made against properties in the irrigation special assessment district, out of the proceeds of bonds issued by the irrigation special assessment district pursuant to this part, or out of any other available funds, but the contract or note is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 220, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.34142 District accounts; duties of county treasurer; expenditure from district funds; bond interest; funds transfer.

Sec. 34142. The county treasurers of the counties in which the irrigation district is located shall carry all accounts and items pertaining thereto as a separate account upon the books of their office. A record shall be kept of the amount of money paid from the irrigation district funds for the use and benefit of any irrigation district and, upon payment to the county treasurer of taxes assessed by the irrigation district, the county treasurer shall pay for the outstanding interest on bonds issued out of the taxes received or shall transfer the excess of funds to the irrigation district fund for the use and benefit of the irrigation district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

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324.34143 Irrigation district funds; deposit; interest; use.

Sec. 34143. The irrigation district funds shall be deposited by the county treasurer in a bank of the county in accordance with the general laws of this state, and interest so received shall belong to the irrigation district fund. Money collected or appropriated for an individual irrigation special assessment district fund shall be used solely for the use and benefit of the irrigation district for which it was raised or received.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34144 Irrigation district funds; county treasurers as custodians; deputies; bond; orders for payment.

Sec. 34144. The county treasurer shall be the custodian of the funds of the irrigation district. He or she may designate 1 or more of his or her deputies who may act for him or her in the performance of any of his or her duties under this section. The irrigation board may require the county treasurer and any deputy county treasurer, so designated, to furnish a bond payable to the irrigation district, in addition to any bond payable to the county, conditioned upon the faithful discharge of his or her duties in respect to money belonging to the irrigation district, the premium on the bond to be paid by the irrigation district. Money held by the treasurer shall be paid out only upon order of the irrigation board, except that an order shall not be required for the payment of principal and interest on bonds.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34145 Revolving fund to pay for preliminary costs; assessment of preliminary costs; repayment of fund.

Sec. 34145. The county board of commissioners in which an irrigation district is proposed to be formed may provide for an appropriation to create a revolving fund to pay for the preliminary costs of irrigation improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the irrigation board after notice of the hearing is given as prescribed in section 34115 and Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The preliminary costs shall be repaid to the fund if the project is not finally constructed. The preliminary costs shall be repaid to the fund when a project is constructed out of the first bond proceeds, taxes, or assessments received.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.34146 Borrowing money; issuing bonds; anticipating collection of special assessments; amount; applicability of law.

Sec. 34146. The irrigation board may borrow money and issue the bonds of the special assessment district for that money in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. The issuance of special assessment bonds shall be governed by the general laws of this state applicable to the issuance of special assessment bonds and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 221, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

PART 342

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

324.34201 Great Lakes-St. Lawrence River Basin Water Resources Compact.

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Sec. 34201. The Great Lakes-St. Lawrence River Basin Water Resources Compact is hereby ratified, enacted into law, and entered into by this state as a party as follows:

AGREEMENT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the "Great Lakes—St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Adaptive Management means a Water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

Agreement means the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

Applicant means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. Application has a corresponding meaning.

Basin or Great Lakes—St. Lawrence River Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

Basin Ecosystem or Great Lakes—St. Lawrence River Basin Ecosystem means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

Community within a Straddling County means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

Compact means this Compact.

Consumptive Use means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

Council means the Great Lakes—St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in Article 4 of this Compact.

County means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

Cumulative Impacts mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

Diversion means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. Divert has a corresponding meaning.

Environmentally Sound and Economically Feasible Water Conservation Measures mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that *i*) are environmentally sound, *ii*) reflect best practices applicable to the water use sector, *iii*) are technically feasible and available, *iv*) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and *v*) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

Exception means a transfer of Water that is excepted under Section 4.9 from the prohibition against

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Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in Section 4.9.4.

Intra-Basin Transfer means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

Measures means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

New or Increased Diversion means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

New or Increased Withdrawal or Consumptive Use means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

Originating Party means the Party within whose jurisdiction an Application or registration is made or required.

Party means a State party to this Compact.

Person means a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

Product means something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (*i*) Water used as part of the packaging of a Product shall be considered to be part of the Product. (*ii*) Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product. (*iii*) Except as provided in (*i*) above, Water which is transferred as part of a public or private supply is not a Product or part of a Product. (*iv*) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a Product.

Proposal means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Québec.

Public Water Supply Purposes means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

Regional Body means the members of the Council and the Premiers of Ontario and Québec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

Source Watershed means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

Standard of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

State means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

Straddling Community means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

Technical Review means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

Waters of the Basin or Basin Water means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

Withdrawal means the taking of water from surface water or groundwater. Withdraw has a corresponding meaning.

Section 1.3. Findings and Purposes.

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The legislative bodies of the respective Parties hereby find and declare:

1. Findings:

a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;

b. The Waters of the Basin are interconnected and part of a single hydrologic system;

c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes—St. Lawrence River region;

e. Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,

f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all Parties.

2. Purposes:

a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;

b. To remove causes of present and future controversies;

c. To provide for cooperative planning and action by the Parties with respect to such Water resources;

d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;

e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;

f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds;

g. To promote interstate and State-Provincial comity; and,

h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.

Section 1.4. Science.

1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Compact.

2. The strategy shall guide the collection and application of scientific information to support:

a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;

b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;

c. Improved scientific understanding of the Waters of the Basin;

d. Improved understanding of the role of groundwater in Basin Water resources management; and,

e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

ARTICLE 2
ORGANIZATION

Section 2.1. Council Created.

The Great Lakes—St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

Section 2.2. Council Membership.

The Council shall consist of the Governors of the Parties, ex officio.

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Section 2.3. Alternates.

Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

Section 2.4. Voting.

1. Each member is entitled to one vote on all matters that may come before the Council.

2. Unless otherwise stated, the rule of decision shall be by a simple majority.

3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.

4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

Section 2.5. Organization and Procedure.

The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

Section 2.6. Use of Existing Offices and Agencies.

It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,

3. Develop and adopt plans consistent with the Water resources plans of the Parties.

Section 2.7. Jurisdiction.

The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

Section 2.8. Status, Immunities and Privileges.

1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. Advisory Committees.

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

ARTICLE 3

GENERAL POWERS AND DUTIES

Section 3.1. General.

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The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact. The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures. The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform and coordinated policies for Water resources conservation and management in the Basin.

Section 3.2. Council Powers.

The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or individual; and, exercise such other and different powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

Section 3.3. Rules and Regulations.

1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.

2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such Party to carry out the management programs contemplated by this Compact.

Section 3.4. Program Review and Findings.

1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means, and how the provisions of the Standard of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.

2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:

a. 30 days after the first report is submitted by all Parties; and,

b. Every five years after the effective date of this Compact; and,

c. At any other time at the request of one of the Parties.

3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

ARTICLE 4
WATER MANAGEMENT AND REGULATION

Section 4.1. Water Resources Inventory, Registration and Reporting.

1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals,

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Diversions and Consumptive Uses. To the extent feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.

2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.

3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.

4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party and any other information requested by the Originating Party.

5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

Section 4.2. Water Conservation and Efficiency Programs.

1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are based on the goals of:

a. Ensuring improvement of the Waters and Water Dependent Natural Resources;

b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;

c. Retaining the quantity of surface water and groundwater in the Basin;

d. Ensuring sustainable use of Waters of the Basin; and,

e. Promoting the efficiency of use and reducing losses and waste of Water.

2. Within two years of the effective date of this Compact, each Party shall develop its own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.

3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, shall review and modify as appropriate the Basin-wide objectives, and the Parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.

4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:

a. Measures that promote efficient use of Water;

b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;

c. Application of sound planning principles;

d. Demand-side and supply-side Measures or incentives; and,

e. Development, transfer and application of science and research.

5. Each Party shall implement in accordance with paragraph 2 above a voluntary or mandatory Water

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conservation program for all, including existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

Section 4.3. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.

2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.

3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.

5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the Council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

Section 4.4. Requirement for Originating Party Approval.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been approved by the Originating Party.

Section 4.5. Regional Review.

1. General.

a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.

b. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Section 4.5.2 of such Proposal is received from the Originating Party.

c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.

d. The Parties agree that the protection of the integrity of the Great Lakes—St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

e. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal, and shall consult with the Applicant throughout the Regional Review Process.

f. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.

a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.

b. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision have been provided.

c. An Originating Party may:

i. Provide notice to the Regional Body of an Application, even if notification is not required; or,

ii. Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.

d. An Originating Party may provide preliminary notice of a potential Proposal.

3. Public Participation.

a. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.

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b. The Regional Body shall provide notice to the public of a Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Standard of Review and Decision.

c. The Regional Body shall hold a public meeting in the State or Province of the Originating Party in order to receive public comment on the issue of whether the Proposal under consideration meets the Standard of Review and Decision.

d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.

e. The Regional Body shall forward the comments it receives to the Originating Party.

4. Technical Review.

a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.

b. The Originating Party's Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.

c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.

d. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.

e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

5. Declaration of Finding.

a. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.

b. The Regional Body, having considered the notice, the Originating Party's Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Compact shall issue a Declaration of Finding that the Proposal under consideration:

i. Meets the Standard of Review and Decision;

ii. Does not meet the Standard of Review and Decision; or,

iii. Would meet the Standard of Review and Decision if certain conditions were met.

c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.

d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.

e. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.

f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.

g. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party's conclusions.

h. The Regional Body shall release the Declarations of Finding to the public.

i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

Section 4.6. Proposals Subject to Prior Notice.

1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces with detailed and timely notice and an opportunity to comment within 90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. The Originating Party shall provide a response to any such comment received from another Party.

2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

Section 4.7. Council Actions.

1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.

2. The Council shall review and take action on Proposals in accordance with this Compact and the

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Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

Section 4.9. Exceptions to the Prohibition of Diversions.

1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:

a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

iii. Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;

b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and,

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that:

a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day average over any 90-day period, the Proposal shall be subject to management and regulation at the discretion of the Originating Party.

b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day or greater average over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than 5 million gallons per day average over any 90-day period:

i. The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,

iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:

i. The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies;

iii. The Proposal undergoes Regional Review; and,

iv. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:

a. The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water;

b. The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;

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c. The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This Exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;

f. The Proposal undergoes Regional Review; and,

g. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

A Proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:

a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

b. The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from the outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

d. The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;

e. The Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

f. The Exception will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and,

g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.

1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of Source Watersheds, and that all other objectives of the Compact are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.

2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90 day period.

3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, the Council, in cooperation with the Provinces, shall periodically assess the Water management programs of the Parties. Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the Decision-Making Standard.

Section 4.11. Decision-Making Standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

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1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;

2. The Withdrawal or Consumptive Use will be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;

3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;

4. The Withdrawal or Consumptive Use will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;

5. The proposed use is reasonable, based upon a consideration of the following factors:

a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of Water;

b. If the Proposal is for an increased Withdrawal or Consumptive use, whether efficient use is made of existing water supplies;

c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

d. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,

f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

Section 4.12. Applicability.

1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.

2. Baseline.

a. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:

i. A list of existing Withdrawal approvals as of the effective date of the Compact;

ii. A list of the capacity of existing systems as of the effective date of this Compact. The capacity of the existing systems should be presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.

c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.

3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.

5. Groundwater. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

6. Withdrawal Systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

8. Transmission in Water Lines. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to another within the Basin shall not be considered a Diversion if none of the

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Water is used outside the Basin.

9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons or less.

Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of this Compact, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

2. The Parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

3. With the exception of Paragraph 5 of this Section, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Section 4.2.

5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.

6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

Section 4.15. Assessment of Cumulative Impacts.

1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the Basin, every 5 years or each time the incremental Basin Water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment shall:

a. Utilize the most current and appropriate guidelines for such a review, which may include but not be

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limited to Council on Environmental Quality and Environment Canada guidelines;

b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty if serious damage may result;

c. Consider adaptive management principles and approaches, recognizing, considering and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.

3. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

ARTICLE 5

TRIBAL CONSULTATION

Section 5.1. Consultation with Tribes

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.

2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.

3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from federally recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

ARTICLE 6

PUBLIC PARTICIPATION

Section 6.1. Meetings, Public Hearings and Records.

1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

Section 6.2. Public Participation.

It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.

2. Assure public accessibility to all documents relevant to an Application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an Application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

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ARTICLE 7
DISPUTE RESOLUTION AND ENFORCEMENT

Section 7.1. Good Faith Implementation.

Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

Section 7.2. Alternative Dispute Resolution.

1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.

2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

Section 7.3. Enforcement.

1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (*i*) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (*ii*) any aggrieved Person shall have the right to judicial review of a Party's action in the relevant Party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's jurisdiction.

3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.

a. No action under this subsection may be commenced if:

i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,

ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.

b. No action under this subsection may be commenced unless:

i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,

ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

ARTICLE 8
ADDITIONAL PROVISIONS

Section 8.1. Effect on Existing Rights.

1. Nothing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.

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2. Nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

3. Nothing in this Compact is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.

4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

Section 8.2. Relationship to Agreements Concluded by the United States of America.

1. Nothing in this Compact is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this Compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Compact.

Section 8.3. Confidentiality.

1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

2. A Party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authorities contained in this Compact.

Section 8.4. Additional Laws.

Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

Section 8.5. Amendments and Supplements.

The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other necessary authority in the same manner as this Compact is required to be ratified to become effective.

Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE 9

EFFECTUATION

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. Effectuation by Chief Executive.

The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

Section 9.3. Entire Agreement.

The Parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

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Section 9.4. Effective Date and Execution.

This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this ____ day of (month), (year).

History: Add. 2008, Act 190, Imd. Eff. July 9, 2008.

Popular name: Act 451

Popular name: NREPA

LAND HABITATS

PART 351
WILDERNESS AND NATURAL AREAS

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324.35101 Definitions.

Sec. 35101. As used in this part:

(a) "Natural area" means a tract of state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Has retained or reestablished its natural character, or has unusual flora and fauna or biotic, geologic, scenic, or other similar features of educational or scientific value, but it need not be undisturbed.

(*ii*) Has been identified and verified through research and study by qualified observers.

(*iii*) May be coextensive with or part of a wilderness area or wild area.

(b) "Wild area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Is less than 3,000 acres of state land.

(*ii*) Has outstanding opportunities for personal exploration, challenge, or contact with natural features of the landscape and its biological community.

(*iii*) Possesses 1 or more of the characteristics of a wilderness area.

(c) "Wilderness area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Has 3,000 or more acres of state land or is an island of any size.

(*ii*) Generally appears to have been affected primarily by forces of nature with the imprint of the work of humans substantially unnoticeable.

(*iii*) Has outstanding opportunities for solitude or a primitive and unconfined type of recreation.

(*iv*) Contains ecological, geological, or other features of scientific, scenic, or natural history value.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

Popular name: Act 451

Popular name: NREPA

324.35102 Wilderness, wild, and natural areas; duty of department to identify, dedicate, and administer.

Sec. 35102. The department shall identify for dedication, dedicate, and administer wilderness areas, wild areas, and natural areas in accordance with this part. The department shall enlist the voluntary cooperation and support of interested citizens and conservation groups.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35103 Review of state land; identification of certain tracts; determination of dedication; proposed alteration or withdrawal of previously dedicated areas; filing proposals;

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procedure for making dedication or denying proposal; exchange of dedicated land; notice requirements.

Sec. 35103. (1) The department shall annually review all state land under its control and identify those tracts that in its judgment best exhibit the characteristics of a wilderness area, wild area, or natural area. The department shall determine which land in its judgment is most suitable for dedication as wilderness areas, wild areas, or natural areas. The department shall administer the proposed land so as to protect its natural values.

(2) A citizen may propose to the department land that in his or her judgment exhibits the characteristics of a wilderness area, wild area, or natural area and is suitable for dedication by the department as such or may propose the alteration or withdrawal of previously dedicated areas. Land under control of the department that has been dedicated or designated before August 3, 1972 as a natural area, nature study area, preserve, natural reservation, wilderness, or wilderness study area shall be considered by the department and, if eligible, proposed for dedication. The proposals of the department shall be filed with both houses of the legislature.

(3) Within 90 days after land is proposed in accordance with subsections (1) or (2), the department shall make the dedication or issue a written statement of its principal reasons for denying the proposal. The department shall dedicate a wilderness area, wild area, or natural area, or alter or withdraw the dedication, by promulgating a rule. The department shall hold a public hearing relative to the dedication in the county where the land to be dedicated is located before a rule making the dedication may be promulgated. Not more than 10% of state land under the control of the department shall be dedicated pursuant to this subsection. All persons who have notified the department in writing during a calendar year of their interest in dedication of areas under this part shall be furnished by the department with a notice of all areas pending dedication or alteration or withdrawal from dedication during that calendar year.

(4) The department may exchange dedicated land for the purpose of acquiring other land that, in its judgment, is more suitable for the purposes of this part.

(5) Except as provided in subsection (4), prior to recommending the transfer of any land that is dedicated as a wilderness area, a wild area, or a natural area under this part, the department shall notify the citizens committee for Michigan state parks created in section 74102a and shall place a public notice in a newspaper of general circulation in the area in which the dedicated land is located describing the proposed transfer. Except as provided in subsection (4), dedicated land shall not be transferred except as specifically authorized by law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996;—Am. 2006, Act 307, Imd. Eff. July 20, 2006.

Popular name: Act 451

Popular name: NREPA

324.35104 Proximity of wild and natural areas to certain urban centers; designation of private land or land controlled by other governmental units.

Sec. 35104. (1) The department shall attempt to provide, to the extent possible, wild areas and natural areas in relative proximity to urban centers of more than 100,000 population.

(2) Private land or land under the control of other governmental units may be designated by the department in the same way as a wilderness area, wild area, or natural area and administered by the department under a cooperative agreement between the owner and the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35105 Prohibited activities; easement.

Sec. 35105. (1) The following are prohibited on state land in a wilderness area, wild area, or natural area, or on state land proposed by the department for dedication in 1 of these categories during the 90 days a dedication is pending pursuant to section 35103:

(a) Removing, cutting, picking, or otherwise altering vegetation, except as necessary for appropriate public access, the preservation or restoration of a plant or wildlife species, or the documentation of scientific values and with written consent of the department.

(b) Except as provided in subsection (2), granting an easement for any purpose.

(c) Exploration for or extraction of minerals.

(d) A commercial enterprise, utility or permanent road.

(e) A temporary road, landing of aircraft, use of motor vehicles, motorboats, or other form of mechanical

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transport, or any structure or installation, except as necessary to meet minimum emergency requirements for administration as a wilderness area, wild area, or natural area by the department.

(f) Motorized equipment, except if the department approves its use for management purposes or conservation practices.

(2) If a right-of-way or an easement for ingress and egress was granted on land prior to the land's designation as a wilderness area, wild area, or natural area, upon request, the department may grant an easement along the route of the existing right-of-way or easement for the installation and maintenance of utilities for gas, electric, telephone, and cable services. In granting an easement under this section, the department shall require conditions necessary to protect the wilderness area, wild area, or natural area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

Popular name: Act 451

Popular name: NREPA

324.35106 Landing aircraft or operating mechanical transport in wilderness, wild, or natural area.

Sec. 35106. A person who lands an aircraft or operates a motor vehicle, motorboat, or other form of mechanical transport in a wilderness area, wild area, or natural area without the express written consent of the department is guilty of a misdemeanor.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35107 Maintenance or restoration of wilderness, wild, or natural area.

Sec. 35107. (1) State land in a wilderness area, wild area, or natural area shall be maintained or restored so as to preserve its natural values in a manner compatible with this part.

(2) Grasslands, forested lands, swamps, marshes, bogs, rock outcrops, beaches, and wholly enclosed waters of this state that are an integral part of a wilderness area, wild area, or natural area shall be included within and administered as a part of the area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35108 Posting signs; contents.

Sec. 35108. The department shall post signs in appropriate locations along the borders of a wilderness area, wild area, or natural area. The signs shall give notice of the area's dedication and may state those activities that are prohibited under section 35105 and those activities that are punishable as a misdemeanor pursuant to section 35106.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

Popular name: Act 451

Popular name: NREPA

324.35109 Acquisition of land.

Sec. 35109. The department may acquire land through purchase, gift, or bequest for inclusion in a wilderness area, wild area, or natural area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35110 Taxation; audit of assessments; appropriation.

Sec. 35110. The local taxing authority is entitled to collect from the state a tax on a wilderness, wild, or natural area within its jurisdiction at its ad valorem tax rate or $2.00 per acre, whichever is less. The department shall audit the assessments of wilderness, wild, or natural areas regularly to ensure that the properties are assessed in the same ratio as similar properties in private ownership. The legislature shall appropriate from the general fund for payments under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.35111 Saving clause.

Sec. 35111. (1) Nothing in this part affects or diminishes any right acquired or vested before August 3, 1972.

(2) Nothing in this part alters the status of land dedicated by the commission before August 3, 1972 until dedicated pursuant to section 35103, except that tax reverted lands are subject to section 35110. Purchased land dedicated by the commission before August 3, 1972 is subject to ad valorem taxes if dedicated pursuant to section 35103.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 353
SAND DUNES PROTECTION AND MANAGEMENT

324.35301 Definitions.

Sec. 35301. As used in this part:

(a) "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in part 637.

(b) "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

(c) "Critical dune area" means a geographic area designated in the "atlas of critical dune areas" dated February 1989 that was prepared by the department of natural resources.

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

(e) "Foredune" means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.

(f) "Model zoning plan" means the model zoning plan provided for in sections 35304 to 35309 and 35311a to 35324.

(g) "Permit" means a permit for a use within a critical dune area under this part.

(h) "Planning commission" means the body or entity within a local government that is responsible for zoning and land use planning for the local unit of government.

(i) "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.

(j) "Special use project" means any of the following:

(*i*) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.

(*ii*) A multifamily use of more than 3 acres.

(*iii*) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.

(*iv*) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.

(k) "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in part 637.

(*l*) "Zoning ordinance" means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

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Popular name: Act 451

Popular name: NREPA

324.35302 Legislative findings.

Sec. 35302. The legislature finds that:

(a) The critical dune areas of this state are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this state and to people from other states and countries who visit this resource.

(b) The purpose of this part is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this part is intended to do all of the following:

(*i*) Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.

(*ii*) Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.

(*iii*) Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.35303 Notice to local units of government and property owners; copy of “atlas of critical dune areas”; contents of notice; supplying addresses of property owners.

Sec. 35303. (1) As soon as practicable following July 5, 1989, the department shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the "atlas of critical dune areas" dated February 1989 and a copy of former Act No. 222 of the Public Acts of 1976 with the notice. By October 1, 1989, the department shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under former Act No. 222 of the Public Acts of 1976.

(b) That a local unit of government may adopt a zoning ordinance that is approved by the department, or, if the local unit of government does not have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35304 Permit for use in critical dune area; requirements; decision of local unit of government; limitations; ordinance; model zoning plan; special exceptions; assisting local units of government.

Sec. 35304. (1) A person shall not initiate a use within a critical dune area unless the person obtains a permit from the local unit of government in which the critical dune area is located or the department if the department issues permits as provided under subsection (7). A permit for a use within a critical dune area is subject to all of the following:

(a) A person proposing a use within a critical dune area shall file an application with the local unit of government, or with the department if the department is issuing permits under the model zoning plan. The application form shall include information necessary to conform with the requirements of this part. If a project

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proposes the use of more than 1 critical dune area location within a local unit of government, 1 application may be filed for the uses.

(b) The local unit of government shall provide notice of an application filed under this section to each person who makes a written request to the local unit of government for notification of pending applications. The local unit of government may charge an annual fee for providing this notice. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly provide copies of the list for the remainder of the calendar year to the persons who have requested notice. In addition, if the department issues permits under this part within a local unit of government, notice of an application shall also be given to the local conservation district office, the county clerk, the county health department, and the local unit of government in which the property is located. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is sent, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons who own real property within 2 miles of the project, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and by providing notice to the persons who have requested notice pursuant to subdivision (b) and to the person requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. If a permit is denied, the local unit of government shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit under this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides a substantially equivalent level of protection for critical dune areas and that is approved by the department.

(g) Subject to section 35316, a permit shall be approved unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

(*i*) The diversity of the critical dune areas within the local unit of government.

(*ii*) The quality of the critical dune areas within the local unit of government.

(*iii*) The functions of the critical dune areas within the local unit of government.

(2) The decision of the local unit of government or the department with respect to a permit shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying a permit shall document, and any review upholding the decision shall determine, all of the following:

(a) That the local unit of government or the department has met the burden of proof under subsection (1).

(b) That the decision is based upon sufficient facts or data.

(c) That the decision is the product of reliable scientific principles and methods.

(d) That the decision has applied the principles and methods reliably to the facts.

(e) That the facts or data upon which the decision is based are recorded in the file.

(3) A permit shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. The proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the critical dune area.

(4) Except as provided in subsection (3), a permit shall provide that a use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the use shall meet all of the following requirements:

(a) The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body

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of water.

(b) Access to the structure shall be from the landward side of the dune.

(c) The dune shall be restabilized with indigenous vegetation.

(d) The crest of the dune shall not be reduced in elevation.

(5) As soon as possible following adoption of a zoning ordinance enacted pursuant to this part, the local unit of government shall submit to the department a copy of the ordinance that it determines meets the requirements of this part. If the local unit of government has an existing ordinance that it contends is substantially equivalent to the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to assure compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department shall work with the local unit of government to bring the ordinance into compliance and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient. Unless a local unit of government receives notice, within 180 days after submittal of the ordinance to the department under this subsection, that the ordinance is not in compliance with this part, the ordinance shall be considered to be approved by the department.

(6) A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved ordinance by June 30, 1990, the department shall implement the model zoning plan for that local unit of government in the same manner and under the same circumstances as provided in subsection (1). Notwithstanding any other provision of this part, a local unit of government may adopt a zoning ordinance at any time, and upon the approval of the department, that ordinance shall take the place of the model zoning plan implemented by the department.

(7) If a local unit of government in which a proposed use is to be located does not elect to issue permits or does not receive department approval of a zoning ordinance that regulates critical dune areas, the department shall implement the model zoning plan in the place of the local unit of government and issue special exceptions in the same circumstances as provided in this part for the issuance of variances by local units of government, and issue permits pursuant to subsection (1) and part 13.

(8) The department shall assist local units of government in developing ordinances that meet the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35305 Hearing; judicial review.

Sec. 35305. (1) If an applicant for a permit or a special exception or the owner of the property immediately adjacent to the proposed use is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the applicant or owner may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35306 Lawful use of land or structure; exemptions.

Sec. 35306. (1) The lawful use of land or a structure, as existing and lawful within a critical dune area at the time the department implements the model zoning plan for a local unit of government, may be continued although the use of that land or structure does not conform to the model zoning plan. The continuance, completion, restoration, reconstruction, extension, or substitution of existing nonconforming uses of land or a structure may continue upon reasonable terms that are consistent, to the extent possible, with the applicable zoning provisions of the local unit of government in which the use is located.

(2) The lawful use of land or a structure, as existing and lawful within a local unit of government that has a zoning ordinance approved by the department, may, but is not required by this part to, be continued subject to the law pertaining to existing uses within the act that enables that local unit of government to zone and the applicable zoning provisions of the local unit of government.

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(3) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on July 5, 1989 shall not be precluded under this part.

(4) A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this part, is exempt for purposes for which the permit was issued from the operation of this part or a local ordinance approved under this part if the maintenance, repair, or replacement is completed in compliance with all of the following:

(a) Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.

(b) All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.

(c) Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.

(d) To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.

(e) In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.

(f) In the case of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline, the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.

(5) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by July 5, 1989, are exempt for purposes for which a permit is issued from the operation of this part or local ordinances approved under this part. Such uses shall be regulated pursuant to local ordinances in effect by that date.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35307 Maps.

Sec. 35307. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35308 Prohibited uses; exception.

Sec. 35308. (1) Except as provided in subsection (2), the following uses shall be prohibited in a critical dune area:

(a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.

(b) Production facilities regulated under parts 615 and 625.

(2) Uses described in subsection (1) that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35309 Use permit and inspection fee; disposition of fees; authorization of separate fee; bond.

Sec. 35309. (1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) The department shall forward all fees it collects under this section to the state treasurer for deposit in the land and water management permit fee fund created in part 301.

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(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this part and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under this part.

(5) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the department to file with the local unit of government or the department a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35310 Suspension or revocation of permit; restraining order, injunction, or other appropriate remedy; instituting action; cumulative rights; performance review; determination of noncompliance; response; implementation of model zoning plan; appeal; civil fine; order to pay cost of restabilization; violation as misdemeanor.

Sec. 35310. (1) If the department finds that a person is not in compliance with the model zoning plan if the department is implementing the plan, or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322, the department may suspend or revoke the permit.

(2) At the request of the department, the attorney general may institute an action for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the model zoning plan if the department is implementing the provisions of the plan or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322. At the request of the governing body of a local unit of government, the county prosecutor may institute an action for a restraining order or injunction or other proper remedy to prevent a violation of a zoning ordinance approved under this part. This shall be in addition to the rights provided in part 17, and as otherwise provided by law. An action under this subsection instituted by the attorney general may be instituted in the circuit court for the county of Ingham or in the county in which the defendant is located, resides, or is doing business.

(3) The department shall periodically review the performance of all local units of government that have ordinances approved under this part. If the department determines that the local unit of government is not administering the ordinance in conformance with this part, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government has 60 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the department may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the manner provided in that act for contested cases.

(4) In addition to any other relief provided by this section, the court may impose on a person who violates this part, or a permit, a civil fine of not more than $5,000.00 for each day of violation, or may order a violator to pay the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both.

(5) A person who violates this part, or a person who violates a permit issued under this part, is guilty of a misdemeanor, punishable by a fine of not more than $5,000.00 per day for each day of violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35311 Review of “atlas of critical dune areas”; appointment and duties of review team.

Sec. 35311. Beginning with the effective date of the 2012 act that amended this section and once every 10 years thereafter, the department may appoint a team of qualified ecologists, who may be employed by the department or may be persons with whom the department enters into contracts, to review "the atlas of critical dune areas" dated February 1989. The review team shall evaluate the accuracy of the designations of critical dune areas within the atlas and shall recommend to the legislature any changes to the atlas or underlying

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criteria revisions to the atlas that would provide more precise protection to the targeted resource.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35311a Construction, improvement, and maintenance of driveways.

Sec. 35311a. (1) Notwithstanding section 35316 or any other provision of this part, the construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this part or a lawful nonconforming use, subject only to applicable permit requirements under sections 35312 through 35325 and the following:

(a) A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this section. Additional driveways, if any, shall meet the applicable requirements for any other use under this part. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record.

(b) Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (*i*) storm water drainage that provides for disposal of storm water without serious erosion, (*ii*) methods for controlling erosion from wind and water, and (*iii*) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.

(c) Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (*i*) storm water drainage that provides for disposal of storm water without serious erosion, (*ii*) methods for controlling erosion from wind and water, and (*iii*) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.

(2) Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

(3) As used in this section, "driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.

History: Add. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35311b Construction, improvement, and maintenance of accessibility measures.

Sec. 35311b. (1) Notwithstanding section 35316 or any other provision of this part, at the request of the applicant, the construction, improvement, and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this part or a lawful nonconforming use, subject only to applicable permit requirements under sections 35312 through 35325 and the following:

(a) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include (*i*) storm water drainage that provides for disposal of storm water without serious erosion, (*ii*) methods for controlling erosion from wind and water, and (*iii*)

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restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.

(b) Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include (*i*) storm water drainage that provides for disposal of storm water without serious erosion, (*ii*) methods for controlling erosion from wind and water, and (*iii*) restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

(2) As used in this section, "accessibility measures" means a circulation path and at least 1 entrance on a circulation path complying with American national standards institute chapter 4 standards for accessible routes, from a road or easement serving the property, and, at the option of the applicant, from a sidewalk, a driveway, or a garage. As used in this section, accessibility measures do not include driveways.

(3) For the purposes of this section, the choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

History: Add. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35312 Zoning ordinance; provisions; regulation of additional lands.

Sec. 35312. (1) A local unit of government that has 1 or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702.

(2) A zoning ordinance shall consist of all of the provisions of the model zoning plan or comparable provisions that provide substantially equivalent protection of critical dune areas as the model zoning plan but shall not be more restrictive than the model zoning plan or the standard of review for permits or variances prescribed in the model zoning plan.

(3) A local unit of government may by an affirmative vote of its governing body following a public hearing regulate additional lands as critical dune areas under this part as considered appropriate by the planning commission if the lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area. A local unit of government shall provide within its zoning ordinance for the protection of lands that are within 250 feet of a critical dune area, if those lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area.

(4) If a local unit of government does not have an approved zoning ordinance, the department may regulate additional lands described in subsection (3). However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area, unless, following a public hearing, an affirmative vote of the governing body of the local unit of government authorizes a further extension. If the director determines that the mapping of a critical dune area designated in the "atlas of critical dune areas" dated February 1989 was inaccurate, the department may regulate additional lands. However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35313 Zoning ordinance; requirements for applications for permits for use of critical dune area.

Sec. 35313. (1) A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing all of the following:

(a) That the county enforcing agency designated pursuant to part 91 finds that the project is in compliance with part 91 and any applicable soil erosion and sedimentation control ordinance that is in effect in the local unit of government.

(b) That a proposed sewage treatment or disposal system on the site has been approved by the county health department or the department.

(c) Assurances that the cutting and removing of trees and other vegetation will be performed according to the "forestry management guidelines for Michigan" prepared by the society of American foresters in 1987 as revised in 2010 and may include a program to provide mitigation for the removal of trees or vegetation by

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providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

(d) A site plan that contains data required by the planning commission concerning the physical development of the site and extent of disruption of the site by the proposed development.

(2) A local unit of government or the department shall not require an environmental site assessment or environmental impact statement as part of a permit application except for a special use project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35314 Zoning ordinance; provisions; review of subdivision development.

Sec. 35314. (1) A zoning ordinance shall provide for all of the following:

(a) Lot size, width, density, and front and side setbacks.

(b) Storm water drainage that provides for disposal of drainage water without serious erosion.

(c) Methods for controlling erosion from wind and water.

(d) Restabilization.

(2) Each zoning ordinance shall provide that a use that proposes a subdivision development shall be reviewed by the local unit of government to assure compliance with all of the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35315 Zoning ordinance; prohibited uses in critical dune area.

Sec. 35315. A zoning ordinance shall not permit either of the following uses in a critical dune area:

(a) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.

(b) A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35316 Zoning ordinances; additional prohibited uses in critical dune area; variance; contour maps; guidelines; restoration.

Sec. 35316. (1) Unless a variance is granted pursuant to section 35317, a zoning ordinance shall not permit the following uses in a critical dune area:

(a) A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.

(b) A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.

(c) A use involving a contour change if the local unit of government or the department determines that it is more likely than not to increase erosion or decrease stability.

(d) Silvicultural practices, as described in the "forest management guidelines for Michigan", prepared by the society of American foresters as revised in 2010, if the local unit of government or the department determines that they are more likely than not to increase erosion or decrease stability.

(e) A use that involves a vegetation removal if the local unit of government or the department determines that it is more likely than not to increase erosion or decrease stability.

(2) If the local unit of government is not certain of the degree of slope on a property for which a use permit is sought, the local unit may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway.

(3) The department shall develop guidelines to describe the method by which the department and local units of government measure slopes to implement the requirements of the zoning ordinance or the model zoning plan.

(4) If a person is ordered by the department, or by a local unit of government that is enforcing a zoning

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ordinance authorized under this part, to restore a critical dune area that has been degraded by that person, the department or local unit of government shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35317 Variances; special exceptions; limitations; decision; environmental site assessment or environmental impact statement; annual report; forwarding application to local government; review and comment; waiver of opportunity to review; notice of opposition; determination of practical difficulty.

Sec. 35317. (1) A local unit of government may issue variances under a zoning ordinance, or the department may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if a practical difficulty will occur to the owner of the property if the variance or special exception is not granted. In determining whether a practical difficulty will occur if a variance or special exception is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance or special exception is not granted, a variance or special exception shall be granted under this section unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:

(a) The diversity of the critical dune areas within the local unit of government.

(b) The quality of the critical dune areas within the local unit of government.

(c) The functions of the critical dune areas within the local unit of government.

(2) The decision of the local unit of government or the department shall be in writing and shall be based upon evidence that would meet the standards in section 75 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance or special exception shall document, and any review upholding the decision shall determine, all of the following:

(a) That the local unit of government or the department has met the burden of proof under subsection (1).

(b) That the decision is based upon sufficient facts or data.

(c) That the decision is the product of reliable scientific principles and methods.

(d) That the decision has applied the principles and methods reliably to the facts.

(e) That the facts or data upon which the decision is based are recorded in the file.

(3) A local unit of government or the department shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.

(4) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance approved under section 35034 enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

(a) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.

(b) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.

(c) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

(5) Each local unit of government that has issued a variance for a use other than a special use project during the previous 12 months shall file an annual report with the department indicating variances that have been granted by the local unit of government during that period.

(6) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review and comment on the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to review the application at any time within 60 days after receipt of the application and

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supporting documentation by notifying the department in writing. The local unit of government also waives its opportunity to review the application if it fails to act as authorized in this subsection within 60 days. If the local unit of government waives its opportunity to review the application, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government opposes the issuance of the special exception, the local unit of government shall notify the department, in writing, of its opposition within the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether a practical difficulty will occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its determination of whether a practical difficulty exists on information provided by the local unit of government and other pertinent information.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35318 Request for revaluation to determine fair market value.

Sec. 35318. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35319 Environmental assessment; contents.

Sec. 35319. The zoning ordinance shall provide that if an environmental assessment is required under section 35313, that assessment shall include the following information concerning the site of the proposed use:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site.

(c) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.

(d) The description and purpose of the proposed use.

(e) The location of existing utilities and drainageways.

(f) The general location and approximate dimensions of proposed structures.

(g) Major proposed change of land forms such as new lakes, terracing, or excavating.

(h) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(i) Approximate location and type of proposed drainage, water, and sewage facilities.

(j) Legal description of property.

(k) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(*l*) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(m) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35320 Environmental impact statement; contents.

Sec. 35320. If an environmental impact statement is required under section 35313 prior to permitting a proposed use, a zoning ordinance may require that the statement include all of the following:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site of the proposed use.

(c) The name, address, and professional qualifications of the proposed professional design team members,

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including the designation of the person responsible for the preparation of the environmental impact statement.

(d) The description and purpose of the proposed use.

(e) Six copies and 1 reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.

(f) The location of the existing utilities and drainageways.

(g) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.

(h) The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.

(i) The general location and approximate dimensions of proposed structures.

(j) Major proposed change of land forms such as new lakes, terracing, or excavating.

(k) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.

(*l*) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(m) Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.

(n) A legal description of the property.

(o) An aerial photo and contour map showing the development site in relation to the surrounding area.

(p) A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(q) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "unified soil classification system" as adopted by the United States government corps of engineers and bureau of reclamation, dated January 1952, or the national cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

(r) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(s) A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers, and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.

(t) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

(u) At a minimum, a site plan for compliance with all of the following standards for the construction and postconstruction periods:

(*i*) Surface drainage designs and structures are erosion-proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design so that drainage waters may be impeded in their flow and percolation encouraged.

(*ii*) The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.

(*iii*) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.

(*iv*) If vegetation has been removed or has not been able to establish on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35321 Review of site plan; duties of planning commission.

Sec. 35321. A zoning ordinance shall provide that, in reviewing a site plan required under section 35313(1)(d), the planning commission shall do both of the following:

(a) Determine whether the requirements of the zoning ordinance have been met and whether the plan is consistent with existing laws.

(b) Recommend alterations of a proposed development to minimize adverse effects anticipated if the

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development is approved and to assure compliance with all applicable state and local requirements.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35322 Special use project application, plan, and proposed decision; review; action.

Sec. 35322. Prior to issuing a permit allowing a special use project within a critical dune area, a local unit of government shall submit the special use project application and plan and the proposed decision of the local unit of government to the department. The department shall have 30 days to review the plan and may affirm, modify, or reverse the proposed decision of the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35323 Destruction of structure or use; exemption; replacement.

Sec. 35323. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this part or a zoning ordinance under this part for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced. A replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2012, Act 297, Imd. Eff. Aug. 7, 2012.

Popular name: Act 451

Popular name: NREPA

324.35324 Management of federally owned and state owned land.

Sec. 35324. Federally owned land, to the extent allowable by law, and state owned land within critical dune areas shall be managed by the federal or state government, respectively, in a manner that is consistent with the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35325 Purchase of lands or interests in lands; purpose.

Sec. 35325. The department or local units of government may purchase lands or interests in lands from a willing seller in critical dune areas for the purpose of maintaining or improving the critical dune areas and the environment of the critical dune areas in conformance with the zoning ordinance, or the model zoning plan if the local unit of government does not have an approved zoning ordinance. Interests that may be purchased may include easements designed to provide for the preservation of critical dune areas and to limit or eliminate development in critical dune areas.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35326 Repealed. 2012, Act 297, Imd. Eff. Aug. 7, 2012

Compiler's note: The repealed section pertained to appropriation to department.

Popular name: Act 451

Popular name: NREPA

PART 355
BIOLOGICAL DIVERSITY CONSERVATION

324.35501 Definitions.

Sec. 35501. As used in this part:

(a) "Biological diversity" means the full range of variety and variability within and among living organisms and the natural associations in which they occur. Biological diversity includes ecosystem diversity, species diversity, and genetic diversity.

(b) "Committee" means the joint legislative working committee on biological diversity created pursuant to

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section 35504.

(c) "Conserve", "conserving", and "conservation" mean measures for maintaining natural biological diversity and measures for restoring natural biological diversity through management efforts, in order to protect, restore, and enhance as much of the variety of native species and communities as possible in quantities and distributions that provide for the continued existence and normal functioning of native species and communities, including the viability of populations throughout the natural geographic distributions of native species and communities.

(d) "Ecosystem" means an assemblage of species, together with the species' physical environment, considered as a unit.

(e) "Ecosystem diversity" means the distinctive assemblages of species and ecological processes that occur in different physical settings of the biosphere.

(f) "Genetic diversity" means the differences in genetic composition within and among populations of a given species.

(g) "Habitat" means the area or type of environment in which an organism or biological population normally lives or occurs.

(h) "Reporting department" means a state department or agency that is required by the committee under this part to file 1 or more reports.

(i) "Species diversity" means the richness and variety of native species.

(j) "State strategy" means the recommended state strategy prepared by the committee.

(k) "Sustained yield" means the achievement and maintenance in perpetuity of regular periodic output of the various renewable resources without impairment of the productivity of the land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35502 Legislative findings.

Sec. 35502. The legislature finds that:

(a) The earth's biological diversity is an important natural resource. Decreasing biological diversity is a concern.

(b) Most losses of biological diversity are unintended consequences of human activity.

(c) Humans depend on biological resources, including plants, animals, and microorganisms, for food, medicine, shelter, and other important products.

(d) Biological diversity is valuable as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure.

(e) Conserving biological diversity has economic implications.

(f) Reduced biological diversity may have potentially serious consequences for human welfare as resources for research and agricultural, medicinal, and industrial development are diminished.

(g) Reduced biological diversity may also potentially impact ecosystems and critical ecosystem processes that moderate climate, govern nutrient cycles and soil conservation and production, control pests and diseases, and degrade wastes and pollutants.

(h) Reduced biological diversity may diminish the raw materials available for scientific and technical advancement, including the development of improved varieties of cultivated plants and domesticated animals.

(i) Maintaining biological diversity through habitat protection and management is often less costly and more effective than efforts to save species once they become endangered.

(j) Because biological resources will be most important for future needs, study by the legislature regarding maintaining the diversity of living organisms in their natural habitats and the costs and benefits of doing so is prudent.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35503 State goal.

Sec. 35503. (1) It is the goal of this state to encourage the lasting conservation of biological diversity.

(2) This part does not require a state department or agency to alter its regulatory functions.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.35504 Joint legislative working committee on biological diversity; creation; appointment of members; establishment, organization, and membership of scientific advisory boards; consultation with other qualified individuals; function; reports; meetings; compliance with open meetings act; writings available to public; public hearings; dissolution.

Sec. 35504. (1) The joint legislative working committee on biological diversity is created in the legislature. The committee shall consist of 4 members of the senate appointed by the senate majority leader, 2 members of the house of representatives appointed by the republican leader of the house of representatives, and 2 members of the house of representatives appointed by the democratic leader of the house of representatives. Members of the committee shall be appointed by the senate majority leader and the republican and democratic leaders of the house of representatives within 30 days of March 23, 1994. At least 1 of the committee members appointed from the senate shall be a member of the minority party of the senate, and at least 1 of the committee members appointed from each house shall be a member of a standing committee that primarily addresses legislation pertaining to environmental protection and natural resources, or wildlife and fisheries management, and agriculture. The committee may establish and organize 1 or more scientific advisory boards to provide the committee with specific expertise as the committee considers necessary or helpful. If 1 or more scientific advisory boards are established, each board shall include individuals with expertise pertaining to the area of resource management at issue. The representatives shall include at least 1 individual employed by a state department or agency; 1 or more individuals employed by a university or college who work in applied research; and 1 or more individuals who work in basic research. The committee may consult with other individuals who are qualified representatives of industry and environmental groups. In fulfilling its duties under this part, the committee may consult with individuals and groups who are knowledgeable about, or interested in, biological diversity and conservation or are knowledgeable about scientific and technological issues related to biological diversity and its impact on human habitat.

(2) The function of the committee shall be to prepare a recommended state strategy for conservation of biological diversity and to report on the costs, benefits, and other implications of the strategy. Upon the request of the committee, state departments and state agencies shall submit reports containing the information required under section 35505 to the committee to enable the committee to prepare the state strategy and fulfill its functions under this part. The state strategy shall in part be based on information provided to the committee in these reports required under this section.

(3) The committee shall meet as soon as possible upon formation and then shall meet at least quarterly. The committee shall at its initial meeting develop a timeline establishing when specific reports are due from each of the reporting departments from which the committee requests reports. However, all reports required under section 35505(1) shall be submitted to the committee by a reporting department by December 30, 1994. The committee shall provide assistance to the reporting department as the committee considers necessary or helpful in developing the state strategy.

(4) The committee shall hold regularly scheduled meetings, and the business of the committee shall be conducted at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the committee shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) The committee shall hold public hearings to solicit input from individuals and entities regarding biological diversity.

(7) The committee shall be dissolved on December 30, 1995.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35505 Reports; contents; additional information.

Sec. 35505. (1) The committee may require clear and concise reports containing the information listed under subsection (2) and, if applicable, subsection (3) from state departments and state agencies, including, but not limited to, the following:

(a) Department of natural resources.

(b) State transportation department.

(c) Department of commerce.

(d) Department of agriculture.

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(e) Department of public health.

(f) Department of military affairs.

(2) Each reporting department shall prepare for the committee a report that contains an overview of all of the following:

(a) A report pertaining to those activities of the reporting departments that alter biological diversity, noting which ecosystems and species are impacted and the existence of and effectiveness of mitigation measures.

(b) Any other information determined by the committee to be necessary or helpful in preparing the state strategy.

(c) The costs and benefits of preserving biological diversity and mitigation measures.

(3) In addition to the information required under subsection (2), the department of natural resources and the department of agriculture shall include in their report, to the extent practical, examples of techniques that are used to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes, including all of the following:

(a) Enhancement of scientific knowledge through improved and more complete biological surveys, and research designed to identify factors limiting population viability or persistence.

(b) Identification of habitats and species of special concern and methods to protect them.

(c) Improvement of management techniques based on scientific knowledge of the conservation of biological diversity.

(d) Effective restoration methods for ecosystems or species of concern.

(e) Broad-based education efforts regarding the importance of biological diversity and the need for conservation.

(f) Use of areas demonstrating management techniques that conserve or restore native biological diversity.

(g) Use of cooperative programs among government agencies, public and private ventures, and the public sector.

(h) Promotion of sustained yield of natural resources for human benefit.

(i) Any other technique to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes whether or not the technique is in current use if supported by scientific knowledge.

(j) The costs and benefits associated with activities described in subdivisions (a) to (i).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.35506 Development of state strategy; factors; progress report to legislature; circulation of draft report; public hearing; report to legislature.

Sec. 35506. (1) Based on information received from the reporting departments and other sources identified in section 35504(1), the committee shall develop a state strategy that includes, but is not limited to, consideration of all of the following:

(a) Reduction of cumulative adverse impacts of all state departments and agencies on biological diversity.

(b) Responsibility of each reporting department to conserve biological diversity and determine the costs of such actions.

(c) Methods of cooperation among reporting departments, other states, and provinces concerning ecosystems management.

(d) Establishment of cooperative programs among governmental agencies, public and private ventures, universities and colleges, and the private sector.

(e) Identification of habitats and species of special concern and methods to protect them.

(f) Prevention of extinction of species.

(g) Provisions for the long-term viability of ecosystems and ecosystem processes.

(h) Development of areas demonstrating management techniques that conserve or restore native biological diversity.

(i) Development of broad-based educational efforts regarding the importance of biological diversity and the need for conservation.

(j) Development of criteria for evaluating the progress of this state in implementing the strategy.

(k) The effects on human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the conservation of biological diversity.

(*l*) The effects of conserving biological diversity on agriculture and forestry.

(2) By December 30, 1994, the committee shall submit to the legislature a report detailing progress made toward development of the strategy.

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(3) By June 30, 1995, the committee shall circulate a draft of the report described in subsection (4) and conduct a public hearing regarding the content of the draft report.

(4) By December 30, 1995, the committee shall approve and submit to the legislature a report containing all of the following:

(a) The recommended state strategy.

(b) Summaries of all written comments and reporting department reports received by the committee pertaining to the work of the committee.

(c) An evaluation of reports submitted by reporting departments.

(d) An evaluation of the cumulative impacts of the reporting departments on the biological diversity of this state.

(e) Recommendations pertaining to legislative options.

(f) Recommendations regarding whether the definitions in this part should be revised.

(g) Recommendations regarding whether there is a need to establish a biological diversity education center to set research priorities and provide leadership and coordination pertaining to fulfilling the policy of this state to maintain biological diversity.

(h) Recommendations concerning research priorities and personnel training to facilitate the implementation of the state strategy.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 357
NATURAL BEAUTY ROADS

324.35701 Definitions.

Sec. 35701. As used in this part:

(a) "Board" means board of county road commissioners.

(b) "City street" means city major street or city local street as described in section 9 of Act No. 51 of the Public Acts of 1951, being section 247.659 of the Michigan Compiled Laws.

(c) "County local road" means county local road as described in section 4 of Act No. 51 of the Public Acts of 1951, being section 247.654 of the Michigan Compiled Laws.

(d) "Native vegetation" means original or indigenous plants of this state including trees, shrubs, vines, wild flowers, aquatic plants, or ground cover.

(e) "Natural" means in a state provided by nature, without human-made changes, wild, or uncultivated.

(f) "Street" means city street or village street.

(g) "Village street" means village major street or village local street as described in section 9 of Act No. 51 of the Public Acts of 1951.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35702 Petition for designation; hearing; notice; resolution.

Sec. 35702. (1) Twenty-five or more freeholders of a township may apply by petition to the board for the county in which that township is located for designation of a county local road or portion of a county local road as a natural beauty road. Twenty-five or more freeholders of a city may petition the legislative body of the city for designation of a city street or a portion of a city street as a natural beauty street. Twenty-five or more freeholders of a village may petition the legislative body of the village for designation of a village street or a portion of a village street as a natural beauty street.

(2) Within 6 months after a petition is received, the board or the legislative body of the city or village shall hold a public hearing to consider designating the road or street described in the petition as a natural beauty road or natural beauty street, respectively. The hearing shall be held at a suitable place within the township in which the proposed natural beauty road is located or the city or village in which the proposed natural beauty street is located. At the hearing, a party or interested person may support or object to the proposed designation. The board, the legislative body of the city, or the legislative body of the village shall give notice of the hearing by publication at least once each week for 2 successive weeks in a newspaper of general circulation in the county, city, or village, respectively, and by posting 5 notices within the limits of the portion of the road or street to be designated, in public and conspicuous places. The posting shall be done and at least

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1 publication in the newspaper shall be made not less than 10 days before the hearing.

(3) Within 30 days after the hearing, if the board, the legislative body of the city, or the legislative body of the village considers the designation desirable, it shall file with the county clerk, city clerk, or village clerk, respectively, a true copy of its resolution designating the portion of the county local road as a natural beauty road, the portion of the city street as a natural beauty street, or the portion of the village street as a natural beauty street, respectively.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35703 Designation; petition requesting withdrawal; revocation of designation; determination; publication of notice; reversion to former status.

Sec. 35703. (1) Not more than 45 days after a board designates a road as a natural beauty road or the legislative body of a city or village designates a street as a natural beauty street, the property owners of record of 51% or more of the lineal footage along the natural beauty road or natural beauty street may submit a petition to the board or the legislative body of the city or village, respectively, requesting that the designation be withdrawn. If the petition is valid, the designation as a natural beauty road or natural beauty street shall be withdrawn.

(2) A board or the legislative body of a city or village may revoke a designation of a natural beauty road or natural beauty street after holding a public hearing in accordance with the procedure described in section 35702(2). Not more than 30 days after a hearing, if the board, the legislative body of the city, or the legislative body of the village by majority vote determines that the revocation is necessary, it shall file with the county clerk, city clerk, or village clerk, respectively, a notice of its determination and publish the notice in a newspaper of general circulation in the county, city, or village, respectively, once each week for 2 successive weeks. After publication of the notice, the road or street previously designated shall revert to its former status.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35704 Guidelines and procedures for native vegetation preservation; rights of public utilities or governmental agencies or municipalities.

Sec. 35704. (1) The department shall develop uniform guidelines and procedures that may be adopted by a board to preserve native vegetation in a natural beauty road right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. The department shall develop uniform guidelines that may be adopted by the legislative body of a city or village to preserve native vegetation in a natural beauty street right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. Guidelines and procedures developed pursuant to this subsection shall not prohibit the application of accepted principles of sound forest management in a natural beauty road or natural beauty street right-of-way or prevent a local road authority from regulating speed and from taking actions to modify specific road features to correct traffic hazards that pose a direct and ongoing threat to motorists.

(2) The department may advise and consult with a board or a city or village legislative body on the application of the guidelines and procedures.

(3) A board or a city or village legislative body shall provide for a public hearing before an act that would result in substantial damage to native vegetation in the right-of-way of a natural beauty road or natural beauty street, respectively, is permitted.

(4) Subject to subsections (5), (6), and (7), prior to approval of any construction project or tree cutting that would significantly impact native vegetation within the right-of-way of a natural beauty road, the board shall notify the clerk of the city, village, or township within which the road lies of the proposed activity. If the city, village, or township desires to hold a public hearing on the proposed activity, the clerk of the city, village, or township shall notify the board within 7 days of the transmittal of notice by the board. The notice to the board shall include the date, time, and place of the township, city, or village hearing. The hearing shall take place within 14 days of the transmittal of notice to the board. A member of the board or a representative of the board shall attend the hearing. The city, village, or township clerk shall provide the board with a written report of testimony taken at the hearing within 10 days of the hearing. The board shall not approve the

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construction project or tree cutting until 12 days after notice of the proposed activity has been sent to the city, village, or township clerk, or if notification of a hearing is timely received by the board, until 12 days after the public hearing is held. The board shall consider, in approval or denial of the proposed activity, any report of testimony taken at the public hearing received from the city, village, or township.

(5) The notification and hearing provided for in subsection (4) are not required if the construction or tree cutting is necessitated by emergency conditions.

(6) This part does not affect the right of a public utility to control vegetation in connection with the maintenance, repair, or replacement of public utility facilities constructed in a road or street before its designation as a natural beauty road or natural beauty street, or in connection with the construction, maintenance, repair, or replacement of public utility facilities crossing a natural beauty road or natural beauty street.

(7) This part does not affect or restrict the maintenance activities of a governmental agency or municipality having jurisdiction over a beauty road.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 119, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35705 Citizen's advisory committee; establishment; purpose.

Sec. 35705. The department may establish a citizen's advisory committee to assist in the formulation of proposals for guidelines and procedures.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of citizens advisory committee for natural beauty roads to department of natural resources by type III transfer, see. E.R.O. No. 2009-12, compiled at MCL 324.99916.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35706 Violation of guideline or procedure; complaint; civil action; default in payment of civil fine or costs.

Sec. 35706. (1) If there is a violation of a guideline or procedure adopted by a board, the legislative body of a city, or the legislative body of a village pursuant to section 35704, a complaint, signed by 5 or more freeholders of the township, city, or village, respectively, or by freeholders representing 10% or more of the lineal frontage along a natural beauty road or natural beauty street, may be filed with the county prosecutor, city attorney, or village attorney, respectively, or with the attorney general. The county prosecutor, the city attorney, the village attorney, or the attorney general, on behalf of the board, the legislative body of the city, the legislative body of the village, or the department, may commence a civil action seeking either of the following:

(a) A temporary or permanent injunction to enjoin the violation of the guideline or procedure.

(b) A civil fine of not more than $400.00 for the violation of the guideline or procedure.

(2) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

PART 358
ADOPT-A-SHORELINE PROGRAM

324.35801 Adopt-a-shoreline program; "department" defined; administration; purpose; rules; agreements with volunteer groups to implement program.

Sec. 35801. (1) As used in this part, "department" means the department of natural resources.

(2) The department shall administer an adopt-a-shoreline program to remove litter from shorelines within state parks and state recreation areas. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating the involvement of volunteer groups in litter cleanup

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work and assisting volunteer groups in selecting specific shoreline or shoreline segments for cleanup activities.

(3) The department may promulgate rules as necessary to implement the adopt-a-shoreline program.

(4) The department may enter into agreements with volunteer groups to implement the adopt-a-shoreline program. Agreements with volunteer groups shall include, but are not limited to, all of the following:

(a) Identification of the designated shoreline or shoreline segment. The volunteer group may request a specific segment of the shoreline it wishes to adopt, subject to the approval of the state park or recreation area manager or supervisor. The department shall assist volunteer groups to select sections of a shoreline and to identify any necessary permits and other authorizations, in cooperation with affected federal, state, and local management agencies, nonprofit organizations, and private landowners.

(b) Specification of the duties of the volunteer group, which shall include both of the following:

(*i*) Removal of litter along the designated shoreline or shoreline segment at least once each year.

(*ii*) Compliance with any rules related to the program that are adopted by the department.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 79, Eff. June 17, 2018.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Popular name: Act 451

Popular name: NREPA

324.35802 Adopt-a-shoreline program; duties of department.

Sec. 35802. In implementing this part and the adopt-a-shoreline program, the department shall do all of the following:

(a) Create a recognition program that acknowledges the efforts of volunteer groups and the members of the groups that participate in the adopt-a-shoreline program.

(b) Provide safety information and assistance to the participating volunteer groups.

(c) Provide volunteer groups with natural resource information and educational materials.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

324.35803 Cleanup effort conducted on state land; part or agreement construed.

Sec. 35803. This part or an agreement under this part shall not be construed to prohibit a cleanup effort from being conducted on any state land.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 79, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

324.35804 Repealed. 2018, Act 79, Eff. June 17, 2018.

Compiler's note: The repealed section pertained to report on implementation and progress of adopt-a-shoreline program.

Popular name: Act 451

Popular name: NREPA

PART 359
ADOPT-A-RIVER PROGRAM

324.35901 Adopt-a-river program; "department" defined; administration; purpose; rules; agreements with volunteer groups to implement program.

Sec. 35901. (1) As used in this part, "department" means the department of natural resources.

(2) The department shall administer an adopt-a-river program to remove litter from rivers and riverbanks within state parks and state recreation areas. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating the involvement of volunteer groups in litter cleanup work and assisting volunteer groups in selecting specific river or stream segments for cleanup activities.

(3) The department may promulgate rules as necessary to implement the adopt-a-river program.

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(4) The department may enter into agreements with volunteer groups to implement the adopt-a-river program. Agreements with volunteer groups shall include, but are not limited to, all of the following:

(a) Identification of the designated river or stream segment. The volunteer group may request a specific segment of the river or stream it wishes to adopt, subject to the approval of the state park or recreation area manager or supervisor. The department shall assist volunteer groups to select sections of a river or stream and to identify any necessary permits or other authorizations, in cooperation with affected federal, state, and local management agencies, nonprofit organizations, and private landowners.

(b) Specification of the duties of the volunteer group, which shall include both of the following:

(*i*) Removal of litter along the designated river or stream segment at least once each year.

(*ii*) Compliance with any rules related to the program that are adopted by the department.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 78, Eff. June 17, 2018.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Popular name: Act 451

Popular name: NREPA

324.35902 Adopt-a-river program; duties of department.

Sec. 35902. In implementing this part and the adopt-a-river program, the department shall do all of the following:

(a) Create a recognition program that acknowledges the efforts of volunteer groups and the members of the groups that participate in the adopt-a-river program.

(b) Provide safety information and assistance to the volunteer groups.

(c) Provide volunteer groups with natural resource information and educational materials.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

324.35903 Cleanup effort conducted on state land; part or agreement construed.

Sec. 35903. This part or an agreement under this part shall not be construed to prohibit a cleanup effort from being conducted on any state land.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996;—Am. 2018, Act 78, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

324.35904 Repealed. 2018, Act 78, Eff. June 17, 2018.

Compiler's note: The repealed section pertained to report on implementation and progress of adopt-a-river program.

Popular name: Act 451

Popular name: NREPA

PART 361
FARMLAND AND OPEN SPACE PRESERVATION

324.36101 Definitions.

Sec. 36101. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

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(c) "Conservation district board" means that term as defined in section 9301.

(d) "Development" means an activity that materially alters or affects the existing conditions or use of any land.

(e) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development, or to extract minerals incidental to a permitted use or as set forth in an instrument recorded under this part.

(f) "Development rights agreement" or "agreement" means a restrictive covenant, evidenced by an instrument in which the owner and this state, for a term of years, agree to jointly hold the right to undertake development of the land, and that contains a covenant running with the land, for a term of years, not to undertake development, subject to permitted uses.

(g) "Development rights easement" or "easement" means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity or for a term of years the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.

(h) "Farmland" means 1 or more of the following:

(*i*) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(*ii*) A farm of 5 acres or more but less than 40 acres, in 1 ownership, with 51% or more of the land area devoted to an agricultural use, and that has produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(*iii*) A farm designated by the department of agriculture and rural development as a specialty farm in 1 ownership that has produced a gross annual income from an agricultural use of $2,000.00 or more. Specialty farm includes, but is not limited to, the following:

(A) A greenhouse.

(B) A farm used for equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; or other similar uses and activities.

(*iv*) Parcels of land in 1 ownership that are not contiguous but that constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland.

(i) "Fund" means the agricultural preservation fund created in section 36202.

(j) "Local governing body" means 1 of the following:

(*i*) With respect to farmland or open space land that is located in a city or village, the legislative body of the city or village.

(*ii*) With respect to farmland or open space land that is not located in a city or village but that is located in a township having a zoning ordinance in effect as provided by law, the township board of the township.

(*iii*) With respect to farmland or open space land that is not described in subparagraph (*i*) or (*ii*), the county board of commissioners.

(k) "Open space land" means 1 of the following:

(*i*) Land that is 1 or more of the following:

(A) An undeveloped site included in a national registry of historic places or designated as a historic site pursuant to state or federal law.

(B) Riverfront property subject to designation under part 305, to the extent that full legal descriptions may be declared open space under the meaning of this part, if the undeveloped parcel or government lot parcel or portions of the undeveloped parcel or government lot parcel as assessed and owned are affected by part 305 and lie within 1/4 mile of the river.

(C) Undeveloped land designated as an environmental area under part 323, including unregulated portions of that land.

(*ii*) Any other area that is approved by the local governing body and is 1 of the following:

(A) An area the preservation of which in its present condition would conserve natural or scenic resources, such as soils, wetlands, and beaches; enhance recreation opportunities; or preserve a historic site.

(B) Idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture and rural development.

(*l*) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor. This subdivision does not apply to section 36104e.

(m) "Permitted use" means any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming

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operation or that does not alter the open space character of the land, as applicable. The state land use agency shall determine whether a use, other than a use under section 36104c or 36104e, is a permitted use pursuant to section 36104a.

(n) "Person" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association, or 2 or more persons having a joint or common interest in land.

(o) "Planning commission" means a planning commission created under the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885.

(p) "Prohibited use" means a use that is not consistent with an agricultural use for farmland subject to a development rights agreement or is not consistent with the open space character of the land for lands subject to a development rights easement.

(q) "Property taxes" means general ad valorem taxes levied after January 1, 1974, on lands and structures in this state, including collection fees, but not including special assessments, penalties, or interest.

(r) "Regional planning commission" means a regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(s) "Regional planning district" means a planning and development region as established by Executive Directive No. 1968-1, as amended, whose organizational structure is approved by the regional council.

(t) "State income tax act" means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.847, and in effect during the particular year of the reference to the act.

(u) "State land use agency" means the department of agriculture and rural development.

(v) "Substantially undeveloped" means any parcel or area of land essentially unimproved except for a dwelling, building, structure, road, or other improvement that is incidental to agricultural and open space uses.

(w) "Unique or critical land area" means agricultural or open space land identified by the land use agency as an area that should be preserved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 262, Imd. Eff. June 29, 2000;—Am. 2008, Act 336, Imd. Eff. Dec. 23, 2008;—Am. 2016, Act 265, Eff. Sept. 26, 2016;—Am. 2023, Act 230, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

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324.36102 Development rights agreement or easement; execution authorized; provisions.

Sec. 36102. (1) The state land use agency may execute a development rights agreement or easement on behalf of the state.

(2) The provisions of a development rights agreement or easement shall be consistent with the purposes of this part and shall not permit an action which will materially impair the character of the land involved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36103 Development rights agreement or easement; effect of execution and acceptance; term; limitation; disposition; prior lien, lease, or interest not superseded; lien of state or local governing body; subordination.

Sec. 36103. (1) The execution and acceptance of a development rights agreement or easement by the state or local governing body and the owner dedicates to the public the development rights in the land for the term specified in the instrument. A development rights agreement or easement shall be for an initial term of not less than 10 years. A development rights agreement or easement entered into after June 5, 1996 shall not be for a term of more than 90 years.

(2) The state or local governing body shall not sell, transfer, convey, relinquish, vacate, or otherwise dispose of a development rights agreement or easement except with the agreement of the owner as provided in sections 36111, 36111a, 36112, and 36113.

(3) An agreement or easement does not supersede any prior lien, lease, or interest that is properly recorded with the county register of deeds.

(4) A lien created under this part in favor of the state or a local governing body is subordinate to a lien of a mortgage that is recorded in the office of the register of deeds before the recording of the lien of the state or local governing body.

(5) The state shall subordinate its interest in a recorded agreement under section 36104 or an easement

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under section 36105 or 36106 to a subsequently recorded mortgage lien, lease, or interest if both of the following conditions are met:

(a) The parcel meets the requirements set forth under section 36111(2)(a) for parcels containing existing structures.

(b) The landowner requesting the subordination is an individual essential to the operation of the farm as defined in section 36110(5).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2003, Act 36, Imd. Eff. July 3, 2003.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36104 Application for farmland development rights agreement; form; contents; notice; review, comment, and recommendations; approval or rejection; appeal; preparation, contents, execution, and recordation of agreement; annual listing of current agreements; application effective for current tax year; reapplication; tax exemption.

Sec. 36104. (1) An owner of land desiring a farmland development rights agreement may apply by filing an application with the local governing body having jurisdiction under this part. The owner shall apply on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly classify the land as farmland. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of the application, the local governing body shall notify the county planning commission or the regional planning commission and the soil conservation district agency. If the county has jurisdiction, it shall also notify the township board of the township in which the land is situated.

(3) An agency or local governing body receiving notice has 30 days to review, comment, and make recommendations to the local governing body with which the application is filed. These reviewing agencies do not have an approval or rejection power over the application.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body holding the application shall approve or reject the application within 45 days after the application is received, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated under section 36116.

(5) If an application for a farmland development rights agreement is approved by the local governing body having jurisdiction, the local governing body shall forward a copy, along with the comments and recommendations of the reviewing bodies, to the state land use agency. The application shall contain a statement from the assessing officer where the property is located specifying the current fair market value of the land and structures in compliance with the agricultural section of the Michigan state tax commission assessor manual. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (6) as if the application was rejected.

(6) If the application for a farmland development rights agreement is rejected by the local governing body, the local governing body shall return the application to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection by submitting the application to the state land use agency.

(7) The state land use agency, within 60 days after a farmland development rights agreement application is received under subsection (5) or (6), shall approve or reject the application. The state land use agency may reject an application for a farmland development rights agreement that has been approved by a local governing body only if the proposed agreement would be inconsistent with section 36101(f). If the application is approved by the state land use agency, the state land use agency shall prepare a farmland development rights agreement that includes all of the following provisions:

(a) A structure shall not be built on the land except for use consistent with farm operations, which includes a residence for an individual essential to the operation of the farm under section 36111(2)(b), or lines for utility transmission or distribution purposes or with the approval of the local governing body and the state land use agency.

(b) Land improvements shall not be made except for use consistent with farm operations or with the approval of the local governing body and the state land use agency.

(c) Any interest in the land shall not be sold except a scenic, access, or utility easement that does not

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substantially hinder farm operations.

(d) Public access is not permitted on the land unless agreed to by the owner.

(e) Any other condition and restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as farmland.

(8) Upon approval of an application by the state, the state land use agency shall execute the farmland development rights agreement on behalf of the state and shall forward the agreement to the applicant for execution. After the applicant executes the farmland development rights agreement, the applicant shall have the executed farmland development rights agreement recorded by the register of deeds in the county in which the property is located. The applicant shall provide a copy of the recorded farmland development rights agreement to the state land use agency.

(9) The state land use agency shall annually provide a listing of current farmland development rights agreements to county equalization offices where the land is located and to the approving local governing body.

(10) An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(11) If an application for a farmland development rights agreement is rejected by the state land use agency, the state land use agency shall notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the reasons for rejection. An applicant receiving a rejection from the state land use agency may appeal the rejection pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(12) An applicant may reapply for a farmland development rights agreement following a 1-year waiting period.

(13) The value of the jointly owned development rights as expressed in a farmland development rights agreement is not exempt from ad valorem taxation and shall be assessed to the owner of the land as part of the value of that land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

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324.36104a Permitted use; criteria; exception.

Sec. 36104a. (1) In determining whether a use is a permitted use, the state land use agency shall consider the following criteria:

(a) Whether the use adversely affects the productivity of farmland or adversely affects the character of open space land.

(b) Whether the use materially alters or negatively affects the existing conditions or use of the land.

(c) Whether the use substantially alters the agricultural use of farmland subject to a development rights agreement or substantially alters the natural character of open space land subject to an open space easement.

(d) Whether the use results in a material alteration of an existing structure to a nonagricultural use.

(e) Whether the use conforms with all applicable federal, state, and local laws and ordinances.

(2) Subsection (1) does not apply to a use authorized under section 36104c or 36104e.

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2023, Act 230, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36104c Farming operations; permitted uses.

Sec. 36104c. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years.

History: Add. 2023, Act 230, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36104e Solar facility; permitted use; development rights agreement; tax credit;

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definitions.

Sec. 36104e. (1) As used in this section:

(a) "Amended development rights agreement" means a development rights agreement that includes the conditions required to allow a solar facility to be installed and operated on all or a portion of the land subject to the agreement.

(b) "Deferment period" means the period of time beginning when construction of the solar facility commences and ending when the solar facility is completely removed.

(c) "Electric provider" means either of the following:

(*i*) An electric provider as defined in section 5 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1005.

(*ii*) A merchant plant as defined in section 10g of 1939 PA 3, MCL 460.10g.

(d) "Landowner" means a person that meets both of the following requirements:

(*i*) Has a freehold estate in land coupled with possession and enjoyment or, if land is subject to a land contract, is the vendee.

(*ii*) Has signed a development rights agreement with the state land use agency, and, if the land is subject to a land contract, the vendor.

(e) "NRCS" means the United States Department of Agricultural Natural Resource Conservation Service.

(f) "Solar agreement" means an agreement entered into by the landowner and the solar facility owner or operator to authorize the installation and operation of a solar facility on all or a portion of the land and that contains all conditions specifically identified in this section as the responsibility of the solar facility owner or operator.

(g) "Solar facility" means a facility, owned by an electric provider, for the generation of electricity using solar photovoltaic cells.

(h) "Solar facility site" means the land subject to a solar agreement.

(2) A solar facility is a permitted use under a development rights agreement if all of the following conditions are met:

(a) Before the solar facility became a permitted use, the land was subject to a development rights agreement.

(b) The land subject to the development rights agreement was divided under section 36110(4), if only a portion of the land was to be subject to a solar agreement.

(c) After any split required by subdivision (b), the landowner and state land use agency amend the resulting development rights agreement applicable to the solar facility site.

(d) The amended development rights agreement applicable to the proposed solar facility site extends the existing development rights agreement beyond the original termination date for an amount of time equal to the length of the deferment period. However, the deferment period shall not exceed 90 years minus the remaining term of the development rights agreement. A landowner may enter into a subsequent amended development rights agreement to provide for an additional deferment period.

(e) At least 60 days have elapsed since the development rights agreement was recorded.

(f) The solar facility site is designed, planted, and maintained with groundcover that achieves a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites developed by the Michigan State University Department of Entomology or is designed, planted, and maintained in compliance with NRCS Cover Standard 327.

(g) A bond or irrevocable letter of credit payable to this state is maintained during the deferment period as financial assurance for the decommissioning of the solar facility and the return of the land to agricultural use. The amount of the financial surety shall be calculated by a licensed professional engineer. Every 3 years, or as the department considers necessary, the amount of the bond or irrevocable letter of credit shall be adjusted as necessary to ensure that the financial assurance is sufficient for the purposes of this subdivision.

(h) The solar facility site is designed, established, and maintained in a manner that ensures the land can be returned to agricultural use at the end of the deferment period.

(i) The land is returned to normal agricultural operations and use by the first growing season following the end of the deferment period.

(3) Under the solar agreement, the electric provider may assume responsibility for compliance with subsection (2)(f), (g), or (h). Under the solar agreement, the electric provider shall assume responsibility for maintenance of any agricultural drain, as defined in section 30103 or 30305, that is privately owned and necessary for exemption from regulation under part 301 or 303, respectively.

(4) When the deferment period ends, the solar facility is no longer a permitted use.

(5) The landowner shall not claim a tax credit under section 36109 during the deferment period. If a

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landowner relinquishes the development rights agreement under sections 36111 and 36111a at any time during the deferment period, the past 7 years of tax credits are payable. The past 7 years of tax credits are calculated from the time the amended development rights agreement is recorded and shall be held until the land is returned to agricultural production at the end of the deferment period.

History: Add. 2023, Act 230, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36105 Open space land; application for open space development rights easement; approval or rejection; provisions; tax exemption.

Sec. 36105. (1) If an owner of open space land desires an open space development rights easement, and the land is subject to section 36101(j)(*i*), the procedures for filing an application provided by the state land use agency shall follow as provided in section 36104, except section 36104(7) and (12) do not apply to an open space development rights easement.

(2) The state land use agency, within 60 days after the open space development rights easement application is received, shall approve or reject the application. If the application is approved by the state land use agency, the state land use agency shall prepare an open space development rights easement that includes the following provisions:

(a) A structure shall not be built on the land without the approval of the state land use agency.

(b) Improvement to the land shall not be made without the approval of the state land use agency.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Access to the open space land may be provided if access is agreed to by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(3) Upon receipt of the application, the state land use agency shall notify the state tax commission. Upon notification, the state tax commission shall within 60 days make an on-site appraisal of the land in compliance with the Michigan state tax commission assessors manual. The application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights. The state land use agency shall submit to the legislature each application for an open space development rights easement and an analysis of its cost to the state. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body if lost revenues are indicated. A copy of the approved application and the open space development rights easement shall be forwarded by the state land use agency to the applicant for execution and to the local assessing office where the land is situated.

(4) If an application for an open space development rights easement is rejected under subsection (2), the applicant may reapply for an open space development rights easement beginning 1 year after the rejection.

(5) The development rights held by the state as expressed in an open space development rights easement under this section are exempt from ad valorem taxation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Compiler's note: In subsection (1), the reference to "section 36101(j)(i)" evidently should be to "section 36101(k)(i)" as the result of Act 265 of 2016.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36106 Open space land; application for open space development rights easement; form; contents; notice; review, comments, and recommendations; approval or rejection; preparation and contents of easement; appraisal; statement of fair market value; execution and recordation of easement; forwarding copies of easement; appeal; legislative approval; costs; reapplication; tax exemption.

Sec. 36106. (1) An owner of open space land desiring an open space development rights easement whose land is subject to section 36101(j)(*ii*) may apply by filing an application with the local governing body. The application shall be made on a form prescribed by the state land use agency. The application shall contain

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information reasonably necessary to properly identify the land as open space. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of an application, the local governing body shall notify the county planning commission, the regional planning commission, and the soil conservation district agency. If the local governing body is the county board of commissioners, the county board shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the local governing body shall notify the governing body of the city or village.

(3) An entity receiving notice under subsection (2) has 30 days to review, comment, and make recommendations to the local governing body with which the application was filed.

(4) The local governing body shall approve or reject the application after considering the comments and recommendations of the reviewing entities and within 45 days after the application was received by the local governing body, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116. If the local governing body does not act within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (9) as if the application was rejected.

(5) If the application is approved by the local governing body, the local governing body shall prepare the easement. If the application is approved by the state land use agency on appeal, the state land use agency shall prepare the easement. An easement prepared under this section shall contain all of the following provisions:

(a) A structure shall not be built on the land without the approval of the local governing body.

(b) An improvement to the land shall not be made without the approval of the local governing body.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Public access to the open space land may be provided if agreed upon by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by both parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(6) Upon receipt of the application, the local governing body shall direct either the local assessing officer or an independent certified assessor to make an on-site appraisal of the land within 30 days in compliance with the Michigan state tax commission assessors manual. The approved application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights, if any. A copy of the approved application and the development rights easement shall be forwarded to the applicant for his or her execution.

(7) If the owner of the land executes the approved easement, it shall be returned to the local governing body for its execution. The local governing body shall record the development rights easement with the register of deeds of the county. A copy of the approved easement shall be forwarded to the local assessing office and to the state land use agency for their information.

(8) The decision of the local governing body may be appealed to the state land use agency, pursuant to subsection (9).

(9) If an application for an open space development rights easement is rejected by the local governing body, the local governing body shall notify the applicant and all reviewing entities with a written statement of the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application. The state land use agency shall submit to the legislature each approved application for an open space development rights easement and an analysis of its cost. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where lost revenues are indicated. A copy of the approved application and an appropriate easement shall be forwarded by the state land use agency to the applicant for execution and to the local governing body where the land is situated.

(10) If an application for an open space development rights easement is rejected under subsection (4), the applicant may reapply for an open space development rights easement beginning 1 year after the final rejection.

(11) The development rights held by the local governing body as expressed in an open space development rights easement are exempt from ad valorem taxation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

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Compiler's note: In subsection (1), the reference to "section 36101(j)(ii)" evidently should be to "section 36101(k)(ii)" as the result of Act 265 of 2016.

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Popular name: Farmland and Open Space

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324.36107 Notice of owners' intentions regarding extension or expiration of agreement or easement; notice of lien.

Sec. 36107. (1) All participants owning land contained under a development rights agreement or easement shall notify, on a form provided by the state land use agency for informational purposes only, the state or the local governing body holding the development rights, 6 months before the natural termination date of the development rights agreement or easement, of the owners' intentions regarding whether the agreement or easement should be extended or allowed to expire.

(2) The state land use agency shall notify the landowner via first-class mail at least 7 years before the expiration of a development rights agreement or easement that a lien may be placed at the time of expiration on the enrolled land in accordance with section 36111(8) if the landowner does not extend the agreement or easement and shall indicate to the landowner the option of not claiming credits during all or a portion of the next 7 years.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36108 Special assessments.

Sec. 36108. (1) A city, village, township, county, or other governmental agency shall not impose special assessments for sanitary sewers, water, lights, or nonfarm drainage on land for which a development rights agreement or easement has been recorded, except for years before 1995 as to a dwelling or a nonfarm structure located on the land, unless the assessments were imposed before the recording of the development rights agreement or easement.

(2) Land covered by this exemption shall be denied use of an improvement created by the special assessment until it has paid that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

(3) Upon termination of a development rights agreement or easement that has been exempt from a special assessment under this section, a city, village, township, county, or other governmental agency may impose the previously exempted special assessment. However, the amount of that special assessment shall not exceed the amount the special assessment would have been at the initial time of exemption, and shall not be subject to interest or penalty.

(4) If a dwelling or a nonfarm structure located on land covered by a development rights agreement or easement is required under the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, to connect to an improvement created by a special assessment, the owner of that dwelling or nonfarm structure shall pay only that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36109 Credit against state income tax or former state single business tax act or Michigan business tax act.

Sec. 36109. (1) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the household income as defined in section 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508, excluding a deduction if taken under section 613 of the internal revenue code of 1986, 26 USC

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613. For the purposes of this section, all of the following apply:

(a) A partner in a partnership is considered an owner of farmland and related buildings owned by the partnership and covered by a development rights agreement, agricultural conservation easement, or purchase of development rights. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the Internal Revenue Service or, if the partnership is not required to report that information to the Internal Revenue Service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of subtitle A of the internal revenue code of 1986, 26 USC 1361 to 1379, is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the corporation. A shareholder is considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the Internal Revenue Service. Except as provided in subsection (8), this subdivision applies to tax years beginning after 1987.

(c) Except as otherwise provided in this subdivision, an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease is considered the owner of that property if it is farmland and related buildings covered by a development rights agreement. Beginning January 1, 1986, if an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease enters into a written agreement with the person holding the remainder interest in that land and the written agreement apportions the property taxes in the same manner as revenue and expenses, the life lease or life estate holder and the person holding the remainder interest may claim the credit under this act as it is apportioned to them under the written agreement upon filing a copy of the written agreement with the return.

(d) If a trust holds farmland and related buildings covered by a development rights agreement and an individual is treated under subpart E of subchapter J of subchapter A of chapter 1 of the internal revenue code of 1986, 26 USC 671 to 679, as the owner of that portion of the trust that includes the farmland and related buildings, that individual is considered the owner of that property.

(e) An individual who is the sole beneficiary of a trust that is the result of the death of that individual's spouse is considered the owner of farmland and related buildings covered by a development rights agreement and held by the trust if the trust conforms to all of the following:

(*i*) One hundred percent of the trust income is distributed to the beneficiary in the tax year in which the trust receives the income.

(*ii*) The trust terms do not provide that any portion of the trust is to be paid, set aside, or otherwise used in a manner that would qualify for the deduction allowed by section 642(c) of the internal revenue code of 1986, 26 USC 642.

(f) A member in a limited liability company is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the limited liability company. A member is considered to pay a proportion of the property taxes on that property equal to the member's share of ownership or distributive share of ordinary income as reported by the limited liability company to the Internal Revenue Service.

(2) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 to whom subsection (1) does not apply may claim a credit under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the amount by which the property taxes on the land and structures used in farming operations restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the adjusted business income of the owner as defined in section 36 of the former single business tax act, 1975 PA 228, or the business income tax base of the owner as defined in section 201 of the Michigan business tax act, 2007 PA 36, MCL 208.1201, plus compensation to shareholders not included in adjusted business income or the business income tax base, excluding any deductions if taken under section 613 of the internal revenue code of 1986, 26 USC 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the

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participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

(4) A beneficiary of an estate or trust to which subsection (1) does not apply is entitled to the same percentage of the credit provided in this section as that person's percentage of all other distributions by the estate or trust.

(5) If the allowable amount of the credit claimed exceeds the state income tax or the state business tax otherwise due for the tax year or if there is no state income tax or the state business tax due for the tax year, the amount of the claim not used as an offset against the state income tax or the state business tax, after examination and review, shall be approved for payment to the claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total credit allowable under this part and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the total property tax due and payable by the claimant in that year. The amount the credit exceeds the property tax due and payable shall be deducted from the credit claimed under this part.

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act, the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish it with a copy of a tax return, or portion of a tax return, and supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless the claimant specifies on the return that a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or business tax return filed by the claimant. If the claimant specifies that a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant. If a claimant falsely specifies that the receipt showing payment of the property taxes is attached to the return and if the property taxes on the land subject to that development rights agreement were not paid before the return was filed, all future payments to that claimant of credits claimed under this act attributable to that development rights agreement may be made payable to the county treasurer of the county in which the property subject to the development rights agreement is located and to that claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing

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an amended return under the former single business tax act, 1975 PA 228. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 421, Eff. Mar. 28, 2001;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36110 Sale of land; notice; death or disability of owner; division into smaller parcels of land; "individual essential to the operation of a farm" defined; fee prohibited.

Sec. 36110. (1) Land subject to a development rights agreement or easement may be sold without penalty under sections 36111, 36112, and 36113, if the use of the land by the successor in title complies with the provisions contained in the development rights agreement or easement. The seller shall notify the governmental authority having jurisdiction over the development rights of the change in ownership.

(2) If the owner of land subject to a development rights agreement or easement dies or becomes totally and permanently disabled or when an individual essential to the operation of the farm dies or becomes totally and permanently disabled, the land may be relinquished from the program under this part and is subject to a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A request for relinquishment under this section shall be made within 3 years from the date of death or disability. A request for relinquishment under this subsection shall be made only by the owner in case of a disability or, in case of death, the person who becomes the owner through survivorship or inheritance.

(3) If an owner of land subject to a development rights agreement becomes totally and permanently disabled or dies, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement, upon request of the disabled agreement holder or upon request of the person who becomes an owner through survivorship or inheritance, and upon approval of the local governing body and the state land use agency. Not more than 2 acres may be relinquished under this subsection unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size. The portion of the farmland relinquished from the development rights agreement under this subsection is subject to a lien pursuant to section 36111(11).

(4) The land described in a development rights agreement may be divided into smaller parcels of land and continued under the same terms and conditions as the original development rights agreement. The smaller parcels created by the division must meet the minimum requirements for being enrolled under this act or be 40 acres or more in size. Farmland may be divided once under this subsection without fee by the state land use agency. The state land use agency may charge a reasonable fee not greater than the state land use agency's actual cost of dividing the agreement for all subsequent divisions of that farmland. When a division of a development rights agreement is made under this subsection and is executed and recorded, the state land use agency shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(5) As used in this section, "individual essential to the operation of the farm" means a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under this part. An individual is considered involved to a material extent if that individual does 1 or more of the following:

(a) Has a financial interest equal to or greater than 1/2 the cost of producing the crops, livestock, or products and inspects and advises and consults with the owner on production activities.

(b) Works 1,040 hours or more annually in activities connected with production of the farming operation.

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(6) The state land use agency shall not charge a fee to process a change of ownership under subsection (1) or a division under subsection (4).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36111 Expiration, renewal, relinquishment, or termination of development rights agreement.

Sec. 36111. (1) A development rights agreement expires at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the agreement upon written request of the owner. A development rights agreement may be renewed for a term of not less than 7 years. If a development rights agreement is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body.

(2) A development rights agreement or a portion of the farmland covered by a development rights agreement may be relinquished as provided in this section and section 36111a. Farmland may be relinquished by this state before a termination date contained in the instrument under either of the following circumstances:

(a) If approved by the local governing body and the state land use agency, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement. Not more than 2 acres may be relinquished under this subdivision unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the size of the parcel proposed to be relinquished is less than that required by local zoning, the parcel shall not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(b) If approved by the local governing body and the state land use agency, land may be relinquished from the agreement for the construction of a residence by an individual essential to the operation of the farm as defined in section 36110(5). Not more than 2 acres may be relinquished under this subdivision. If the size of the parcel proposed to be relinquished is less than that required by local zoning, the parcel shall not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(3) Until April 1, 1997, if an owner who entered into or renewed a development rights agreement before April 15, 1994 makes a request, in writing, to the state land use agency, to terminate that development rights agreement with respect to all or a portion of the farmland covered by the agreement, the state land use agency shall approve the request and relinquish that farmland from the development rights agreement. If farmland is relinquished under this subsection, the state land use agency shall notify the local governing body of the local unit of government in which the land is located of the relinquishment.

(4) If the request for relinquishment of the development rights agreement is approved, the state land use agency shall prepare an instrument, subject to subsections (5) to (8), and shall forward the original relinquishment instrument to the applicant. The applicant shall have the relinquishment instrument recorded by the register of deeds in the county in which the property is located. The applicant shall provide a copy of the recorded relinquishment instrument to the department.

(5) If a development rights agreement or a portion of a development rights agreement is to be relinquished pursuant to subsection (2) or section 36111a, the state land use agency shall record a lien against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by an owner under section 36109 and attributable to the property formerly subject to the development rights agreement, plus interest at the rate of 6% per annum simple interest from the time the credit was received until the lien is placed on the property.

(6) If the property being relinquished from the development rights agreement is less than all of the property subject to that development rights agreement, the allocated tax credit for the development rights agreement shall be multiplied by the property's share of the taxable value of the agreement. As used in this subsection:

(a) "The allocated tax credit" means the amount obtained by multiplying the owner's total farmland preservation credit claimed in that year on all agreements by the quotient of the ad valorem property tax levied in that year on property subject to the development rights agreement that included the property being relinquished from the agreement divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year.

(b) "The property's share of the taxable value of the agreement" means the quotient of the taxable value of

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the property being relinquished from the agreement divided by the total taxable value of property subject to the development rights agreement that included the property being relinquished from the agreement. For years before 1995, taxable value means assessed value.

(7) Thirty days before the recording of a lien under this section, the state land use agency shall notify the owner of the farmland subject to the development rights agreement of the amount of the lien, including interest, if any. If the lien amount is paid before 30 days after the owner is notified, the lien shall not be recorded. The lien may be paid and discharged at any time and is payable to the state by the owner of record when the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged. Notwithstanding any other provision of this section, from July 1, 2011 through September 30, 2011, a lien under this section recorded before January 1, 2011 may be paid at 85% of the face value of the lien. From October 1, 2011 through March 31, 2012, a lien under this section recorded before January 1, 2011 may be paid at 90% of the face value of the lien.

(8) Upon the termination of all or a portion of the development rights agreement under subsection (3) or, subject to subsection (14), the termination of a development rights agreement under subsection (1), the state land use agency shall prepare and record a lien, if any, against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by the owner under section 36109, attributable to the property formerly subject to the development rights agreement. The lien shall be without interest or penalty and is payable as provided in subsection (7). However, if the development rights agreement was approved or rejected by the local governing body under section 36104 on or after July 1, 2012 and is terminated under subsection (1), the amount of the lien shall include interest at the current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the lien is recorded until it is paid. The adjusted prime rate shall be determined as provided in section 23 of 1941 PA 122, MCL 205.23.

(9) The state land use agency shall notify the department of treasury of the termination of a development rights agreement.

(10) The unappropriated proceeds from lien payments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202.

(11) Upon the relinquishment of all of the farmland under section 36110(2) or a portion of the farmland under section 36110(3), the state land use agency shall prepare and record a lien against the property formerly subject to a development rights agreement in an amount calculated as follows:

(a) Establishing a term of years by multiplying 7 by a fraction, the numerator of which is the number of years the farmland was under the development rights agreement, including any extensions, and the denominator of which is the number representing the term of years of that agreement, including any extensions.

(b) The lien amount equals the total amount of the allocated tax credit claimed attributable to that development rights agreement in the immediately preceding term of years as determined in subdivision (a).

(12) When a lien is paid under this section, the state land use agency shall prepare and record a discharge of lien with the register of deeds in the county in which the land is located. The discharge of lien shall specifically state that the lien has been paid in full, that the lien is discharged, that the development rights agreement and accompanying contract are terminated, and that the state has no further interest in the land under that agreement.

(13) A farmland development rights agreement is automatically relinquished when the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206.

(14) If, upon expiration of the term of a farmland development rights agreement, the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206 or if a farmland development rights agreement is automatically relinquished under subsection (13), the farmland is not subject to a lien under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 173, Imd. Eff. Oct. 9, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 1996, Act 567, Imd. Eff. Jan. 16, 1997;—Am. 2000, Act 262, Imd. Eff. June 29, 2000;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002;—Am. 2011, Act 79, Imd. Eff. July 12, 2011;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36111a Relinquishment of development rights agreement; conditions; "economic

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viability" defined.

Sec. 36111a. (1) Upon request from a landowner and a local governing body, the state land use agency shall relinquish farmland from the development rights agreement if 1 or both of the following occur:

(a) The local governing body determines 1 or more of the following:

(*i*) That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices.

(*ii*) That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices.

(*iii*) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland.

(*iv*) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

(b) The local governing body determines that the relinquishment is in the public interest and that the farmland to be relinquished meets 1 or more of the following conditions:

(*i*) The farmland is to be owned, operated, and maintained by a public body for a public use.

(*ii*) The farmland had been zoned for the immediately preceding 3 years for a commercial or industrial use.

(*iii*) The farmland is zoned for commercial or industrial use and the relinquishment of the farmland will be mitigated by 1 of the following means:

(A) For every 1 acre of farmland to be relinquished, an agricultural conservation easement will be acquired over 2 acres of farmland of comparable or better quality located within the same local unit of government where the farmland to be relinquished is located. The agricultural conservation easement shall be held by the local unit of government where the farmland to be relinquished is located or, if the local governing body declines to hold the agricultural conservation easement, by the state land use agency.

(B) If an agricultural conservation easement cannot be acquired as provided under sub-subparagraph (A), there will be deposited into the state agricultural preservation fund created in section 36202 an amount equal to twice the value of the development rights to the farmland being relinquished, as determined by a certified appraisal.

(*iv*) The farmland is to be owned, operated, and maintained by an organization exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and the relinquishment will be beneficial to the local community.

(2) In determining public interest under subsection (1)(b), the governing body shall consider all of the following:

(a) The long-term effect of the relinquishment upon the preservation and enhancement of agriculture in the surrounding area, including any nonfarm encroachment upon other agricultural operations in the surrounding area.

(b) Any other reasonable and prudent site alternatives to the farmland to be relinquished.

(c) Any infrastructure changes and costs to the local governmental unit that will result from the development of the farmland to be relinquished.

(3) If a landowner's relinquishment application under this section is denied by the local governing body, the landowner may appeal that denial to the state land use agency. In determining whether to grant the appeal and approve the relinquishment, the state land use agency shall follow the criteria established in subsection (1)(a) or follow the criteria in subsection (1)(b) and consider the factors described in subsection (2).

(4) The state land use agency shall review an application approved by the local governing body to verify that the criteria provided in subsection (1)(a) were met or the criteria in subsection (1)(b) were met and the factors in subsection (2) were considered. If the local governing body did not render a determination in accordance with this subsection, the state land use agency shall not relinquish the farmland from the development rights agreement.

(5) A local governing body may elect to waive its right to make a relinquishment determination under subsection (1)(a) or (b) by providing written notice of that election to the state land use agency. The written notice shall grant the state land use agency sole authority to grant or deny the application as provided in this section.

(6) A decision by the state land use agency to grant or deny an application for relinquishment under this section that adversely affects a land owner or a local governing body is subject to a contested case hearing as provided under this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) As used in this section, "economic viability" means that the cash flow returning to the farming operation is positive. The local governing body or state land use agency shall evaluate an application for relinquishment, and determine the economic viability of the affected farming operation, by doing all of the

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following:

(a) Estimating crop, livestock, or product value of the farmland using locally accepted production methods and local United States department of agriculture yield capabilities for the specific soil types and average price for crop, livestock, or product over the past 5 years.

(b) Adding average yearly property tax credits afforded by the development rights agreement over the immediately preceding 5-year period.

(c) Subtracting estimated expenses directly attributed to the production of the crop, livestock, or product, including, but not limited to, seed, fertilizer, insecticide, building and machinery repair, drying, trucking, and property taxes.

(d) Subtracting the estimated cost of the operator's labor and management time at rates established by the United States department of agriculture for "all labor", Great Lakes area, as published in the United States department of agriculture labor reports.

(e) Subtracting typical capital replacement cost per acre of nonland assets using a useful life depreciation rate for comparable farming operations.

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36111b Development rights or acquisition of agricultural conservation easements; application; selection criteria and scoring system; notification; points; determination of development rights value; approval by director; installment purchase plan; provisions for protection of farmland; termination of easements; value development rights in event of condemnation.

Sec. 36111b. (1) An application submitted under section 36111(10) for purchase of development rights or acquisition of agricultural conservation easements shall be evaluated and ranked according to selection criteria and a scoring system approved by the commission of agriculture. In developing a point system for selecting the parcels for purchase of development rights or the acquisition of agricultural conservation easements, the department of agriculture shall seek the assistance of the department of natural resources, Michigan state university, the United States department of agriculture-natural resources conservation service, and other appropriate professional and industry organizations. The selection criteria shall give consideration to the quality and physical characteristics of the parcel as well as surrounding land uses and threat of development.

(2) The department of agriculture shall prepare a notification to those individuals whose farmland development rights agreements are expiring in the year of application or expiring 1 year after the year of application. The notice shall be completed not less than 90 days before an application deadline set by the department of agriculture and shall include written information and details regarding the program. Applications for the purchase of development rights or the acquisition of agricultural conservation easements shall be submitted to the department of agriculture by the owner of that land and must include written support by the local governing body.

(3) In developing a scoring system, points shall be given to farmland that meets 1 or more of the following criteria, with subdivision (a) given priority over subdivisions (b) to (e):

(a) Productive capacity of farmland suited for the production of feed, food, and fiber, including, but not limited to, prime or unique farmland or farmland of local importance, as defined by the United States department of agriculture-natural resources conservation service.

(b) Lands that are enrolled under this act.

(c) Prime agricultural lands that are faced with development pressure that will permanently alter the ability for that land to be used for productive agricultural activity.

(d) Parcels that would complement and are part of a documented, long-range effort or plan for land preservation by the local governing body.

(e) Parcels with available matching funds from the local governing body, private organizations, or other sources.

(4) For purposes of subsections (7) and (8), the value of development rights in the purchase of development rights or the acquisition of agricultural conservation easements shall be determined by subtracting the current fair market value of the property without the development rights from the current fair market value of the property with all development rights.

(5) The director of the department of agriculture shall approve individual parcels for the purchase of

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development rights or the acquisition of agricultural conservation easements based upon the adopted selection criteria and scoring process. The commission of agriculture shall approve a method to establish the price to be paid for the purchase of development rights or the acquisition of agricultural conservation easements, such as via appraisal, bidding, or a formula-based process and shall establish the maximum price to be paid on a per purchase basis from the lien fund. The director of the department of agriculture, after negotiations with the landowner, shall approve the price to be paid for purchase of development rights or the acquisition of the agricultural conservation easements. Proper releases from mortgage holders and lienholders must be obtained and executed to ensure that all development rights are purchased free and clear of all encumbrances.

(6) The department may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the department.

(7) An agricultural conservation easement shall include appropriate provisions for the protection of the farmland and other unique and critical benefits. An agricultural conservation easement may be terminated if the land, as determined by the commission of agriculture, meets 1 or more of the criteria described in section 36111a(1)(a) to (d). An agricultural conservation easement or portion of an agricultural conservation easement shall not be terminated unless approved by the local governing body and the commission of natural resources and the commission of agriculture. If an agricultural conservation easement is terminated, the current fair market value of the development rights, at the time of termination, shall be paid to the state land use agency. Any payment received by the state land use agency under this part shall be used to acquire agricultural conservation easements on additional farmland under section 36111(10).

(8) Whenever a public entity, authority, or political subdivision exercises the power of eminent domain and condemns land enrolled under this act, the value of the land shall include the value of development rights covered by development rights agreements or agricultural conservation easements. If the development rights have been purchased or agricultural conservation easements have been acquired under section 36111(10), the value of the development rights at the time of condemnation shall be paid to the state land use agency and any payment received by the state land use agency shall be used to acquire agricultural conservation easements on additional land under section 36111(10).

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 262, Imd. Eff. June 29, 2000.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

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324.36112 Relinquishment of open space development rights easement pursuant to MCL 324.36105.

Sec. 36112. (1) An open space development rights easement pursuant to section 36105 shall be relinquished by the state at the expiration of the term of the easement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner is entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the state prior to a termination date contained in the instrument as follows:

(a) At any time the state determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body where the original application for an open space development rights easement was submitted requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in sections 36104 and 36105 for review and approval.

(3) If the request for relinquishment of the development rights easement is approved, the state land use agency shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time a development rights easement is to be relinquished pursuant to subsection (2)(b), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the development rights easement for the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes not paid from the time the exemption was received until it is paid.

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(5) The lien shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall be without penalty or interest and shall be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local governing body's assessing office.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36113 Relinquishment of open space development rights easement pursuant to MCL 324.36106.

Sec. 36113. (1) An open space development rights easement pursuant to section 36106 shall be relinquished by the local governing body at the expiration of the term of the easement unless renewed with the consent of the owner of the land if the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner shall be entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the local governing body prior to a termination date contained in the instrument as follows:

(a) At any time the local governing body determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body having jurisdiction requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in section 36106 for review and approval.

(3) If the request for relinquishment of the open space development rights easement is approved, the local governing body shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time an open space development rights easement is to be relinquished pursuant to subsection (2)(b), the local governing body shall cause to have prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes exemption from the time granted until the lien is paid.

(5) The lien shall become payable to the local governing body by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest and the development rights easement upon the land expire.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the local governing body shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall be without penalty or interest and will be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local assessing office.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36114 Injunction; penalty.

Sec. 36114. If the owner or a successor in title of the land upon which a development rights agreement or easement has been recorded pursuant to this part changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the development rights agreement or easement without first pursuing the provisions in sections 36110(2), 36111, 36112, and 36113, or receiving permission of the state land use agency, he or she may be enjoined by the state acting through the attorney general, or by the local governing body acting through its attorney, and is subject to a civil penalty for actual damages, which in no case shall exceed double the value of the land as established at the time the application for the development rights agreement or easement was approved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36115 Exchange of information.

Sec. 36115. All departments and agencies of state government shall cooperate with the state land use agency in the exchange of information concerning projects and activities that might jeopardize the preservation of land contemplated by this part. The state land use agency shall periodically advise the departments and agencies of state government of the location and description of land upon which there exists development rights agreements or easements and the departments and agencies shall harmonize their planning and projects consistent with the purposes of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36116 Rules.

Sec. 36116. The state land use agency may promulgate rules for the administration of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36117 Repealed. 2016, Act 265, Eff. Sept. 26, 2016.

Compiler's note: The repealed section pertained to report and recommendation for preservation of certain lands.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

PART 362
AGRICULTURAL PRESERVATION FUND

324.36201 Definitions.

Sec. 36201. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a woodlot.

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(c) "Board" means the agricultural preservation fund board created in section 36204.

(d) "Commission" means the commission of agriculture and rural development.

(e) "Department" means the department of agriculture and rural development.

(f) "Development" means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.

(g) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.

(h) "Farmland" means 1 or more of the following:

(*i*) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(*ii*) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(*iii*) A farm designated by the department as a specialty farm in 1 ownership that has produced a gross annual income of $2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(*iv*) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

(i) "Fund" means the agricultural preservation fund created in section 36202.

(j) "Grant" means a grant for the purchase of an agriculture conservation easement under this part.

(k) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

(*l*) "Permitted use" means any use expressly authorized within an agriculture conservation easement consistent with the farming operation or that does not adversely affect the productivity of the farmland. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that is inconsistent with an agricultural use.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2013, Act 86, Imd. Eff. June 28, 2013.

Popular name: Act 451

Popular name: NREPA

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324.36202 Agricultural preservation fund; creation; disposition; money remaining in fund; administration; expenditures.

Sec. 36202. (1) The agricultural preservation fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including federal funds, other state revenues, gifts, bequests, and other donations. The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) Money in the fund may be expended, upon appropriation, as follows:

(a) Not more than $1,400,000.00 annually for the administrative costs of the department and the board in implementing this part and part 361.

(b) After expenditures for the administrative costs under subdivision (a), money in the fund may be used, upon approval of the board, to provide grants to local units of government pursuant to section 36203.

(c) After expenditures under subdivisions (a) and (b) have been made, if the amount of money remaining in the fund exceeds $5,000,000.00, money in the fund may be used, upon approval of the board, pursuant to part 361 for the purchase of development rights to farmland or the acquisition of agricultural conservation easements.

(6) Expenditures of money in the fund as provided in this part are consistent with the state's interest in preserving farmland and are for an important public purpose.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2004, Act 75, Imd. Eff. Apr. 21, 2004;—Am. 2013, Act 86, Imd. Eff.

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June 28, 2013;—Am. 2016, Act 265, Eff. Sept. 26, 2016.

Popular name: Act 451

Popular name: NREPA

324.36203 Purchase of agricultural conservation easements; establishment of grant program; application; eligibility; form; contents; forwarding to board.

Sec. 36203. (1) The department shall establish a grant program to provide grants to eligible local units of government for the purchase of agricultural conservation easements.

(2) A grant application shall be submitted by the local unit of government applying for the grant. A local unit of government is eligible to submit a grant application under this section if both of the following requirements have been met:

(a) The local unit of government has adopted a development rights ordinance providing for a purchase of development rights program pursuant to the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, that contains all of the following:

(*i*) An application procedure.

(*ii*) The criteria for a scoring system for parcel selections within the local unit of government.

(*iii*) A method to establish the price to be paid for development rights, which may include an appraisal, bidding, or formula-based process.

(b) The local unit of government has adopted, within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

(3) An application for a grant shall be submitted on a form prescribed by the department. The grant application shall include at a minimum a list of the parcels proposed for acquisition of agricultural conservation easements, the size and location of each parcel, the amount of local matching funds, and the estimated acquisition value of the agricultural conservation easements.

(4) Upon receipt of grant applications pursuant to subsection (3), the department shall forward those grant applications to the board for consideration under section 36205.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36204 Agricultural preservation fund board; creation; membership; appointment; terms; quorum; compensation; expenses; election of chairperson and vice-chairperson; removal of member; vacancy.

Sec. 36204. (1) The agricultural preservation fund board is created within the department.

(2) The board shall consist of the following members:

(a) The director of the department or his or her designee.

(b) The director of the department of natural resources or his or her designee.

(c) Five individuals appointed by the governor as follows:

(*i*) Two individuals representing agricultural interests.

(*ii*) One individual representing conservation interests.

(*iii*) One individual representing development interests.

(*iv*) One individual representing the general public.

(d) In addition to the members described in subdivisions (a) to (c), the director of the department may appoint 2 individuals with knowledge and expertise in agriculture or land use, or local government, as nonvoting members.

(3) The members first appointed to the board shall be appointed within 60 days after the effective date of this section.

(4) Members of the board appointed under subsection (2)(c) and (d) shall serve for terms of 4 years or until a successor is appointed, whichever is later. However, of the members first appointed under subsection (2)(c), 1 shall be appointed for a term of 2 years, 2 shall be appointed for terms of 3 years, and 2 shall be appointed for terms of 4 years.

(5) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the board.

(6) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

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(7) The board shall annually elect a chairperson and a vice-chairperson from among its members.

(8) The board may remove a member of the board for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(9) A vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36205 Application; evaluation criteria; priority; determination of grant awards; amount; notification; report to commission; maximum expenditure; portion of acquisition cost to be provided by applicant or another person.

Sec. 36205. (1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

(a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.

(b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.

(c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.

(d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.

(e) Other factors considered important by the board.

(2) After reviewing grant applications for the acquisition of agricultural conservation easements and evaluating them according to the criteria established in subsection (1), the board shall determine which grants should be awarded and the amount of the grants. Upon making its determination, the board shall notify the department and shall submit a report containing this information to the commission.

(3) The board may establish a maximum amount per acre that may be expended with money from the fund for the purchase of agricultural conservation easements.

(4) A grant shall require that a portion of the cost of acquiring an agricultural conservation easement shall be provided by the applicant or another person.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36206 Distribution of grants to local units of government; condition; reviewing permitted uses; contribution of development rights; purchase by local unit of government through installment purchase agreement; joint holding by state and local unit of government; delegation of enforcement authority; transfer to property owner; tax credits under MCL 324.36109.

Sec. 36206. (1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

(2) In reviewing permitted uses contained within an agricultural conservation easement under subsection (1), the department shall consider all of the following:

(a) Whether the permitted uses adversely affect the productivity of farmland.

(b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.

(c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.

(d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances.

(3) The department may accept contributions of all or a portion of the development rights to 1 or more parcels of land, including a conservation easement or a historic preservation easement as defined in section 2140, as part of a transaction for the purchase of an agricultural conservation easement.

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(4) A local unit of government that purchases an agricultural conservation easement with money from a grant may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the local unit of government.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

(6) An agricultural conservation easement acquired under this part may be transferred to the owner of the property subject to the agricultural conservation easement if the state and the local unit of government holding the agricultural conservation easement agree to the transfer and the terms of the transfer.

(7) Section 36109 provides for tax credits for an owner of farmland subject to an agricultural conservation easement under this section.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: NREPA

324.36207 Rules.

Sec. 36207. The department may promulgate rules to implement this part.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

ENDANGERED SPECIES

PART 365

ENDANGERED SPECIES PROTECTION

324.36501 Definitions.

Sec. 36501. As used in this part:

(a) "Endangered species" means any species of fish, plant life, or wildlife that is in danger of extinction throughout all or a significant part of its range, other than a species of insecta determined by the department or the secretary of the United States department of the interior to constitute a pest whose protection under this part would present an overwhelming and overriding risk to humans.

(b) "Fish or wildlife" means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body or parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.

(c) "Import" means to bring into, introduce into, or attempt to bring into or introduce into any place subject to the jurisdiction of this state.

(d) "Plant or plant life" means any member of the plant kingdom, including seeds, roots, and other parts of a member of the plant kingdom.

(e) "Species" includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.

(f) "Take" means, in reference to fish and wildlife, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.

(g) "Take" means, in reference to plants, to collect, pick, cut, dig up, or destroy in any manner.

(h) "Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.36502 Duties of department.

Sec. 36502. The department shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species of fish, wildlife, and plants in cooperation with the federal government, pursuant to the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, and with rules promulgated by the secretary of the interior under that act.

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History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.36503 Investigations; determinations; rule; review.

Sec. 36503. (1) The department shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the department shall promulgate a rule listing those species of fish, plants, and wildlife that are determined to be endangered or threatened within the state, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The department shall conduct a review of the state list of endangered and threatened species within not more than 2 years after its effective date and every 2 years thereafter, and may amend the list by appropriate additions or deletions pursuant to Act No. 306 of the Public Acts of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.1021 et seq. of the Michigan Administrative Code.

324.36504 Programs; cooperative agreements.

Sec. 36504. (1) The department may establish programs, including acquisition of land or aquatic habitat, as are considered necessary for the management of endangered or threatened species.

(2) In implementing the programs authorized by this section, the department may enter into cooperative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 36503.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.36505 Prohibitions; exceptions.

Sec. 36505. (1) Except as otherwise provided in this part, a person shall not take, possess, transport, import, export, process, sell, offer for sale, buy, or offer to buy, and a common or contract carrier shall not transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists:

(a) The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 36503 or subsection (3).

(b) The United States list of endangered or threatened native fish and wildlife.

(c) The United States list of endangered or threatened plants.

(d) The United States list of endangered or threatened foreign fish and wildlife.

(2) A species of fish, plant, or wildlife appearing on any of the lists delineated in subsection (1) which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with the terms of a federal permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, or an applicable permit issued under the laws of another state.

(3) The department may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 36503, if it finds any of the following:

(a) The species so closely resembles in appearance, at the point in question, a species which is listed pursuant to section 36503 that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species.

(b) The effect of the substantial difficulty in differentiating between a listed and an unlisted species is an additional threat to an endangered or threatened species.

(c) The treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this part.

(4) The department may permit the taking, possession, purchase, sale, transportation, exportation, or shipment of species of fish, plants, or wildlife which appear on the state list of endangered or threatened

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species compiled pursuant to section 36503 and subsection (3) for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife to ensure their survival.

(5) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered or threatened species found on the state list compiled pursuant to section 36503 and subsection (3) may be removed, captured, or destroyed, but only as authorized by a permit issued by the department pursuant to part 13. Carnivorous animals found on the state list may be removed, captured, or destroyed by any person in emergency situations involving an immediate threat to human life, but the removal, capture, or destruction shall be reported to the department within 24 hours of the act.

(6) This section does not prohibit any of the following:

(a) The importation of a trophy under a permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, which is not for resale and which was lawfully taken in a manner permitted by the laws of the state, territory, or country where the trophy was caught, taken, or killed.

(b) The taking of a threatened species when the department has determined that the abundance of the species in the state justifies a controlled harvest not in violation of federal law.

(c) Subject to any permits that may be required by the department, the possession, transfer, transportation, importation, or exportation or the transport or receipt for shipment by a common or contract carrier of a raptor or the captive-bred progeny of a raptor, a raptor egg, or raptor semen acquired in accordance with applicable state and federal laws and regulations which allow raptors, raptor eggs, or raptor semen to be used in falconry or in the captive propagation of raptors for use in falconry.

(d) Subject to any permits that may be required by the department, the selling, offering for sale, buying, or offering to buy a raptor that was captive-bred or semen from a raptor that was captive-bred in accordance with applicable state and federal laws and regulations which allow raptors or raptor semen to be used in falconry or in captive propagation of raptors for use in falconry.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1998, Act 470, Imd. Eff. Jan. 4, 1999;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.36506 Enforcement of part and rules.

Sec. 36506. A law enforcement officer, police officer, sheriff's deputy, or conservation officer shall enforce this part and the rules promulgated under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.36507 Violation; penalty.

Sec. 36507. A person who violates this part or who fails to procure any permit required under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00 or less than $100.00, or both.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 128, Imd. Eff. Mar. 13, 1996.

Popular name: Act 451

Popular name: NREPA

CHAPTER 2
MANAGEMENT OF RENEWABLE RESOURCES

SUBCHAPTER 1
WILDLIFE

WILDLIFE CONSERVATION

PART 401
WILDLIFE CONSERVATION

324.40101 Meanings of words and phrases.

Sec. 40101. For purposes of this part, the words and phrases defined in sections 40102 to 40104 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.40102 Definitions; A to F.

Sec. 40102. (1) "Animals" means wild birds and wild mammals.

(2) "Bag limit" means the number of animals that may be taken and possessed as determined by the department.

(3) "Bow" means a device for propelling an arrow from a string drawn, held, and released by hand where the force used to hold the string in the drawn position is provided by the archer's muscles.

(4) "Buy" or "sell" means an exchange or attempt or offer to exchange for money, barter, or anything of value.

(5) "Chase" means to follow animals with dogs or other wild or domestic animals trained for that purpose.

(6) "Cormorant damage" means adverse impacts of double-crested cormorants on fish, fish hatchery stock, wildlife, plants, and their habitats and on man-made structures.

(7) "Cormorant depredation order" means the depredation order for double-crested cormorants to protect public resources, 50 CFR 21.48, issued by the United States Department of the Interior, Fish and Wildlife Service.

(8) "Crossbow" means a weapon consisting of a bow mounted transversely on a stock or frame and designed to fire an arrow, bolt, or quarrel by the release of a bow string that is controlled by a mechanical or electric trigger and has a working safety and a draw weight of 100 pounds or greater.

(9) "Deer or elk feeding" means the depositing, distributing, or tending of feed in an area frequented by wild, free-ranging white-tailed deer or elk. Deer or elk feeding does not include any of the following:

(a) Feeding wild birds or other wildlife if done in such a manner as to exclude wild, free-ranging white-tailed deer and elk from gaining access to the feed.

(b) The scattering of feed solely as the result of normal logging practices or normal agricultural practices.

(c) The storage or use of feed for agricultural purposes if 1 or more of the following apply:

(*i*) The area is occupied by livestock actively consuming the feed on a daily basis.

(*ii*) The feed is covered to deter wild, free-ranging white-tailed deer or elk from gaining access to the feed.

(*iii*) The feed is in a storage facility that is consistent with normal agricultural practices.

(d) Baiting to take game as provided by an order of the commission under section 40113a.

(10) "Disability" means a determinable physical characteristic of an individual that may result from disease, injury, congenital condition of birth, or functional disorder.

(11) "Feed" means a substance composed of grain, mineral, salt, fruit, vegetable, hay, or any other food material or combination of these materials, whether natural or manufactured, that may attract white-tailed deer or elk. Feed does not include any of the following:

(a) Plantings for wildlife.

(b) Standing farm crops under normal agricultural practices.

(c) Agricultural commodities scattered solely as the result of normal agricultural practices.

(12) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. A pneumatic gun, as defined in section 1 of 1990 PA 319, MCL 123.1101, other than a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact, is also considered a firearm for the purpose of this act.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 1999, Act 66, Imd. Eff. June 25, 1999;—Am. 2000, Act 347, Imd. Eff. Dec. 28, 2000;—Am. 2007, Act 48, Imd. Eff. Aug. 3, 2007;—Am. 2015, Act 24, Eff. July 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.40103 Definitions; G to R; "conservation" defined.

Sec. 40103. (1) "Game" means any species of wildlife designated by the legislature or the commission as game under section 40110 and any of the following animals but does not include privately owned cervidae species located on a cervidae livestock facility registered under the privately owned cervidae producers marketing act, 2000 PA 190, MCL 287.951 to 287.969:

(a) Badger.

(b) Bear.

(c) Beaver.

(d) Bobcat.

(e) Brant.

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(f) Coot.
(g) Coyote.
(h) Crow.
(i) Deer.
(j) Duck.
(k) Elk.
(*l*) Fisher.
(m) Florida gallinule.
(n) Fox.
(o) Geese.
(p) Hare.
(q) Hungarian partridge.
(r) Marten.
(s) Mink.
(t) Moose.
(u) Muskrat.
(v) Opossum.
(w) Otter.
(x) Pheasant.
(y) Quail.
(z) Rabbit.
(aa) Raccoon.
(bb) Ruffed grouse.
(cc) Sharptailed grouse.
(dd) Skunk.
(ee) Snipe.
(ff) Sora rail.
(gg) Squirrel.
(hh) Virginia rail.
(ii) Weasel.
(jj) Wild turkey.
(kk) Wolf.
(*ll*) Woodchuck.
(mm) Woodcock.

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(2) "Interim order of the department" means an order of the department issued under section 40108.

(3) "Kind" means an animal's sex, age, or physical characteristics.

(4) "Normal agricultural practices" means generally accepted agricultural and management practices as defined by the commission of agriculture and rural development.

(5) "Open season" means the dates during which game may be legally taken.

(6) "Parts" means any or all portions of an animal, including the skin, plumage, hide, fur, entire body, or egg of an animal.

(7) "Protected" or "protected animal" means an animal or kind of animal that is designated by the department as an animal that shall not be taken.

(8) "Residence" means a permanent building serving as a temporary or permanent home. Residence may include a cottage, cabin, or mobile home, but does not include a structure designed primarily for taking game, a tree blind, a tent, a recreational or other vehicle, or a camper.

(9) "Conservation" means the wise use of natural resources.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 1999, Act 66, Imd. Eff. June 25, 1999;—Am. 2000, Act 191, Eff. June 1, 2001;—Am. 2012, Act 520, Imd. Eff. Dec. 28, 2012;—Am. 2013, Act 21, Imd. Eff. May 8, 2013;—Am. 2014, Act 281, Eff. Mar. 31, 2015;—Am. 2016, Act 382, Imd. Eff. Dec. 22, 2016.

Compiler's note: Act 160 of 2004, which was approved by the governor and filed with the secretary of state on June 18, 2004, provided for the amendment of Act 451 of 1994 by amending Sec. 40103 and adding Sec. 40110a. The amended and added sections were effective June 18, 2004. On March 28, 2005, a petition seeking a referendum on Act 160 of 2004 was filed with the Secretary of State. Const 1963, art 2, sec 9, provides that no law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election. A referendum on Act 160 of 2004 was presented to the electors at the November 2006 general election as Proposal 06-3, which read as follows:

"PROPOSAL 06-3

"A REFERENDUM ON PUBLIC ACT 160 OF 2004 — AN ACT TO ALLOW THE ESTABLISHMENT OF A HUNTING SEASON FOR MOURNING DOVES

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"Public Act 160 of 2004 would:

"Authorize the Natural Resources Commission to establish a hunting season for mourning doves.

"Require a mourning dove hunter to have a small game license and a $2.00 mourning dove stamp.

"Stipulate that revenue from the stamp must be split evenly between the Game and Fish Protection Fund and the Fish and Wildlife Trust Fund.

"Require the Department of Natural Resources to address responsible mourning dove hunting; management practices for the propagation of mourning doves; and participation in mourning dove hunting by youth, the elderly and the disabled in the Department's annual hunting guide.

"Should this law be approved?

"Yes [ ]

"No [ ]"

Act 160 of 2004 was rejected by a majority of the electors voting thereon at the November 2006 general election.

Enacting section 1 of Act 281 of 2014 provides:

"Enacting section 1. This act reenacts all or portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108. If any portions of 2012 PA 520 or 2013 PA 21 or 2013 PA 22 or 2013 PA 108 not amended by this act are invalidated pursuant to referendum or any other reason, then any such invalidated portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108 which are otherwise included in this act, shall be deemed to be reenacted pursuant to this act."

Enacting section 2 of Act 281 of 2014 provides:

"Enacting section 2. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

Public Act 281 of 2014 was proposed by initiative petition pursuant to Const 1963, art II, § 9. The initiative petition was approved by an affirmative vote of the majority of the Senate on August 13, 2014 and by the House of Representatives on August 27, 2014. The initiative petition was filed with the Secretary of State on August 27, 2014.

In Keep Michigan Wolves Protected v State of Michigan, an unpublished opinion issued November 22, 2016, (Docket No. 328604), the Michigan Court of Appeals held that 2014 PA 281, which amended sections of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, is unconstitutional as it violates the title-object clause of section 24 of article IV of the state constitution of 1963.

Popular name: Act 451

Popular name: NREPA

324.40104 Definitions; T, V.

Sec. 40104. (1) "Take" means to hunt with any weapon, dog, raptor, or other wild or domestic animal trained for that purpose; kill; chase; follow; harass; harm; pursue; shoot; rob; trap; capture; or collect animals, or to attempt to engage in such an activity.

(2) "Transport" means to carry or ship animals within this state or to points outside this state.

(3) "Trap" means taking or attempting to take animals by means of a trap or other device designed to kill or capture animals.

(4) "Vehicle" means every device in, upon, or by which any person or property is or may be transported, except devices exclusively moved by human power.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40105 Animals as property of state; taking of animals to be regulated.

Sec. 40105. All animals found in this state, whether resident or migratory and whether native or introduced, are the property of the people of the state, and the taking of all animals shall be regulated by the department as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40106 Game or protected animal; taking, releasing, transporting, selling, buying, or possessing; construction of section.

Sec. 40106. A person shall not take, release, transport, sell, buy, or have in his or her possession game or any protected animal, whether living or dead, or parts of any game or protected animal, from this state or from outside of this state, except as provided for in this part or by an order of the department or an interim order of the department. This section does not enhance the department's powers to establish an open season for an animal that is not game or give the department the power to designate a species as game.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.40107 Management of animals; orders of department; procedures for exercising power; revision of order; filing orders to take place of former 1929 PA 286; filing and effective date of orders.

Sec. 40107. (1) The department shall manage animals in this state. In managing animals, the department may issue orders to do all of the following:

(a) Make recommendations to the legislature regarding animals that should be added or deleted from the category of game.

(b) Determine the kinds of animals that may be taken.

(c) Determine the animals or kinds of animals that are protected.

(d) Except as otherwise provided in section 40110, establish open seasons for taking or possessing game.

(e) Establish lawful methods of taking game.

(f) Establish lawful methods of taking game for persons who have certain disabilities.

(g) Establish bag limits.

(h) Establish geographic areas within the state where certain regulations may apply to the taking of animals.

(i) Determine conditions under which permits may be issued by the department.

(j) Establish fees for the issuing of permits by the department.

(k) Regulate the hours during which animals may be taken.

(*l*) Require that a person involved in a chase of an animal have in his or her possession a valid license that would authorize the taking of the animal being chased.

(m) Establish conditions under which animals taken or possessed outside of this state may be imported into this state.

(n) Regulate the buying and selling of animals and parts of animals.

(o) Establish methods of taking animals that are primarily taken because of the value of their pelts, which methods supplement the lawful methods of taking such animals that exist on October 1, 1988.

(2) In exercising a power under this section, the department shall comply with the following procedures in a manner that assures adequate public notice, opportunity for public comment, and due regard for traditional methods and practices that were lawful prior to October 1, 1988:

(a) An order shall be prepared by the department after comments from department field personnel and interested persons have been solicited and considered.

(b) The order shall be on the department agenda for at least 1 month prior to its consideration.

(c) The department shall provide an opportunity for public comment on the order.

(d) Except as otherwise provided in this subdivision, the department prior to issuance of an order shall provide a copy of each order to each member of the senate and the house of representatives standing committees that consider legislation pertaining to conservation, environment, recreation, tourism, and natural resources. The members of the standing committees have 30 days to review and submit comments to the department regarding an order. This subdivision shall not apply to an order that does not alter the substance of a lawful provision that exists in the form of a statute, rule, regulation, or order at the time the order is prepared.

(e) The department shall approve, reject, or modify the order.

(3) The department may revise an order issued pursuant to this section, and any revision of such an order shall comply with the procedure set forth in subsection (2).

(4) Not later than January 1, 1990, the commission shall issue orders pursuant to subsection (1) and file orders with the secretary of state that the commission considers sufficient to take the place of former 1929 PA 286. The orders filed with the secretary of state pursuant to this subsection shall indicate that the orders become effective upon filing with the secretary of state. Following the effective date of this part, the department shall undertake all of the powers given to the commission in former 1988 PA 256.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998.

Popular name: Act 451

Popular name: NREPA

324.40107a Repealed. 2003, Act 242, Eff. Jan. 4, 2009.

Compiler's note: The repealed section pertained to raptors.

Popular name: Act 451

Popular name: NREPA

324.40107b Taking of live raptors for use in falconry; order; establishment of season; scope

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of section.

Sec. 40107b. (1) The department shall issue an order in the manner provided in section 40107(2) establishing a season or seasons for falconers to take live raptors for use in falconry. The order shall designate the numbers of raptors that may be taken and possessed and any other conditions pertaining to the taking and possession of raptors that the department considers advisable.

(2) This section does not, and an order issued under this section shall not, designate any species of raptor as game. This section does not prohibit the department from determining that any species of raptor is a protected animal.

History: Add. 2009, Act 36, Imd. Eff. June 4, 2009.

Popular name: Act 451

Popular name: NREPA

324.40107c Control and management of double-crested cormorants; administration of program; organization of states; funds.

Sec. 40107c. (1) To reduce cormorant damage, the department shall administer a program to control and manage double-crested cormorants. The department shall administer the program in cooperation with federal agencies and in a manner that complies with the cormorant depredation order.

(2) In consultation with the department of environmental quality, the department shall participate in a federally recognized organization of states, such as the Mississippi flyway council, to coordinate a regional effort to reduce cormorant damage that includes urging the federal government to do both of the following:

(a) Expand state options for double-crested cormorant control by revising the cormorant depredation order.

(b) Seek to amend the migratory bird convention with Mexico to designate the double-crested cormorant as a game species.

(3) The department shall seek funding from the Great Lakes protection fund authorized under part 331 for deposit in the cormorant control fund created in section 40107d.

History: Add. 2007, Act 47, Imd. Eff. Aug. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.40107d Control and management of double-crested cormorants; administration of program; organization of states; funds.

Sec. 40107d. (1) The cormorant control fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only to implement section 40107c.

History: Add. 2007, Act 49, Imd. Eff. Aug. 3, 2007.

Popular name: Act 451

Popular name: NREPA

324.40108 Interim orders.

Sec. 40108. The department may modify an order issued under section 40107 by issuing an interim order consistent with federal regulations or when the department determines that animals are at risk of being depleted or extirpated, or the animal is threatening public safety or inflicting damage to horticulture, agriculture, or other property. The department shall publicize an interim order in a manner that ensures that interested persons are provided notice of the proposed interim order, the reasons for the requested modifications, and the proposed effective date of the order. In addition, the department shall provide a copy of an interim order to each member of the senate and the house of representatives standing committees that consider legislation pertaining to conservation, environment, recreation, tourism, and natural resources. An interim order under this section shall be in effect for not longer than 6 months.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.40109 Transportation of game; identification of sex and species; tagging; section inapplicable to skins, pelts, and hides.

Sec. 40109. If game is transported, the sex and species of the game shall be readily identifiable unless the game is game that has been cleaned at a hunting preserve and tagged as required by law. If game is transported, it shall be tagged as required by law or a department order authorized under section 40107. This section does not apply to skins, pelts, or hides of game that is lawfully taken and legally possessed.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40109a Conduct in another state; prosecution, punishment, or penalty prohibited.

Sec. 40109a. An individual shall not be prosecuted, punished, or penalized by this state for any of the following:

(a) Lawfully taking game in another state.

(b) Lawfully engaging in a hunt in another state.

(c) Possessing game that was lawfully taken in another state or this state if that game is possessed in compliance with this act and with orders issued under this act.

History: Add. 2013, Act 111, Imd. Eff. Sept. 24, 2013.

Popular name: Act 451

Popular name: NREPA

324.40110 Designation of species as game; establishment of first open season; removal from list; orders; definitions.

Sec. 40110. (1) Only the legislature or the commission may designate a wildlife species as game. Only the legislature or commission may establish the first open season for a game species designated under this section. The legislature retains the sole authority to remove a wildlife species from the list of game species. The commission shall exercise its authority under this subsection by issuing orders consistent with its duty to use principles of sound scientific wildlife management, as expressed in section 40113a. The commission may decline to issue orders authorizing an open season for a game species if doing so would conflict with principles of sound scientific wildlife management. The commission shall not designate any of the following as game under this subsection:

(a) A domestic animal.

(b) Livestock.

(c) Any species added to the game list by a public act that is rejected by a referendum before May 14, 2013.

(2) After the legislature or commission authorizes the establishment of the first open season for game under this section, the department may issue orders pertaining to that animal for each of the purposes listed in section 40107.

(3) As used in this section:

(a) "Domestic animal" means those species of animals that live under the husbandry of humans.

(b) "Livestock" includes, but is not limited to, cattle, sheep, new world camelids, goats, bison, privately owned cervids, ratites, swine, equine, poultry, and rabbits. Livestock does not include dogs and cats.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 21, Imd. Eff. May 8, 2013;—Am. 2014, Act 281, Eff. Mar. 31, 2015;—Am. 2016, Act 382, Imd. Eff. Dec. 22, 2016.

Compiler's note: Enacting section 1 of Act 281 of 2014 provides:

"Enacting section 1. This act reenacts all or portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108. If any portions of 2012 PA 520 or 2013 PA 21 or 2013 PA 22 or 2013 PA 108 not amended by this act are invalidated pursuant to referendum or any other reason, then any such invalidated portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108 which are otherwise included in this act, shall be deemed to be reenacted pursuant to this act."

Enacting section 2 of Act 281 of 2014 provides:

"Enacting section 2. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

Public Act 281 of 2014 was proposed by initiative petition pursuant to Const 1963, art II, § 9. The initiative petition was approved by an affirmative vote of the majority of the Senate on August 13, 2014 and by the House of Representatives on August 27, 2014. The initiative petition was filed with the Secretary of State on August 27, 2014.

In Keep Michigan Wolves Protected v State of Michigan, an unpublished opinion issued November 22, 2016, (Docket No. 328604), the Michigan Court of Appeals held that 2014 PA 281, which amended sections of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, is unconstitutional as it violates the title-object clause of section 24 of article IV of the state constitution of 1963.

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Popular name: Act 451

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324.40110a Open season for moose.

Sec. 40110a. The legislature hereby authorizes the establishment of the first open season for moose. The commission may issue orders pertaining to moose for each of the purposes listed in section 40113a, including, but not limited to, orders establishing the first open season for moose.

History: Add. 2010, Act 366, Imd. Eff. Dec. 22, 2010.

Compiler's note: Act 160 of 2004, which was approved by the governor and filed with the secretary of state on June 18, 2004, provided for the amendment of Act 451 of 1994 by amending Sec. 40103 and adding Sec. 40110a. The amended and added sections were effective June 18, 2004. On March 28, 2005, a petition seeking a referendum on Act 160 of 2004 was filed with the Secretary of State. Const 1963, art 2, sec 9, provides that no law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election. A referendum on Act 160 of 2004 was presented to the electors at the November 2006 general election as Proposal 06-3, which read as follows:

"PROPOSAL 06-3

"A REFERENDUM ON PUBLIC ACT 160 OF 2004 — AN ACT TO ALLOW THE ESTABLISHMENT OF A HUNTING SEASON FOR MOURNING DOVES

"Public Act 160 of 2004 would:

"Authorize the Natural Resources Commission to establish a hunting season for mourning doves.

"Require a mourning dove hunter to have a small game license and a $2.00 mourning dove stamp.

"Stipulate that revenue from the stamp must be split evenly between the Game and Fish Protection Fund and the Fish and Wildlife Trust Fund.

"Require the Department of Natural Resources to address responsible mourning dove hunting; management practices for the propagation of mourning doves; and participation in mourning dove hunting by youth, the elderly and the disabled in the Department's annual hunting guide.

"Should this law be approved?

"Yes [ ]

"No [ ]"

Act 160 of 2004 was rejected by a majority of the electors voting thereon at the November 2006 general election.

Popular name: Act 451

Popular name: NREPA

324.40110b Legislative findings and declaration; establishment of first open season for wolf.

Sec. 40110b. (1) The legislature finds and declares that:

(a) The wildlife populations of the state and their habitat are of paramount importance to the citizens of this state.

(b) The sound management of wolf populations in this state is necessary, including the use of hunting as a management tool, to minimize negative human and wolf encounters and to prevent wolves from threatening or harming humans, livestock, and pets.

(2) The legislature hereby authorizes the establishment of the first open season for wolf. The commission may issue orders under section 40113a establishing annual wolf hunting seasons throughout the state.

History: Add. 2012, Act 520, Imd. Eff. Dec. 28, 2012.

Popular name: Act 451

Popular name: NREPA

324.40111 Taking animal from in or upon vehicle; transporting or possessing firearm in or upon vehicle; person with disability; transporting or possessing unloaded firearm in or upon vehicle on sporting clays range; individual holding permit to hunt from standing vehicle; possessing and discharging firearm to take game from personal assistive mobility device; transporting or possessing bow or crossbow in or upon vehicle while on public land or highway, road, or street; written permission to hunt or discharge firearm within certain distance of property; definitions.

Sec. 40111. (1) Except as otherwise provided in subsection (3) or (5), this part, or in a department order authorized under section 40107, an individual shall not take an animal from in or upon a vehicle.

(2) Except as otherwise provided in subsection (3), (4), or (5), this part, or in a department order authorized under section 40107, an individual shall not transport or possess a firearm in or upon a vehicle, unless the firearm is unloaded and enclosed in a case, unloaded and carried in the trunk of a vehicle, or unloaded in a motorized boat.

(3) A person with a disability may transport or possess a firearm in or upon a vehicle, except for a car or truck, on a state licensed game bird hunting preserve if the firearm is unloaded and the vehicle is operated at a speed of not greater than 10 miles per hour. A person with a disability may possess a loaded firearm and may

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discharge that firearm to take an animal from in or upon a vehicle, except for a car or truck, on a state licensed game bird hunting preserve if the vehicle is not moving. The department may demand proof of eligibility under this subsection. An individual shall possess proof of his or her eligibility under this subsection and furnish the proof upon the request of a peace officer.

(4) An individual may transport or possess an unloaded firearm in or upon a vehicle on a sporting clays range.

(5) An individual holding a valid permit to hunt from a standing vehicle under section 40114 may transport or possess an uncased firearm with a loaded magazine on a personal assistive mobility device if the action is open. An individual holding a valid permit to hunt from a standing vehicle under section 40114 may possess a loaded firearm and may discharge that firearm to take game from a personal assistive mobility device if each of the following applies:

(a) The personal assistive mobility device is not moving.

(b) The individual holds a valid base license under section 43523a, holds any other necessary license under part 435, and complies with all other laws and rules for the taking of game.

(6) An individual may transport or possess a bow or crossbow in or upon a vehicle while that vehicle is operated on public land or on a highway, road, or street in this state if the bow or crossbow is unloaded and uncocked, enclosed in a case, or carried in the trunk of a vehicle.

(7) An individual shall not hunt with a firearm within 150 yards of an occupied building, dwelling, house, residence, or cabin, or any barn or other building used in connection with a farm operation, without obtaining the written permission of the owner, renter, or occupant of the property.

(8) As used in this section:

(a) "Person with a disability" means a disabled person as that term is defined in section 19a of the Michigan vehicle code, 1949 PA 300, MCL 257.19a, and who is in possession of 1 of the following:

(*i*) A certificate of identification or windshield placard issued to a disabled person under section 675 of the Michigan vehicle code, 1949 PA 300, MCL 257.675.

(*ii*) A special registration plate issued to a disabled person under section 803d of the Michigan vehicle code, 1949 PA 300, MCL 257.803d.

(b) "Personal assistive mobility device" means any device, including, but not limited to, one that is battery-powered, that is designed solely for use by an individual with mobility impairment for locomotion and is considered an extension of the individual.

(c) "Uncocked" means the following:

(*i*) For a bow, that the bow is not in the drawn position.

(*ii*) For a crossbow, that the crossbow is not in the cocked position.

(d) "Unloaded" means the following:

(*i*) For a firearm, that the firearm does not have ammunition in the barrel, chamber, cylinder, clip, or magazine when the barrel, chamber, cylinder, clip, or magazine is part of or attached to the firearm.

(*ii*) For a bow, that an arrow is not nocked.

(*iii*) For a crossbow, that a bolt is not in the flight groove.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 246, Imd. Eff. July 2, 2012;—Am. 2012, Act 340, Imd. Eff. Oct. 16, 2012;—Am. 2015, Act 24, Eff. July 1, 2015;—Am. 2015, Act 185, Eff. Jan. 1, 2016;—Am. 2018, Act 272, Eff. Sept. 27, 2018.

Popular name: Act 451

Popular name: NREPA

324.40111a Deer and elk feeding; order; definition.

Sec. 40111a. (1) The commission, after consultation with the commission of agriculture and rural development, shall issue in the manner provided in section 40113a an order concerning deer and elk feeding in this state.

(2) As used in this section, "deer and elk feeding" means the depositing, distributing, or tending of feed in an area frequented by wild, free-ranging white-tailed deer and elk to prevent them from starving or for recreational viewing. Deer and elk feeding does not include any of the following:

(a) Baiting to take game as provided by an order of the commission under section 40113a.

(b) The scattering of feed solely as the result of normal logging practices or normal agricultural practices.

(c) The storage or use of feed for agricultural purposes if 1 or more of the following apply:

(*i*) The area is occupied by livestock actively consuming the feed on a daily basis.

(*ii*) The feed is covered to deter wild, free-ranging white-tailed deer and elk from gaining access to the feed or is being used on a daily basis.

(*iii*) The feed is in a storage facility or is stored in a manner that is consistent with normal agricultural practices.

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(d) Feeding wild birds or other wildlife if done in such a manner as to exclude wild, free-ranging white-tailed deer and elk from gaining access to the feed.

History: Add. 1999, Act 66, Imd. Eff. June 25, 1999;—Am. 2004, Act 537, Imd. Eff. Jan. 3, 2005;—Am. 2009, Act 199, Imd. Eff. Dec. 29, 2009;—Am. 2015, Act 265, Imd. Eff. Dec. 23, 2015.

Popular name: Act 451

Popular name: NREPA

324.40111c Use of tranquilizer propelled from bow or firearm; use of unmanned vehicle or device; prohibitions.

Sec. 40111c. (1) A person other than the department shall not take game using a tranquilizer propelled from a bow or firearm.

(2) An individual shall not take game or fish using an unmanned vehicle or unmanned device that uses aerodynamic forces to achieve flight or using an unmanned vehicle or unmanned device that operates on the surface of water or underwater.

History: Add. 2008, Act 301, Imd. Eff. Nov. 13, 2008;—Am. 2015, Act 13, Eff. July 13, 2015.

Popular name: Act 451

Popular name: NREPA

324.40112 Obstructing or interfering in lawful taking of animals or fish; prohibited conduct; petition; injunction; violation as misdemeanor; penalties; section inapplicable to peace officer.

Sec. 40112. (1) An individual shall not obstruct or interfere in the lawful taking of animals or fish by another individual.

(2) An individual violates this section when the individual intentionally or knowingly does any of the following:

(a) Drives or disturbs animals or fish for the purpose of disrupting a lawful taking.

(b) Blocks, impedes, or harasses another individual who is engaged in the process of lawfully taking an animal or fish.

(c) Uses a natural or artificial visual, aural, olfactory, gustatory, or physical stimulus or an unmanned vehicle or unmanned device that uses aerodynamic forces to achieve flight or that operates on the surface of the water or underwater, to affect animal or fish behavior in order to hinder or prevent the lawful taking of an animal or a fish.

(d) Erects barriers to deny ingress or egress to areas where the lawful taking of animals or fish may occur. This subdivision does not apply to an individual who erects barriers to prevent trespassing on his or her property.

(e) Interjects himself or herself into the line of fire of an individual lawfully taking wildlife.

(f) Affects the condition or placement of personal or public property intended for use in the lawful taking of an animal or a fish in order to impair the usefulness of the property or prevent the use of the property.

(g) Enters or remains upon private lands without the permission of the owner or the owner's agent, for the purpose of violating this section.

(h) Engages in any other act or behavior for the purpose of violating this section.

(3) Upon petition of an aggrieved person or an individual who reasonably may be aggrieved by a violation of this section, a court of competent jurisdiction, upon a showing that an individual was engaged in and threatens to continue to engage in illegal conduct under this section, may enjoin that conduct.

(4) An individual who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than $500.00 or more than $1,000.00, or both, and the costs of prosecution. An individual who violates this section a second or subsequent time is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not less than $1,000.00 or more than $2,500.00, or both, and the costs of prosecution. In addition to the penalties provided for in this subsection, any permit or license issued by the department authorizing the individual to take animals or fish shall be revoked. A prosecution under this section does not preclude prosecution or other action under any other criminal or civil statute.

(5) This section does not apply to a peace officer while the peace officer performs his or her lawful duties.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 316, Eff. July 1, 1996;—Am. 2015, Act 12, Eff. July 13, 2015
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Popular name: Act 451

Popular name: NREPA

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324.40113 Artificial light.

Sec. 40113. (1) Except as otherwise provided in a department order authorized under section 40107 for a specified animal, a person shall not use an artificial light in taking game or in an area frequented by animals; throw or cast the rays of a spotlight, headlight, or other artificial light in a field, woodland, or forest while having a bow or firearm or other weapon capable of shooting a projectile in the person's possession or under the person's control unless otherwise permitted by law. A licensed hunter may use an artificial light 1 hour before and 1 hour after shooting hours while in possession of any unloaded firearm or bow and traveling afoot to and from the licensed hunter's hunting location.

(2) Except as otherwise provided in a department order authorized under section 40107, a person shall not throw, cast, or cause to be thrown or cast, the rays of an artificial light from December 1 to October 31 between the hours of 11 p.m. and 6 a.m. for the purpose of locating animals. Except as otherwise permitted by law or an order of the department, from November 1 to November 30, a person shall not throw, cast, or cause to be thrown or cast, the rays of a spotlight, headlight, or other artificial light for the purpose of locating animals. This subsection does not apply to any of the following:

(a) A peace officer while in the performance of the officer's duties.

(b) A person operating an emergency vehicle in an emergency.

(c) An employee of a public or private utility while working in the scope of his or her employment.

(d) A person operating a vehicle with headlights in a lawful manner upon a street, highway, or roadway.

(e) A person using an artificial light to identify a house or mailbox number.

(f) The use of artificial lights used to conduct a census by the department.

(g) A person using an artificial light from November 1 to November 30 on property that is owned by that person or by a member of that person's immediate family.

(3) The operator of a vehicle from which the rays of an artificial light have been cast in a clear attempt to locate game shall immediately stop the vehicle upon the request of a uniformed peace officer or when signaled by a peace officer with a flashing signal light or siren from a marked patrol vehicle.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40113a Legislative findings and declarations; taking of game; issuance of orders; right to hunt, fish, and take game.

Sec. 40113a. (1) The legislature finds and declares that:

(a) The fish and wildlife populations of the state and their habitat are of paramount importance to the citizens of this state.

(b) The conservation of fish and wildlife populations of the state depend upon the wise use and sound scientific management of the state's natural resources.

(c) The sound scientific management of the fish and wildlife populations of the state, including hunting of bear, is declared to be in the public interest.

(d) The sound scientific management of bear populations in this state is necessary to minimize human and bear encounters and to prevent bears from threatening or harming humans, livestock, and pets.

(2) The commission has the exclusive authority to regulate the taking of game as that term is defined in section 40103 and to regulate sport fishing under part 487 in this state, including, but not limited to, regulating the use of commercial hunting guides or sport fishing guides in taking game and fish. The commission shall, to the greatest extent practicable, utilize principles of sound scientific management in making decisions regarding the taking of game. The commission may take testimony from department personnel, independent experts, and others, and review scientific literature and data, among other sources, in support of its duty to use principles of sound scientific management. The commission shall issue orders regarding the taking of game following a public meeting and an opportunity for public input. Not less than 30 days before issuing an order, the commission shall provide a copy of the order to each of the following:

(a) Each member of each standing committee of the senate or house of representatives that considers legislation pertaining to conservation, the environment, natural resources, recreation, tourism, or agriculture.

(b) The chairperson of the senate appropriations committee and the chairperson of the house of representatives appropriations committee.

(c) The members of the subcommittee of the senate appropriations committee and the subcommittee of the house of representatives appropriations committee that consider the budget of the department of natural resources.

(3) The legislature declares that hunting, fishing, and the taking of game are a valued part of the cultural

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heritage of this state and should be forever preserved. The legislature further declares that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural resources. Therefore, the legislature declares that the citizens of this state have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by subsection (2) and law.

History: Add. 1996, Act 377, Eff. Dec. 5, 1996;—Am. 1997, Act 19, Imd. Eff. June 12, 1997;—Am. 2013, Act 21, Imd. Eff. May 8, 2013;—Am. 2013, Act 22, Imd. Eff. May 8, 2013;—Am. 2014, Act 281, Eff. Mar. 31, 2015;—Am. 2016, Act 382, Imd. Eff. Dec. 22, 2016;—Am. 2023, Act 222, Eff. Feb. 20, 2024.

Compiler's note: This section, as added by Act 377 of 1996, was submitted to, and approved by, the electors of the state at the general election held on November 5, 1996.

Enacting section 1 of Act 281 of 2014 provides:

"Enacting section 1. This act reenacts all or portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108. If any portions of 2012 PA 520 or 2013 PA 21 or 2013 PA 22 or 2013 PA 108 not amended by this act are invalidated pursuant to referendum or any other reason, then any such invalidated portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108 which are otherwise included in this act, shall be deemed to be reenacted pursuant to this act."

Enacting section 2 of Act 281 of 2014 provides:

"Enacting section 2. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

Public Act 281 of 2014 was proposed by initiative petition pursuant to Const 1963, art II, § 9. The initiative petition was approved by an affirmative vote of the majority of the Senate on August 13, 2014 and by the House of Representatives on August 27, 2014. The initiative petition was filed with the Secretary of State on August 27, 2014.

In Keep Michigan Wolves Protected v State of Michigan, an unpublished opinion issued November 22, 2016, (Docket No. 328604), the Michigan Court of Appeals held that 2014 PA 281, which amended sections of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, is unconstitutional as it violates the title-object clause of section 24 of article IV of the state constitution of 1963.

Popular name: Act 451

Popular name: NREPA

324.40114 Permits or licenses; issuance to individual who is paraplegic, amputee, or permanently disabled; taking of game with modified bow; permits for additional activities; activities not considered hunting; suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of permit; disposition of fees; report; sterilization of game; deer management zones; ordinance; "cub bear" defined.

Sec. 40114. (1) The department may issue a permit to an individual who is unable to walk because the individual is a paraplegic or an amputee or because of a disease or injury that has rendered the individual permanently disabled. A permit issued under this subsection authorizes the individual to take game during the open season for that game, including deer of either sex, from or upon a standing vehicle if that individual holds a license to take that game issued under part 435 and complies with all other laws and rules for the taking of game.

(2) The department may issue a permit to an individual who is permanently disabled, who has full use of only 1 arm, and who upon investigation is unable to hold, aim, and shoot a bow. A permit issued under this subsection authorizes the individual to take game during the open season for that game with a bow that has been modified so that the bow may be held, aimed, and shot with 1 arm, if that individual holds a license to take that game issued under part 435 and complies with all other laws and rules for the taking of game.

(3) The commission may issue an order under section 40113a regulating the taking of game with a modified bow that may be shot with 1 arm. Subsection (2) does not apply on or after the effective date of such an order.

(4) In addition, the department may issue permits authorizing 1 or more of the following:

(a) The taking or possession of animals for the purpose of rehabilitating animals.

(b) The taking of animals to prevent or control damage to crops or feed, disease, or nuisance caused by the animals. The taking of animals to prevent or control damage to crops or feed is subject to the following:

(*i*) Except during an open season for deer, deer may be taken under this subdivision if the department determines that deer have caused damage to emerging, standing, or harvested crops or to feed properly stored in accordance with normal agricultural practices. If the department receives a request for a permit to take deer under this subdivision, the department shall, within 5 business days after receiving the request, determine whether a permit should be issued. If the department determines that a permit should not be issued under this subdivision, the department shall deny the request in writing within 10 business days after receiving the request. In denying the request for a permit, the department shall advise the applicant on other techniques for controlling or preventing damage caused by deer.

(*ii*) A permittee under a deer damage shooting permit may designate not more than 15 authorized shooters to implement the provisions of the permit unless the department authorizes otherwise.

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(*iii*) Except during an open season for bear, bear may be taken under this subdivision if the department determines that bear have caused damage to emerging, standing, or harvested crops or to feed properly stored in accordance with normal agricultural practices. If the department receives a request for a permit to take bear under this subdivision, the department shall, within 4 days after receiving the request, respond to the request and evaluate whether a permit should be issued. The department may, within 10 days after responding to the request for a permit, attempt or recommend that the applicant attempt other methods for controlling or preventing damage caused by bear, if the applicant is not required to pay for those methods. Within 10 days after responding to a request for a permit, the department shall grant or deny the request in writing. In denying the request for a permit, the department shall advise the applicant on other techniques for controlling or preventing damage caused by bear. A permittee under a bear damage shooting permit may allow only an individual with a bear hunting license issued under section 43528 for that bear management unit and calendar year to implement the provisions of this subdivision. If an individual takes a bear under this subdivision, that individual shall not take another bear under a bear hunting license issued under section 43528 during that calendar year. An individual implementing this section is subject to the rules and regulations for a bear hunting license issued under section 43528 except that individuals shall not use bait to take a bear under this subdivision. An individual shall not take a cub bear or a female bear accompanied by a cub bear under this subdivision. The department shall not allow more than 5% of the bear hunting licenses issued for a bear management unit to be used to implement the provisions of this subdivision. However, in a bear management unit that offers fewer than 20 licenses, the department may allow 1 of those bear hunting licenses to be used to implement this subdivision. If an individual takes a bear under this subdivision, that individual shall register that bear at a field office of the department within 72 hours after taking the bear.

(c) The collection, transportation, possession, or disposition of animals and parts of animals for scientific purposes.

(d) The public exhibition of animals.

(e) Taxidermy.

(f) The disposition of accidentally or unlawfully taken or injured animals or animals that are unlawfully possessed.

(g) The taking of game with a crossbow by an individual who is permanently or temporarily disabled.

(h) The taking or possession of raptors for the purposes of falconry.

(5) The taking of animals pursuant to a permit issued under subsection (4)(a), (b), (c), (d), (e), (f), or (h) is not considered hunting.

(6) A permit issued under this section may be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the holder of a permit is convicted of violating the permit or this section, his or her permit or license may be revoked and any animal and the parts of any animal in his or her possession shall be disposed of in a manner approved by the department.

(7) The department shall forward fees received for permits and licenses issued under this section to the state treasurer to be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(8) By March 30, 2018, the department shall issue a report in electronic form to each member of the legislature that includes all of the following:

(a) The number of bear damage shooting permits issued under subsection (4)(b)(*iii*).

(b) The number of bears taken under subsection (4)(b)(*iii*).

(c) Any recommendations for changes to the bear damage shooting permits under subsection (4)(b)(*iii*).

(9) Until April 1, 2022, the department shall not issue a permit authorizing the sterilization of game. The department shall submit, to the standing committees of the senate and house of representatives with primary responsibility for natural resources issues, 2 reports on the results of research under any permit authorizing the sterilization of game issued before the effective date of the amendatory act that added this subsection. A preliminary report shall be submitted by December 31, 2020 and a final report by March 31, 2022. The reports shall include any recommendations for legislation, including whether and how sterilization of deer should be authorized as a manner of taking game.

(10) The commission may establish, in or adjacent to urban areas with a high concentration of deer, special deer management zones for which a higher number of deer kill tags are issued.

(11) The legislative body of a municipality may by ordinance adopt a firearm hunting distance requirement shorter than the 150-yard requirement under section 40111 as part of a deer management plan. The 150-yard requirement under section 40111 does not apply in circumstances addressed by the ordinance.

(12) As used in this section, "cub bear" means a bear that is less than 1 year of age.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2008, Act 169, Imd. Eff. July 2, 2008;—Am. 2009, Act 109, Imd. Eff. Oct. 1, 2009;—Am. 2010, Act 87, Imd. Eff. May 27, 2010;—Am. 2012, Act 65, Imd. Eff. Mar. 27, 2012;—Am. 2014, Act 407, Eff. Mar. 30, 2015;—Am. 2016, Act 356, Eff. Mar. 29, 2017;—Am. 2018, Act 390, Eff. Mar. 19, 2019.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.40115 Possession of certain game killed in collision with motor vehicle.

Sec. 40115. (1) Subject to subsections (9) and (10), an individual may possess game, other than badger, bobcat, brant, coot, crow, cub bear, duck, elk, fisher, Florida gallinule, geese, marten, moose, otter, snipe, sora rail, spotted fawn deer, Virginia rail, wild turkey, wolf, and woodcock, that is either killed by, or injured and euthanized as allowed under law following, a collision with a motor vehicle. The driver of the motor vehicle has first priority to take possession of the game.

(2) An individual in possession of deer under subsection (1) shall do 1 of the following:

(a) Obtain a salvage tag under subsection (8).

(b) Promptly notify the department or a local law enforcement agency of his or her intent to maintain possession of the game under subsection (1) by telephone or on the department's website.

(c) If the individual is the driver of the motor vehicle involved in the collision and as a result of that collision is calling 9-1-1 to report the collision, the individual must state his or her intent to maintain possession of the game under subsection (1).

(3) An individual in possession of beaver, coyote, fox, mink, muskrat, opossum, raccoon, skunk, weasel, or small game under subsection (1) shall prepare a written record with all of the following information:

(a) The date and time the individual took possession of the game.

(b) The location where the possession of the game occurred.

(c) The type of game the individual seeks to possess.

(d) Whether the individual has requested a salvage tag under subsection (8).

(e) The individual's full name, including middle initial, date of birth, mailing address, telephone number, and driver license number.

(f) The intended purpose for obtaining possession of the game, including, but not limited to, human consumption, bait, or other uses.

(4) An individual in possession of bear under subsection (1) shall obtain a salvage tag for that bear under subsection (8).

(5) If an individual notifies 9-1-1, the department, or a local law enforcement agency under subsection (2) of his or her intent to legally maintain possession of the game under subsection (1), that individual shall provide 9-1-1, the department, or the local law enforcement agency with the following information:

(a) The date and time the individual took possession of the game.

(b) The location where the possession of the game occurred.

(c) The type of game the individual seeks to possess. If the game is a deer, identify whether the deer is an antlered deer or antlerless deer. If it is an antlered deer, identify the number of antler points.

(d) Whether the individual has requested a salvage tag under subsection (8).

(e) The individual's full name, including middle initial, date of birth, mailing address, telephone number, and driver license number.

(f) The intended purpose for obtaining possession of the game, including, but not limited to, human consumption, bait, or other uses.

(6) For beaver, coyote, fox, mink, muskrat, opossum, raccoon, skunk, weasel, and small game, an individual shall maintain the written record prepared under subsection (3) until the individual obtains a salvage tag under subsection (8) or until the game and its parts are consumed, are composted, or are no longer possessed by any person. The record shall be kept at the location where the game or its parts are kept. The individual shall exhibit the record upon request of a law enforcement officer.

(7) An individual in possession of game under subsection (1) who has obtained a salvage tag under subsection (2), (4), or (8) shall upon the request of a conservation officer or peace officer produce the salvage tag. Immediately following the issuance of a salvage tag, an individual possessing game shall securely attach the salvage tag to the game. The salvage tag shall remain attached until the game is processed, butchered for consumption, or delivered to a business for the purpose of taxidermy or tanning. If the game is used for bait, the salvage tag may be removed, but the individual possessing that game shall produce the salvage tag if requested by a conservation officer or peace officer.

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(8) The department shall promptly issue a salvage tag if requested by an individual in possession of game under subsection (1).

(9) The director may immediately suspend all salvage mechanisms for disease-affected areas by issuing an order based on sound science to address disease control. The department shall provide public notice of that order and notify the legislative committees with primary oversight of natural resources before issuing that order. The director shall revoke the suspension after the department verifies the absence of the identified disease in the affected area. The department shall provide public notice of the suspension and of the revocation of the suspension by posting notice on the department's website and at department offices throughout the disease-affected areas.

(10) This section does not apply to an individual who intentionally uses a motor vehicle to kill or injure game.

(11) The department shall annually issue a report in electronic form to each member of the legislature that includes all of the following:

(a) The number of salvage tags issued under subsection (8).

(b) The number of animals reported to the department under subsection (2)(b).

(c) If available, the number of animals reported to local law enforcement agencies or 9-1-1 under subsection (2)(b) and (c).

History: Add. 2014, Act 255, Eff. Sept. 28, 2014.

Compiler's note: Former MCL 324.40115, which pertained to issuance of permit to person with a disability, was repealed by Act 347 of 2000, Eff. July 1, 2000.

Popular name: Act 451

Popular name: NREPA

324.40116 Hunter orange or other authorized color; exceptions; noncompliance not as evidence of contributory negligence; review and determination by commission; "hunter orange" and "hunter pink" defined.

Sec. 40116. (1) An individual shall not take game during the established daylight shooting hours from August 15 through April 30 unless the individual wears a cap, hat, vest, jacket, or rain gear of hunter orange or a color authorized by the commission under subsection (4). Hunter orange or a color authorized by the commission under subsection (4) includes camouflage that is not less than 50% hunter orange or a color authorized by the commission under subsection (4). The garments that are hunter orange or a color authorized by the commission under subsection (4) must be the hunter's outermost garment and be visible from all sides of the hunter.

(2) Subsection (1) does not apply to an individual engaged in the taking of deer with a bow or crossbow during archery deer season, an individual taking bear with a bow or crossbow, an individual engaged in the taking of turkey or migratory birds other than woodcock, an individual engaged in the sport of falconry, or an individual who is stationary and in the act of hunting bobcat, coyote, or fox.

(3) The failure of an individual to comply with this section is not evidence of contributory negligence in a civil action for injury to the individual or for the individual's wrongful death.

(4) The commission shall review and determine whether hunter pink or any additional colors are effective and safe for individuals to wear while hunting. By October 1, 2017, the commission shall issue an order under section 40113a authorizing what additional garment colors may be worn under subsection (1) based on the determination made by the commission under this subsection.

(5) As used in this section:

(a) "Hunter orange" means the highly visible color commonly referred to as hunter orange and includes blaze orange, flame orange, and fluorescent blaze orange.

(b) "Hunter pink" means the highly visible color commonly referred to as hunter pink and includes blaze pink, flame pink, and fluorescent blaze pink.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 154, Imd. Eff. Apr. 3, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2009, Act 65, Imd. Eff. July 2, 2009;—Am. 2016, Act 377, Imd. Eff. Dec. 22, 2016.

Popular name: Act 451

Popular name: NREPA

324.40117 Possession of parts of animal as prima facie evidence of violation.

Sec. 40117. In a prosecution for a violation of this part or an order or interim order issued under this part, the possession of the parts of any game or protected animal, except when the taking is permitted by this part, is prima facie evidence that the animal was taken in violation of this part by the person possessing the animal.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 347, Imd. Eff. Dec. 28, 2000.

Popular name: Act 451

Popular name: NREPA

324.40118 Violation as misdemeanor; penalty; additional penalties.

Sec. 40118. (1) An individual who violates this part, an order or interim order issued under this part, or a condition of a permit issued under this part, except for a violation specified in subsections (2) to (19), is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $500.00, or both, and the costs of prosecution. In addition, a permit issued by the department under this part must be revoked pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) An individual who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of any game, except deer, bear, wild turkey, wolf, waterfowl, moose, or elk, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $100.00 or more than $1,000.00, or both, and the costs of prosecution.

(3) Except as otherwise provided in this subsection or subsection (19), an individual who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of deer, bear, wild turkey, or wolf is guilty of a misdemeanor and may be imprisoned for not more than 90 days, shall be fined not less than $200.00 or more than $1,000.00, and shall be ordered to pay the costs of prosecution. An individual shall not be punished under this subsection for lawfully removing, capturing, or destroying a wolf under 2008 PA 290, MCL 324.95151 to 324.95155, or 2008 PA 318, MCL 324.95161 to 324.95167.

(4) An individual who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of elk is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than $500.00 or more than $2,000.00, or both, and the costs of prosecution.

(5) An individual who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of moose is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not less than $1,000.00 or more than $5,000.00, and the costs of prosecution.

(6) An individual who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of waterfowl is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $250.00 or more than $500.00, or both, and the costs of prosecution. An individual who violates a provision of this part or an order or interim order issued under this part regarding the possession or taking of waterfowl a second or subsequent time is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of $500.00, or both, and the costs of prosecution.

(7) An individual sentenced under subsection (3), (14), or (15) shall not secure or possess a license of any kind to hunt during the remainder of the year in which convicted and the next 3 succeeding calendar years. An individual sentenced under subsection (11) shall not secure or possess a license to hunt during the remainder of the year in which convicted and the next succeeding calendar year, or longer in the discretion of the court.

(8) In addition to the penalties provided for violating this part or an order issued under this part, an individual convicted of the illegal killing, possessing, purchasing, or selling of a bear or an antlered white-tailed deer is subject to the following penalties:

(a) For a first offense, the individual shall not secure or possess a license of any kind to hunt for an additional 2 calendar years after the penalties imposed under subsection (7).

(b) For a second or subsequent offense, the individual shall not secure or possess a license of any kind to hunt for an additional 7 calendar years after the penalties imposed under subsection (7).

(9) In addition to the penalties provided for violating this part or an order issued under this part, an individual convicted of the illegal killing, possessing, purchasing, or selling of a wild turkey shall not secure or possess a license of any kind to hunt for an additional 2 calendar years after the penalties imposed under subsection (7).

(10) An individual sentenced under subsection (4) or (5) is subject to the following penalties:

(a) For a first offense, the individual shall not secure or possess a license of any kind to hunt for the remainder of the year in which convicted and the next 15 succeeding calendar years.

(b) For a second offense, the individual shall not secure or possess a license of any kind to hunt for the remainder of that individual's life.

(11) An individual who violates section 40113(1) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $100.00 or more than $500.00, or both, and the costs of prosecution.

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(12) An individual who violates section 40113(2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $500.00, or both, and the costs of prosecution.

(13) An individual who violates section 40113(3) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $100.00 or more than $500.00, or both, and the costs of prosecution.

(14) An individual who violates a provision of this part or an order or interim order issued under this part regarding the taking or possession of an animal that has been designated by the department to be a protected animal, other than an animal that appears on a list prepared under section 36505, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $100.00 or more than $1,000.00, or both, and the costs of prosecution.

(15) An individual who buys or sells game or a protected animal in violation of this part or an order or interim order issued under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both, for the first offense, and is guilty of a felony for each subsequent offense.

(16) An individual who willfully violates a provision of this part or an order or interim order issued under this part by using an illegally constructed snare or cable restraint is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of $1,000.00 for the first illegally constructed snare or cable restraint and $250.00 for each subsequent illegally constructed snare or cable restraint, or both, and the costs of prosecution.

(17) An individual who violates a provision of this part or an order or interim order issued under this part regarding the importation of a cervid carcass or parts of a cervid carcass, other than hides, deboned meat, quarters or other parts of a cervid that do not have any part of the spinal column or head attached, finished taxidermy products, cleaned teeth, antlers, or antlers attached to a skullcap cleaned of brain and muscle tissue, from another state or province is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $500.00 or more than $2,000.00, or both, and the costs of prosecution.

(18) If an individual is convicted of a violation of this part or an order or interim order issued under this part and it is alleged in the complaint and proved or admitted at trial or ascertained by the court after conviction that the individual had been previously convicted 2 times within the preceding 5 years for a violation of this part or an order or interim order issued under this part, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than $500.00 or more than $2,000.00, or both, and the costs of prosecution.

(19) An individual who violates a provision of this part or an order or interim order issued under this part regarding any of the following is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00:

(a) Attaching that individual's name, driver license number, or sportcard number to a ground blind.

(b) Attaching that individual's name, driver license number, or sportcard number to a tree stand, scaffold, or raised platform.

(c) Supplemental feeding of deer.

(d) Reporting of a deer harvest or retention of a deer harvest confirmation number.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 347, Imd. Eff. Dec. 28, 2000;—Am. 2012, Act 520, Imd. Eff. Dec. 28, 2012;—Am. 2015, Act 188, Eff. Feb. 14, 2016;—Am. 2017, Act 124, Eff. Jan. 10, 2018;—Am. 2020, Act 385, Eff. Mar. 24, 2021;—Am. 2022, Act 23, Eff. June 8, 2022;—Am. 2023, Act 55, Imd. Eff. July 12, 2023.

Compiler's note: Enacting section 2 of Act 124 of 2017 provides:
"Enacting section 2. This amendatory act may be referred to as the "John Kivela amendatory act"."

Popular name: Act 451

Popular name: NREPA

324.40119 Reimbursement of state for value of game or protected animal; restitution for illegal killing, possessing, purchasing, or selling antlered white-tailed deer, antlered elk, antlered moose, and turkey with beard; forfeiture; default as civil contempt; additional time for payment; reduction of amount forfeited; revocation of forfeiture; collection of default in payment; disposition of forfeiture damages; "point" defined.

Sec. 40119. (1) In addition to the penalties provided for violating this part or an order issued under this part, and the penalty provided in section 36507, an individual convicted of the illegal killing, possessing, purchasing, or selling of game or protected animals, in whole or in part, shall reimburse the state for the value of the game or protected animal as follows:

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(a) Elk, $5,000.00 per animal.
(b) Moose, $5,000.00 per animal.
(c) Bear, $3,500.00 per animal.
(d) Eagle, $1,500.00 per animal.
(e) Hawk or any animal that appears on a list specified in section 36505, $1,500.00 per animal.
(f) Deer, owl, and wild turkey, $1,000.00 per animal.
(g) Waterfowl, $500.00 per animal.
(h) Other game not listed in subdivisions (a) to (g), not less than $100.00 or more than $500.00 per animal.
(i) Other protected animals, $100.00 per animal.

(2) In addition to the restitution value established in subsection (1), an individual convicted of the illegal killing, possessing, purchasing, or selling of an antlered white-tailed deer also shall pay an additional restitution value that is equal to $1,000.00 plus 1 of the following:

(a) For an antlered white-tailed deer with at least 8 but not more than 10 points, $500.00 for each point.
(b) For an antlered white-tailed deer with 11 or more points, $750.00 for each point.

(3) In addition to the restitution value established in subsection (1), an individual convicted of the illegal killing, possessing, purchasing, or selling of an antlered elk shall pay an additional restitution value that is equal to 1 of the following:

(a) For an antlered elk with at least 8 but not more than 10 points, $250.00 for each point.
(b) For an antlered elk with 11 or more points, $500.00 for each point.

(4) In addition to the restitution value established in subsection (1), an individual convicted of the illegal killing, possessing, purchasing, or selling of an antlered moose shall pay an additional restitution value that is equal to $5,000.00.

(5) In addition to the restitution value established in subsection (1), an individual convicted of the illegal killing, possessing, purchasing, or selling of a turkey with a beard shall pay an additional restitution value of $1,000.00.

(6) The court in which a conviction for a violation described in subsections (1) to (5) is obtained shall order the defendant to forfeit to the state a sum as set forth in subsections (1) to (5). If 2 or more defendants are convicted of the illegal killing, possessing, purchasing, or selling, in whole or in part, of game or protected animals listed in subsections (1) to (5), the forfeiture prescribed shall be declared against them jointly.

(7) If a defendant fails to pay upon conviction the sum ordered by the court to be forfeited, the court shall either impose a sentence and, as a condition of the sentence, require the defendant to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or make a written order permitting the defendant to pay the sum to be forfeited in installments at those times and in those amounts that, in the opinion of the court, the defendant is able to pay.

(8) If a defendant defaults in payment of the sum forfeited or of an installment, the court on motion of the department or upon its own motion may require the defendant to show cause why the default should not be treated as a civil contempt, and the court may issue a summons or warrant of arrest for his or her appearance. Unless the defendant shows that the default was not due to an intentional refusal to obey the order of the court or to a failure to make a good-faith effort to obtain the funds required for the payment, the court shall find that the default constitutes a civil contempt.

(9) If it appears that the defendant's default in the payment of the forfeiture does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the forfeiture or of each installment, or revoking the forfeiture or the unpaid portion of the forfeiture, in whole or in part.

(10) A default in the payment of the forfeiture or an installment payment may be collected by any means authorized for the enforcement of a judgment under chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6001 to 600.6098.

(11) A court receiving forfeiture damages shall remit the damages to the county treasurer, who shall deposit the damages with the state treasurer, who shall deposit the damages in the game and fish protection account established in section 2010.

(12) As used in this section, "point" means a projection on the antler of a white-tailed deer or elk that is at least 1 inch long as measured from its tip to the nearest edge of the antler beam.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2013, Act 175, Eff. Feb. 25, 2014;—Am. 2015, Act 187, Eff. Feb. 14, 2016.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

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Popular name: NREPA

324.40120 Michigan big game trophy records; official keeper; recognition.

Sec. 40120. The department shall recognize commemorative bucks of Michigan, inc., as the official keeper of Michigan big game trophy records for deer, bear, elk, and turkey.

History: Add. 2006, Act 145, Imd. Eff. May 22, 2006.

Popular name: Act 451

Popular name: NREPA

PART 403
WILDLIFE PRESERVATION

324.40301 Sale of items signifying interest in wildlife preservation.

Sec. 40301. The department may issue for sale to the public a stamp, decal, medallion, or other item of personal property intended to signify the interest of the purchaser in contributing to wildlife preservation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40302 Use of net proceeds.

Sec. 40302. Net proceeds from the sale of an item authorized by this part shall be used by the department exclusively for wildlife research and habitat improvement for nongame wild animals or designated endangered species or designated plant species.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40303 Rights and privileges; marketing items.

Sec. 40303. The department may attach such rights and privileges to the items sold as will best serve the interests of wildlife preservation and shall market the items without the use of general fund appropriation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 405
WILDLIFE RESTORATION, MANAGEMENT, AND RESEARCH

324.40501 Wildlife restoration, management, and research projects; authority of department to cooperate with federal government; use of hunters' license fees; expenditures for game and fish habitat.

Sec. 40501. The department shall perform such acts as may be necessary to conduct and establish wildlife restoration, management, and research projects and areas in cooperation with the federal government under the Pittman-Robertson wildlife restoration act, 16 USC 669 to 669i, and regulations promulgated by the United States secretary of the interior under that act. In compliance with that act, funds accruing to this state from license fees paid by hunters shall not be used for any purpose other than game and fish activities under the administration of the department. The department shall manage land acquired with money received under the Pittman-Robertson wildlife restoration act, 16 USC 669 to 669i, to manage game and fish habitat or to increase recreational hunting, fishing, and shooting opportunities. Expenditures to enhance game and fish habitat must be primarily for the management of game species, but may benefit nongame species.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2008, Act 416, Imd. Eff. Jan. 6, 2009;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

PART 409
HOMING PIGEONS

324.40901 Homing pigeons; prohibited acts.

Sec. 40901. A person shall not at any time of the year or in any manner, hunt, take, pursue, capture,

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wound, kill, maim, or disfigure the homing pigeons of another person.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40902 Homing pigeons; use of certain devices prohibited.

Sec. 40902. A person shall not at any time make use of any pit, pitfalls, deadfall, scaffold, cage, snarl, trap, net, baited hook, or any similar device, or any drug poison, chemical, or explosive for the purpose of injuring, capturing, or killing a homing pigeon of another person.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.40903 Violation of part as misdemeanor; penalty.

Sec. 40903. A person who violates this part, upon conviction of a first offense, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $25.00 or more than $100.00 and the cost of prosecution, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 411
PROTECTION AND PRESERVATION OF FISH, GAME, AND BIRDS

324.41101 Definitions.

Sec. 41101. As used in this part:

(a) "Area" means the whole of the state and the whole or any designated portion of any township or townships or county or counties within the state.

(b) "Waters" means any inland lake, stream, river, pond, or other body of water including the Great Lakes and connecting waters, any part or portion of such waters, and any and all chains, systems, or combinations of such waters, in any township or townships or county or counties, within this state, and in which any species of fish or waterfowl are protected by the laws of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.41102 Regulatory powers of department; exception.

Sec. 41102. (1) The department, in accordance with this part, may regulate the taking or killing of all fish, game and fur-bearing animals, and game birds protected by the laws of this state, and may suspend or abridge the open season provided by law for the taking or killing of such fish, animals, or game birds in any designated waters or area of this state, if in the opinion of the department it is necessary to assist in the increased or better protection of the fish, game or fur-bearing animals, or game birds, or any particular kinds or species of fish, game or fur-bearing animals, or game birds, which may in the opinion of the department be threatened from any cause or causes with depletion or extermination in the waters or area. The department may promulgate rules and orders necessary to implement this part after a thorough investigation has been made by the department.

(2) This section does not apply to privately owned cervidae species located on a registered cervidae livestock facility or involved in a registered cervidae livestock operation under the privately owned cervidae producers marketing act.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 191, Eff. June 1, 2001.

Popular name: Act 451

Popular name: NREPA

324.41103 Orders protecting fish, animals, or birds; provisions; duration; notice; newspaper publication; filing; printing order in Michigan fish and game laws; fisheries research; experimental game management areas; notice of availability of annual sports fishing handbook and amendments, corrections, or additions thereto.

Sec. 41103. (1) If the department determines that any fish, game or fur-bearing animals, or game birds of

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any kind or species are in danger of depletion or extermination and require additional protection in any designated waters or area within the state, the department may issue an order suspending or abridging the open season on fish, game or fur-bearing animals, or game birds, or may regulate their taking or killing in the waters or area as the department considers necessary for the further protection of fish, game or fur-bearing animals, or game birds in those waters or areas. The orders shall clearly specify the manner and condition relative to the taking or killing. The orders shall clearly and distinctly describe and set forth the waters or area affected by each order, and whether the order is applicable to all fish, game or fur-bearing animals, or game birds, or only to certain kinds or species designated in the order, and shall also clearly specify and set forth the length of time during which the order shall remain in effect. However, an order shall not remain in effect for more than 5 years. The public shall be notified of orders changing the rules pertaining to hunting, fishing, or trapping in the annual hunting, fishing, and trapping guides available by licensed agents of the department and field offices of the department or the department may publish the orders at least 21 days but not more than 60 days prior to taking effect, and at least once annually while in force, in at least 1 newspaper in each county, if a newspaper is published in a county, the whole or any portion of which is affected by the order. The first newspaper publication shall appear at least once each week for 3 successive weeks. A copy of the order as printed in the newspaper shall be filed with the clerk of each county. Proof by affidavit of the newspaper publication or other form of publication allowed in this section shall be filed with the department, and a copy of the order, while it is in force and effect, shall be included and printed in the authorized biennial compilation of the Michigan fish and game laws. The original of all orders on file in the Lansing office of the department shall be under the seal of the department and shall bear the signatures of the chairperson and secretary of the commission and shall be countersigned by the department. The department shall establish the seasons, size limits, creel limits, and methods of taking fish in certain designated inland lakes not to exceed 20 in number at any 1 time and in certain designated streams or portions of streams not to exceed 10 in number at any 1 time for the purpose of fisheries research. The department may establish not more than 1 experimental game management area that shall not exceed 40,000 acres in size, 4 experimental game management areas not to exceed 5,000 acres each in size, and 1 experimental game management area that shall include Beaver island in its entirety and the 4 islands that comprise the Little Beaver islands state game area. The department shall establish rules and orders governing the kind of game that may be taken in the areas designated in this subsection and the time, place, and manner or method of the taking.

(2) The department shall publish annually in 1 or more newspapers of general circulation in this state notice of the availability of the annual sports fishing handbook. The published notice shall inform the public of when, where, and how the annual sports fishing handbook may be obtained.

(3) The department shall notify the public of an amendment, correction, or addition to the annual sports fishing handbook in the same manner as provided for newspaper publication in subsection (1).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41104 Suspended open season; rescission or modification; exception.

Sec. 41104. If the open season during which any species of fish, game or fur-bearing animals, or game birds may be taken or killed has been suspended or abridged in any waters or area by an order of the department as provided in this part, if that order is still in force, and if it appears to the department that the conditions existing in the waters or area affected by the order no longer require that additional protection for those species, then the department shall cause a thorough investigation to be made of the waters or area and the conditions prevailing in the waters or area. If after the investigation the department is satisfied that because of the increase of the fish, game or fur-bearing animals, or game birds protected by the order in the waters or area, or because of the removal of the cause threatening those species with depletion or extermination, the additional protection afforded by the order is no longer needed, the department may rescind or modify the original order. Notices of the rescinding or modifying of the order shall be published in the same manner as notice of the original order and filed in the same manner in the office of the clerk of each county. This part does not suspend, abridge, or regulate the open seasons established by law for the taking of fish for commercial purposes from the waters of Lakes Superior, Michigan, Huron, and Erie, and the bays of those waters.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41105 Violation as misdemeanor; penalty.

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Sec. 41105. A person who takes or kills any fish, game, fur-bearing animal, or game bird, contrary to an order issued or rule promulgated under this part, or who violates this part, is guilty of a misdemeanor, punishable for the first offense by imprisonment for not more than 60 days or a fine of not more than $100.00. For each offense that is charged as a second or subsequent offense, the person is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $250.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: NREPA

PART 413

TRANSGENIC AND NONNATIVE ORGANISMS

324.41301 Definitions; possession of live organism.

Sec. 41301. (1) As used in this part:

(a) "Amphibian" means any frog, toad, or salamander of the class Amphibia.

(b) "Aquatic", except as used in subdivision (q), describes an amphibian, crustacean, fish, mollusk, reptile, wiggler, or aquatic plant.

(c) "Aquatic plant" means a submergent, emergent, obligate wetland, facultative wetland, or floating-leaf plant or a fragment thereof, including a seed or other propagule. Aquatic plant does not include wild rice (*Zizania aquatica* or *Zizania palustris*).

(d) "Crustacean" means freshwater crayfish, shrimp, or prawn of the order Decapoda.

(e) "Genetically engineered" refers to an organism whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, or the progeny of such an organism.

(f) "Introduce", with reference to an organism, means to knowingly and willfully stock, place, plant, release, or allow the release of the organism in this state at any specific location where the organism is not already naturalized.

(g) "Mollusk" means any mollusk of the classes Bivalvia and Gastropoda.

(h) "Native" means indigenous to any location in this state.

(i) "Nonaquatic" describes a bird, insect other than a wiggler, or mammal.

(j) "Nonnative" means not native.

(k) "Prohibited species", subject to section 41302, means any of the following:

(*i*) Any of the following prohibited species of aquatic plant, including a hybrid or genetically engineered variant of the species:

(A) African oxygen weed (*Lagarosiphon major*).

(B) Brazilian elodea (*Egeria densa*).

(C) Cylindro (*Cylindrospermopsis raciborskii*).

(D) European frogbit (*Hydrocharis morsus-ranae*).

(E) Fanwort (*Cabomba caroliniana*).

(F) Giant salvinia (*Salvinia molesta*, *auriculata*, *biloba*, or *herzogii*).

(G) Hydrilla (*Hydrilla verticillata*).

(H) Parrot's feather (*Myriophyllum aquaticum*).

(I) Starry stonewort (*Nitellopsis obtusa*).

(J) Water chestnut (*Trapa natans*).

(K) Yellow floating heart (*Nymphoides peltata*).

(*ii*) Any of the following prohibited species of terrestrial plant, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant:

(A) Giant hogweed (*Heracleum mantegazzianum*).

(B) Japanese knotweed (*Fallopia japonica*).

(*iii*) The following prohibited bird species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: Eurasian collared dove (*Streptopelia decaocto*).

(*iv*) The following prohibited crustacean species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant: rusty crayfish (*Faxonious resticus*, formerly *Orconectes rusticus*).

(*v*) Any of the following prohibited fish species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:

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(A) Bighead carp (*Hypophthalmichthys nobilis*).
(B) Bitterling (*Rhodeus sericeus*).
(C) Black carp (*Mylopharyngodon piceus*).
(D) Eurasian ruffe (*Gymnocephalus cernuus*).
(E) Grass carp (*Ctenopharyngodon idellus*).
(F) Ide (*Leuciscus idus*).
(G) Japanese weatherfish (*Misgurnus anguillicaudatus*).
(H) Round goby (*Neogobius melanostomus*).
(I) Rudd (*Scardinius erythrophthalmus*).
(J) Silver carp (*Hypophthalmichthys molitrix*).
(K) A fish of the snakehead family (family *Channidae*).
(L) Tench (*Tinca tinca*).
(M) Tubenose goby (*Proterorhinus marmoratus*).

(*vi*) Any of the following prohibited insect species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:
(A) Asian longhorned beetle (*Anoplophora glabripennis*).
(B) Emerald ash borer (*Agrilus planipennis*).

(*vii*) The following prohibited mammal species, including a hybrid or genetically engineered variant: nutria (*Myocastor coypus*).

(*viii*) Any of the following prohibited mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:
(A) Brown garden snail (*Helix aspersa*).
(B) Carthusian snail (*Monacha cartusiana*).
(C) Giant African snail (*Achatina fulica*).
(D) Girdled snail (*Hygromia cinctella*).
(E) Heath snail (*Xerolenta obvia*).
(F) Wrinkled dune snail (*Candidula intersecta*).

(*l*) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

(m) "Relevant commission", "relevant department", or "relevant director" means the following:

(*i*) With respect to a species other than a plant or insect, but including a wiggler, the natural resources commission, department of natural resources, or the director of the department of natural resources, respectively.

(*ii*) With respect to a plant species or insect species, other than a wiggler, the commission of agriculture and rural development, the department of agriculture and rural development, or the director of the department of agriculture and rural development, respectively.

(n) "Reptile" means any turtle, snake, or lizard of the class Reptilia.

(o) "Restricted species", subject to section 41302, means any of the following:

(*i*) Any of the following restricted species of aquatic plant, including a hybrid or genetically engineered variant of the species:
(A) Curly leaf pondweed (*Potamogeton crispus*).
(B) Eurasian watermilfoil (*Myriophyllum spicatum*).
(C) Flowering rush (*Butomus umbellatus*).
(D) Phragmites or common reed (*Phragmites australis*).
(E) Purple loosestrife (*Lythrum salicaria*), except that cultivars of purple loosestrife developed and recognized to be sterile and approved by the director of the department of agriculture and rural development under section 16a of the insect pest and plant disease act, 1931 PA 189, MCL 286.216a, are not a restricted species.

(*ii*) The following restricted species of terrestrial plant, including a hybrid or genetically engineered variant of the species or a fragment, including a seed or other propagule, of the species or of a hybrid or genetically engineered variant: autumn olive (*Elaeagnus umbellata*).

(*iii*) Any of the following restricted mollusk species, including a hybrid or genetically engineered variant of the species or an egg of the species or of a hybrid or genetically engineered variant:
(A) Quagga mussel (*Dreissena bugensis*).
(B) Zebra mussel (*Dreissena polymorpha*).

(p) "Watercraft" means any conveyance used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat.

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(q) "Wiggler" means an aquatic egg, nymph, or larva of an insect.

(2) For the purposes of this part:

(a) A person is not considered to possess a live organism simply because the organism is present on land or in waters owned by that person unless the person has knowingly introduced that live organism on that land or in those waters.

(b) A person is not considered to possess a live organism if the organism was obtained from the environment and the person only possesses the organism at the specific location at which it was obtained from the environment.

(c) A person is not considered to possess a live organism if the possession is for the purpose of promptly destroying the organism.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 77, Imd. Eff. July 19, 2005;—Am. 2009, Act 51, Eff. Sept. 21, 2009;—Am. 2014, Act 358, Imd. Eff. Dec. 9, 2014;—Am. 2014, Act 537, Eff. Apr. 15, 2015;—Am. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41302 Adding or deleting from list of prohibited species or restricted species; consultation; procedure; determination; review; emergency order; order setting conditions for harvesting, possessing, and transporting naturalized organism of aquatic restricted species.

Sec. 41302. (1) The relevant commission may by order add to or delete a species from the list of prohibited species or restricted species under section 41301. Before the natural resources commission issues an order under this subsection, it shall consult with the department of agriculture and rural development. Before the commission of agriculture and rural development issues an order under this subsection, it shall consult with the department of natural resources. After the consultation, and at least 30 days before the relevant commission issues the order, the relevant department shall post a copy of the proposed order on the relevant department's website and shall submit a copy of the proposed order to all of the following:

(a) The legislature.

(b) The standing committees of the senate and house of representatives with primary responsibility for any of the following:

(*i*) Agricultural issues.

(*ii*) Environmental issues.

(*iii*) Natural resources issues.

(2) The relevant commission shall list a nonaquatic species as a prohibited species or restricted species if the relevant commission determines the following:

(a) For a nonaquatic prohibited species, all of the following requirements are met:

(*i*) The organism is not native.

(*ii*) The organism is not naturalized in this state or, if naturalized, is not widely distributed in this state.

(*iii*) Based on a risk assessment, any of the following apply:

(A) The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are not available.

(b) For a nonaquatic restricted species, all of the following requirements are met:

(*i*) The organism is not native.

(*ii*) The organism is naturalized and widely distributed in this state.

(*iii*) Based on a risk assessment, any of the following apply:

(A) The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are available.

(3) The relevant commission shall list an aquatic species as a prohibited species or restricted species if the relevant commission determines the following based on a review by the relevant department:

(a) For an aquatic prohibited species, all of the following requirements are met:

(*i*) The organism is not native or is genetically engineered.

(*ii*) The organism is not naturalized in this state or, if naturalized, is not widely distributed.

(*iii*) Based on a risk assessment, any of the following apply:

(A) The organism has the potential to harm human health or to severely harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are not available.

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(b) For an aquatic restricted species, all of the following requirements are met:

(*i*) The organism is not native.

(*ii*) The organism is naturalized in this state.

(*iii*) Based on a risk assessment, any of the following apply:

(A) The organism has the potential to harm human health or to harm natural, agricultural, or silvicultural resources.

(B) Effective management or control techniques for the organism are available.

(4) The following apply to a review by the relevant department of an aquatic species for listing as a prohibited species or restricted species under subsection (3):

(a) The relevant department shall review each aquatic animal listed or delisted as injurious wildlife under the Lacey act, 16 USC 3371 to 3378, and each aquatic plant designated or removed from designation as a noxious weed under the plant protection act, title IV of Public Law 106-224, for listing or delisting as a prohibited species or restricted species within 180 days after the change in federal listing or designation.

(b) The relevant department shall review each aquatic species that has the potential to harm human health or natural, agricultural, or silvicultural resources for listing as a prohibited species or restricted species even if the species is not currently on either federal list described in subdivision (a).

(c) The relevant department may review other aquatic species for listing as prohibited or restricted species.

(5) The relevant director may issue an emergency order designating an organism as a prohibited species or restricted species if the organism has the potential to harm human health or to severely harm natural, agriculture, or silvicultural resources. An emergency order is effective for 90 days or a shorter period if specified in the order. The relevant department shall do all of the following:

(a) Post a proposed emergency order on its website and otherwise publicize the proposed emergency order in a manner that ensures that interested persons are provided notice of the proposed emergency order, the reasons for the emergency order, and the proposed effective date of the order.

(b) Provide a copy of the proposed emergency order to each member of the standing committees of the senate and the house of representatives that consider legislation pertaining to conservation, the environment, recreation, tourism, or natural resources.

(c) Post the final emergency order on its website.

(6) The relevant department may issue an order setting forth the conditions under which naturalized organisms of an aquatic restricted species may be harvested, possessed, and transported.

History: Add. 2009, Act 52, Eff. Sept. 21, 2009;—Am. 2014, Act 537, Eff. Apr. 15, 2015;—Am. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41302a Repealed. 2018, Act 451, Eff. March 21, 2019.

Compiler's note: The repealed section pertained to a permitted aquatic species list.

Popular name: Act 451

Popular name: NREPA

324.41303 Possession of live prohibited or restricted organism; prohibition; exceptions; notification of location where found.

Sec. 41303. (1) A person shall not knowingly possess a live organism if the organism is a prohibited species or restricted species, except under 1 or more of the following circumstances:

(a) The person intends to present a specimen of the prohibited species or restricted species, for identification or similar purposes, to a person who is a certified applicator or registered applicator under part 83, to a public or private institution of higher education, or to the department of natural resources, the department of agriculture and rural development, or any other state, local, or federal agency with responsibility for the environment, natural resources, or agriculture.

(b) The person has been presented with a specimen of a prohibited species or restricted species for identification or similar purposes under subdivision (a).

(c) The person possesses the prohibited species or restricted species in conjunction with otherwise lawful activity to eradicate or control the prohibited species or restricted species.

(d) The possession is pursuant to a permit issued for education or research purposes by the relevant department under section 41306 or, if the prohibited species or restricted species is a plant species or an insect other than a wiggler, by the United States Department of Agriculture.

(e) The species is an aquatic restricted species and the person possesses the species in compliance with an order under section 41302(6).

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(2) A person described in subsection (1)(b) or (c) shall notify the department of natural resources, the department of agriculture and rural development, or the department of environmental quality if the prohibited species or restricted species was found at a location where it was not previously known to be present.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 78, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009;—Am. 2014, Act 537, Eff. Apr. 15, 2015;—Am. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41305 Introduction of prohibited or restricted species, or genetically engineered or nonnative bird, crustacean, fish, insect, mammal, or mollusk, or aquatic plant; prohibition; exceptions.

Sec. 41305. A person shall not introduce a prohibited species, a restricted species, a genetically engineered or nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant unless the introduction is authorized by 1 of the following, as applicable:

(a) For a fish, by a permit issued by the department of natural resources under section 48735.

(b) For a plant or an insect other than a wiggler, by a permit issued by the department of agriculture and rural development under section 41306.

(c) For any other species, by a permit issued by the department of natural resources under section 41306.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 79, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009;—Am. 2014, Act 537, Eff. Apr. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.41306 Permit; application; fee; granting or denying; revocation; modification; hearing; administration; enforcement.

Sec. 41306. (1) A person shall apply to the relevant department for a permit that section 41303 or 41305 describes as being issued under this section. The application shall be submitted on a form developed by the relevant department. The application shall be accompanied by a fee based on the cost of administering this part. The relevant department shall either grant an administratively complete application and issue a permit or deny the application.

(2) In determining whether to grant or deny an application for a permit for introduction of a genetically engineered organism required by section 41305, the relevant department shall consider whether any application for a federal permit or approval for the genetically engineered organism has been granted or denied.

(3) The relevant department may revoke or modify a permit it has issued under subsection (1) after providing an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) The relevant department shall administer and enforce sections 41302 to 41310. In addition, any peace officer may enforce the criminal provisions of this part.

History: Add. 2005, Act 79, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009;—Am. 2014, Act 537, Eff. Apr. 15, 2015;—Am. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41307 Rules.

Sec. 41307. The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to implement this part.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004.

Popular name: Act 451

Popular name: NREPA

324.41309 Violation; penalties; suspension or revocation of permit or license; order; liability for damages to natural resources; exceptions.

Sec. 41309. (1) A person who violates section 41303(2) is subject to a civil fine of not more than $100.00.

(2) A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a restricted species is subject to a civil fine of not more than $5,000.00. A person who violates section 41303(1), or a condition of a permit issued under this part, with respect to a prohibited species is subject to a

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civil fine of not more than $10,000.00.

(3) A person who violates section 41303(1) knowing the possession is unlawful or who willfully or in a grossly negligent manner violates a condition of a permit issued under this part is guilty as follows:

(a) For a violation involving a restricted species, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $1,000.00 or more than $10,000.00.

(b) For a violation involving a prohibited species that is not an aquatic species, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than $2,000.00 or more than $20,000.00.

(c) For a violation involving a prohibited species that is an aquatic species, the person is guilty of a felony and may be imprisoned for not more than 3 years and shall be fined not less than $2,000.00 or more than $100,000.00.

(4) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health:

(a) Violates section 41303(1) with respect to a restricted species or possesses a nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than $1,000.00 or more than $250,000.00.

(b) Violates section 41303(1) with respect to a prohibited species or possesses a genetically engineered bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than $2,000.00 or more than $500,000.00.

(5) A person who sells or offers to sell a restricted species is subject to a civil fine of not less than $1,000.00 or more than $10,000.00. A person who sells or offers to sell a prohibited species or who violates section 41303(3) is subject to a civil fine of not less than $2,000.00 or more than $20,000.00.

(6) A person who violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or a nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, the person is guilty of a misdemeanor and may be imprisoned for not more than 6 months and shall be fined not less than $500.00 or more than $5,000.00.

(b) For a violation involving a prohibited species or a genetically engineered bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, the person is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $1,000.00 or more than $10,000.00.

(7) A person who violates section 41305 with respect to a restricted species or nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant and who has actual or constructive knowledge of the identity of the restricted species or that the organism, whether a restricted species or other bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, is nonnative is guilty of a misdemeanor and may be imprisoned for not more than 1 year and shall be fined not less than $1,000.00 or more than $10,000.00.

(8) A person who violates section 41305 with respect to a prohibited species that is not an aquatic species or with respect to a genetically engineered bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant and who has actual or constructive knowledge of the identity of the prohibited species or that the bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant is genetically engineered, respectively, is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than $2,000.00 or more than $20,000.00.

(9) A person who violates section 41305 with respect to a prohibited species that is an aquatic species and who has actual or constructive knowledge of the identity of the prohibited species is guilty of a felony and may be imprisoned for not more than 3 years and shall be fined not less than $2,000.00 or more than $100,000.00.

(10) A person who violates section 41305 knowing the introduction is unlawful, is guilty as follows:

(a) For a violation involving a restricted species or nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, the person is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than $1,000.00 or more than $250,000.00.

(b) For a violation involving a prohibited species or a genetically engineered bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, the person is guilty of a felony and may be imprisoned for not more than 4 years and shall be fined not less than $2,000.00 or more than $500,000.00.

(11) A person who, with intent to damage natural, agricultural, or silvicultural resources or human health, violates section 41305 is guilty as follows:

(a) For a violation involving a restricted species or nonnative bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, the person is guilty of a felony and may be imprisoned for not more than 3 years and shall be fined not less than $1,000.00 or more than $500,000.00.

(b) For a violation involving a prohibited species or a genetically engineered bird, crustacean, fish, insect, mammal, mollusk, or aquatic plant, the person is guilty of a felony and may be imprisoned for not more than 5 years and shall be fined not less than $2,000.00 or more than $1,000,000.00.

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(12) If a person commits a criminal violation of this part or a rule promulgated or permit issued under this part or knowingly commits a violation described in subsection (5) and if the violation involves a prohibited species that is an aquatic species, the court shall order that any permit or license issued to the person under part 473 or 487 be suspended for 1 year, and that the person is not eligible to be issued any permit or license under part 473 or 487 for 1 year. If the remaining term of an existing permit or license under part 473 or 487 is less than 1 year, the court shall order that the permit or license be revoked and that the person is not eligible to be issued any permit or license under part 473 or 487 for 1 year. For a second violation described in this subsection, the court shall order that any permit or license issued to the person under part 473 or 487 be revoked and that the person is permanently ineligible to be issued any permit or license under part 473 or 487. An order under this subsection is self-effectuating. The clerk of the court shall send a copy of the order to the department of natural resources.

(13) In addition to any other civil or criminal sanction imposed under this section, a person who violates this part is liable for any damages to natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize such damages.

(14) This part does not apply to activities authorized under the Michigan aquaculture development act, 1996 PA 199, MCL 286.871 to 286.884.

History: Add. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2005, Act 76, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009;—Am. 2014, Act 541, Eff. Apr. 15, 2015.

Compiler's note: In subsection (5), the phrase "or who violates section 41303(3)" evidently should have been removed when section 41303(3) was removed by Act 451 of 2018.

Popular name: Act 451

Popular name: NREPA

324.41310 Property used in criminal violation subject to seizure and forfeiture.

Sec. 41310. A vehicle, equipment, or other property used in a criminal violation of this part or a permit issued under this part involving a prohibited species that is an aquatic species is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: Add. 2014, Act 537, Eff. Apr. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.41311 Invasive species fund; creation; disposition of funds; money remaining in fund; expenditures; purposes.

Sec. 41311. (1) The invasive species fund is created within the state treasury.

(2) The department of natural resources and the department of agriculture shall forward to the state treasurer and the state treasurer shall deposit into the fund civil fines collected under section 41309 and permit fees collected under section 41306. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of natural resources and the department of agriculture shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) The administration of this part, consistent with section 41306(4).

(b) Public education about preventing the introduction of, controlling, or eradicating prohibited species, restricted species, and other nonnative species and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, and mollusks.

History: Add. 2005, Act 80, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41313 Providing information on website; requirements.

Sec. 41313. The department of natural resources and the department of agriculture shall each provide all of the following information on its website:

(a) Information on the requirements of this part applicable to the public.

(b) The penalties for violating the requirements of this part.

(c) A list of prohibited species and restricted species along with a description and a photograph or drawing

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of each of those species.

(d) Each annual report of the department under section 41323, for not less than 3 years after its issuance.

History: Add. 2005, Act 80, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41321 Repealed. 2009, Act 51, Eff. Sept. 21, 2009.

Compiler's note: The repealed section pertained to the invasive species advisory council.

Popular name: Act 451

Popular name: NREPA

324.41323 Duties of department.

Sec. 41323. (1) The department of natural resources shall do all of the following:

(a) By March 1 of each year, submit to the governor and the legislature a report that makes recommendations on all of the following:

(*i*) Additions to or deletions from the classes of genetically engineered or nonnative organisms covered by this part.

(*ii*) The status of various prohibited species and other problematic invasive species in this state, including, but not limited to, a list of infested waterbodies by species.

(*iii*) Preventing the introduction of and controlling or eradicating invasive species or genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.

(*iv*) Restoration or remediation of habitats or species damaged by invasive species or genetically engineered organisms.

(*v*) Prioritizing efforts to prevent violations of and otherwise further the purposes of this part.

(*vi*) The specific areas of responsibility for various state departments under this part and the sharing of information on permits under this part among responsible state departments.

(*vii*) Educating citizens about their responsibilities under this part and their role in preventing the introduction of and controlling or eradicating prohibited species, restricted species, invasive species, and genetically engineered aquatic plants, birds, crustaceans, fish, insects, mammals, or mollusks.

(*viii*) Simplifying citizen access to state government for compliance with this part.

(*ix*) Legislation and funding to carry out the recommendations of the department of natural resources and otherwise further the purposes of this part.

(*x*) Other matters that the department of natural resources considers pertinent to the purposes of this part.

(b) Establish criteria for identifying waterbodies infested by prohibited species.

(c) Monitor and promote efforts to rescind the exemption under 40 CFR 122.3(a) for ballast water discharges.

(2) The department of natural resources shall carry out its reporting and other duties under this section in cooperation with the aquatic nuisance species council created under Executive Order No. 2002-21 and the department of agriculture.

History: Add. 2005, Act 75, Imd. Eff. July 19, 2005;—Am. 2009, Act 52, Eff. Sept. 21, 2009.

Popular name: Act 451

Popular name: NREPA

324.41325 Watercraft, watercraft equipment, or watercraft trailer with aquatic plant attached; placement in state waters prohibited; transport over land; order to remove aquatic organisms; release of baitfish prohibited; release of fish limited; notice; posting; violation as civil infraction; penalty.

Sec. 41325. (1) A person shall not do any of the following:

(a) Place a watercraft, watercraft equipment, or a watercraft trailer in the waters of this state if the watercraft, watercraft equipment, or watercraft trailer has an aquatic plant attached.

(b) Transport any watercraft over land without first doing all of the following:

(*i*) Removing all drain plugs from bilges, ballast tanks, and live wells.

(*ii*) Draining all water from any live wells and bilge.

(*iii*) Ensuring that the watercraft, trailer, and any conveyance used to transport the watercraft or trailer are free of aquatic organisms, including plants.

(2) A law enforcement officer may order the owner or operator of a watercraft, watercraft equipment, watercraft trailer, or any conveyance used to transport the watercraft or trailer to comply with subsection

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(1)(b). The owner or operator shall obey the order.

(3) A person shall not release baitfish in any waters of this state. A person who collects fish shall not use the fish as bait or cut bait except in the inland lake, stream, or Great Lake where the fish was caught, or in a connecting waterway of the inland lake, stream, or Great Lake where the fish was caught if the fish could freely move between the original location of capture and the location of release.

(4) A person, who catches fish other than baitfish in a lake, stream, Great Lake, or connecting waterway shall only release the fish in the lake, stream, or Great Lake where the fish was caught, or in a connecting waterway of the lake, stream, or Great Lake where the fish was caught if the fish could freely move between the original location of capture and the location of release.

(5) The department shall prepare a notice that contains a summary of subsections (1) to (4), (6), and (7) and the definition of aquatic plant in section 41301 and shall make copies of the notice available to owners of public boating access sites. The department shall include the notice in relevant department publications and post the notice on its website.

(6) The owner of a public boating access site shall post and maintain the notice described in subsection (5) at the public boating access site.

(7) A person who violates subsection (1), (2), (3), (4), or (6) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

History: Add. 2009, Act 91, Imd. Eff. Sept. 15, 2009;—Am. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Compiler's note: NREPA

324.41329 Sale or possession of nonnative aquatic species without registration prohibited; exceptions; applicability of section.

Sec. 41329. (1) A person shall not sell or offer for sale or possess for the purpose of sale or offering for sale a live, nonnative aquatic species except as authorized by a registration issued by the department of natural resources pursuant to part 13. A registration is nontransferable and expires on December 31 of the year for which issued. A separate registration is required for each place where an activity described in this subsection occurs.

(2) In addition to the exemption provided in section 41309(14), this section and section 41335 do not apply to any of the following:

(a) Activities authorized under part 459.

(b) The sale or offering for sale of aquatic species, other than prohibited species or restricted species, for human consumption.

(c) The 1-time sale or offering for sale of aquatic species if the sale or offering for sale involves not more than 20 organisms of a single species.

History: Add. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41331 Registration to sell or possess nonnative aquatic species; application; issuance.

Sec. 41331. To register under section 41329, a person shall submit an application to the department of natural resources. The application shall state the name and address of the applicant and include the description of the premises where the aquatic species are to be sold or offered for sale, together with any relevant additional information required by the department of natural resources. The department shall issue a registration certificate to a registrant.

History: Add. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41333 Person registered to sell or possess nonnative aquatic species; duties.

Sec. 41333. A registrant under section 41329 shall do all of the following:

(a) Maintain the registration certificate conspicuously posted at the registered location at all times.

(b) Maintain, until submission under subdivision (c), electronic records of all of the following:

(*i*) The species and number of individuals of each aquatic species purchased. This subparagraph does not apply to species that are unable to survive in freshwater or in this state's climate as determined based on guidance developed by the relevant department.

(*ii*) The date of purchase or sale.

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(*iii*) Other relevant information as required by the department.

(c) By March 1 each year, beginning in 2020, submit to the department of natural resources a report consolidating the electronic records maintained under subdivision (b) for the prior calendar year. However, the first submission shall cover records maintained since the effective date of the 2018 amendatory act that added this section.

(d) Notify the department if the registrant sells or offers for sale a live aquatic species not previously listed in a submission under subdivision (c). The department shall conduct a risk assessment of the aquatic species and take appropriate action. This subdivision does not apply to species that are unable to survive in freshwater or in this state's climate as determined based on guidance developed by the relevant department.

History: Add. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41335 Trade show for aquatic species; written notice required.

Sec. 41335. Subject to section 41329(2), a person shall not conduct a trade show for selling or trading aquatic species unless the person has given the department not less than 10 days' advance written notice of the time, date, and location of the trade show.

History: Add. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41337 Violation; penalties; suspension or revocation of registration; disposal of aquatic species.

Sec. 41337. (1) A person who violates sections 41329 to 41335 or rules promulgated under this part to implement those sections may be ordered to pay a civil fine of not more than $1,000.00.

(2) A person who violates sections 41329 to 41335 or rules promulgated under this part to implement those sections a second or subsequent time is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both.

(3) In addition to the sanctions under subsections (1) or (2), the court may suspend or revoke any registration issued to the person under section 41329.

(4) If a person violates sections 41329 to 41335 or rules promulgated under this part to implement those sections, the department of natural resources may suspend or revoke the person's registration required under section 41329 or refuse to register the person after providing an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) If a registration is suspended or revoked under this section, the aquatic species held under the registration shall be disposed of only in a manner approved by the department of natural resources.

History: Add. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

324.41341 Inspection of site or facility permitted.

Sec. 41341. The department of natural resources or the department of agriculture and rural development shall have free access at all reasonable hours to any site, including, but not limited to, an aquaculture facility, as defined in section 2 of the Michigan aquaculture development act, 1996 PA 199, MCL 286.872, if there is probable cause to believe that activities subject to the permitting or registration requirements of this part take place and to any trade show described in section 41335 for any of the following purposes:

(a) To inspect and determine if this act is being violated. An inspection shall be conducted under generally recognized practices designed not to jeopardize the health of the aquatic species.

(b) To secure samples or specimens of any aquatic species after paying or offering to pay fair market value for the sample or specimen.

History: Add. 2018, Act 451, Eff. Mar. 21, 2019.

Popular name: Act 451

Popular name: NREPA

PART 414
AQUATIC INVASIVE SPECIES

324.41401 Definitions.

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Sec. 41401. As used in this part:

(a) "Aquatic invasive plant species" means an aquatic plant species, hybrid, or genotype that is not native and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.

(b) "Department" means the department of environmental quality.

(c) "Eligible applicant" means a person that meets the requirements under section 41402.

(d) "Eligible project" means a project that meets the requirements under section 41402.

(e) "Fund" means the inland lake aquatic invasive plant species control and eradication fund created in section 41403.

(f) "Grant" means an inland lake aquatic invasive plant species control or eradication grant issued through the program.

(g) "Program" means the inland lake aquatic invasive plant species control and eradication program established in section 41402.

History: Add. 2018, Act 671, Eff. Mar. 29, 2019.

Compiler's note: Former Part 414, MCL 324.41401-324.41415, which pertained to the Aquatic Invasive Species Advisory Council, was repealed by Act 286 of 2011, Eff. Dec. 21, 2015.

Popular name: Act 451

Popular name: NREPA

324.41402 Inland lakes aquatic invasive plant species control and eradication program; grants; application; requirements.

Sec. 41402. (1) The department shall establish an inland lake aquatic invasive plant species control and eradication program. The program shall provide grants to eligible applicants for eligible projects to control or eradicate inland lake aquatic invasive plant species using chemical, physical, or biological methods, or a combination of these methods. A grant may include funding for costs associated with preparation of a vegetation management plan, required monitoring, and any necessary permit fees associated with the eligible project.

(2) An eligible applicant must meet both of the following requirements:

(a) Be a legally constituted lake association or nonprofit organization, property owners association, homeowners association, lake board, or special assessment district.

(b) Have demonstrated that a permit from the department is in effect to conduct the control or eradication activities included in the eligible project.

(3) An eligible project must meet all of the following requirements:

(a) There is public access to the inland lake for all activities associated with the project.

(b) The waterbody has vegetation management goals created by a licensed commercial applicator or lake manager.

(c) All survey, control, eradication, and documentation activities have been completed by a qualified scientist, technician, licensed commercial aquatic applicator, or university representative.

(d) All control or eradication activities use best management practices.

(e) The project utilizes products approved or authorized by the United States Environmental Protection Agency, the department, or the department of agriculture and rural development for control or eradication activities.

(4) The department shall issue grants considering the following statewide priorities:

(a) Permit fees associated with an eligible project.

(b) Eligible projects to manage pioneer infestations of inland lake aquatic invasive plant species.

(c) Eligible projects to prevent or control the further spread of inland lake aquatic invasive plant species.

(d) Eligible projects for recurring maintenance control.

(5) If an eligible applicant submits an application for an eligible project, but does not receive a grant because of a lack of available funds, that eligible applicant shall be given special consideration for approval in the following year.

(6) An eligible applicant that wishes to receive a grant shall submit an application to the department containing the information required by the department. Applications for grants shall be submitted by July 1. By September 1, the department shall notify each applicant whether its application has been approved. The department may require an applicant that receives a grant to enter into a grant agreement with the department prior to the issuance of the grant.

History: Add. 2018, Act 671, Eff. Mar. 29, 2019.

Compiler's note: Former Part 414, MCL 324.41401-324.41415, which pertained to the Aquatic Invasive Species Advisory Council, was repealed by Act 286 of 2011, Eff. Dec. 21, 2015.

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Popular name: Act 451

Popular name: NREPA

324.41403 Inland lake aquatic invasive plant species control and eradication fund; creation; investment, disposition, and expenditure of money.

Sec. 41403. (1) The inland lake aquatic invasive plant species control and eradication fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only for the following:

(a) Inland lake aquatic invasive plant species control or eradication grants.

(b) Grant administration, in an amount not to exceed 3% of annual available funding.

History: Add. 2018, Act 671, Eff. Mar. 29, 2019.

Compiler's note: Former Part 414, MCL 324.41401-324.41415, which pertained to the Aquatic Invasive Species Advisory Council, was repealed by Act 286 of 2011, Eff. Dec. 21, 2015.

Popular name: Act 451

Popular name: NREPA

SHOOTING AND HUNTING GROUNDS

PART 415
PUBLIC SHOOTING AND HUNTING GROUNDS

SUBPART 1

CAUTION! This document is from an archive and may contain outdated information.

324.41501 Saginaw bay; public shooting and hunting ground.

Sec. 41501. All of the lands belonging to the state and being in township 16 north, range 9 east, in Wild Fowl bay, in the county of Huron, in this state, commonly known as the "middle ground," lying between Maison island, in Saginaw bay, and the main land, are set apart and dedicated for a public shooting or hunting ground for the benefit and enjoyment of the people of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41502 Saginaw bay; trespassers; prosecution.

Sec. 41502. A person who has located upon or occupied or in the future locates upon or occupies any part of the lands described in this subpart, except as provided in this subpart, is a trespasser and may be prosecuted as a trespasser upon the public lands in the manner provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41503 Saginaw bay; hunting.

Sec. 41503. A person may go upon any parts of the lands described in this subpart at any and all times permitted by the game laws of this state for the purpose of hunting or shooting wildfowl or game. However, a person shall not hunt or shoot wildfowl or game on the lands, or any part of the lands, described in this subpart at any season or time or manner that is not permitted by the game laws of this state, and any person violating any game laws of this state by hunting wildfowl or game on any of the lands described in this subpart shall be punished as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41504 Saginaw bay; control; rules; enforcement; violation of subpart; penalty.

Sec. 41504. Public shooting grounds described in this subpart are under the control of the department. The

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department may make, publish, and enforce reasonable rules and regulations for the care and preservation of the shooting grounds, for the maintenance of good order, and for the protection of property as from time to time are necessary or expedient. If the department makes any rules or regulations pertaining to the management or welfare of the shooting grounds, the department may enforce the rules or regulations and cause a person violating any rule or regulation to be punished for that violation in the manner set forth in this subpart. All rules and regulations made by the department under the authority of this subpart or any other part or act shall be effective within the whole territory referred to in this subpart. A person who violates this subpart or any of the rules and regulations prescribed by the department is guilty of a misdemeanor, punishable by imprisonment for not less than 10 days or more than 60 days, or a fine of not more than $50.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 2

324.41505 Lake Erie submerged lands in Monroe and Wayne counties; public shooting and hunting ground; fishing privileges.

Sec. 41505. All of that part of Lake Erie lying adjacent to the surveyed lands of Monroe and Wayne counties and any submerged lands within the surveyed lines of these counties and connected with Lake Erie and the Detroit river, providing the surveyed lands are owned by the state, are set apart and dedicated for a public shooting or hunting ground for the benefit and enjoyment of the people of the state, for a distance extending 1 mile into Lake Erie, the eastern line of the submerged lands and waters reserved by this subpart being 1 mile distant from the surveyed lines of the east side of Monroe and Wayne counties and parallel to those surveyed lines. This reservation and dedication shall not interfere with or detract from any rights or privileges as to fishing now enjoyed by any person or the public.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41506 Lake Erie submerged lands; trespassers; navigation.

Sec. 41506. A person who has located upon or occupied or in the future locates upon or occupies any part of the submerged lands or lake described in this subpart, except as provided in this subpart, is a trespasser and may be prosecuted as a trespasser upon the public lands in the manner provided by law. However, the waters shall be free for all purposes of navigation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41507 Lake Erie submerged lands; destruction of submarine vegetation; violation as misdemeanor; penalty.

Sec. 41507. A person shall not cut or otherwise destroy the rushes and other submarine vegetation growing on the reserve described in this subpart without the consent of the boards of commissioners of Monroe and Wayne counties. A person who willfully cuts or destroys the same, or causes that cutting or destruction to be done, knowingly, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than $100.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 3

324.41508 Great Lakes, Kalamazoo, Grand and Muskegon rivers; submerged and swamp lands; public shooting and hunting grounds; boundaries; excluded lands.

Sec. 41508. All of the swamp or submerged lands lying along the borders of Lakes Erie, Huron, Michigan, Superior, and St. Clair, except such parts of the "St. Clair Flats," so-called, as have been, prior to January 1, 1899, actually occupied, built up, cultivated, or improved to the extent of at least $25.00, within the boundaries of the state, and within the limits described in this section, and also all swamp or submerged lands

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adjoining these lakes, or in the bayous adjoining or emptying into these lakes, and also all swamp or submerged lands contiguous to and lying along the shores of the Kalamazoo river, Grand river, and Muskegon river, which now belong to the state, or to which the state later acquires title, are set apart and dedicated for a public shooting and hunting ground, for the benefit and enjoyment of the people of the state. This park shall extend to the state line into the respective lakes from the shoreline of the lakes, and the outer boundary of the park shall be the center line of the lakes or the boundary of the state. The park described in this subpart shall include all swamp or submerged lands lying between the shoreline and the outer boundary. The premises described in this subpart do not include any islands in any of the lakes to which the state does not have title, unless the state first acquires title. The park shall also include the swamp or submerged lands owned or acquired by the state that border upon the lakes or in or upon the bayous emptying into the lakes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41509 Public shooting and hunting ground; inclusion of subsequently acquired swamp or submerged lands.

Sec. 41509. (1) If the state acquires title to any swamp or submerged lands within the limits described in section 41508, whether by purchase, escheat, forfeiture, tax bid, or tax title, the lands shall be, by operation of this subpart, included in the park described in this subpart and shall not be offered for sale by the state.

(2) This section does not apply to a conveyance made pursuant to a public act or a conveyance ratified pursuant to section 41510.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41510 Swamp or submerged lands; ratification of certain conveyances; title.

Sec. 41510. All conveyances made before July 1, 1977, by or for and on behalf of the state conveying swamp or submerged lands described in section 41508 or 41509 are ratified and declared to have passed good and sufficient title to the lands conveyed.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41511 Land subject to fish and game laws; navigation; private and municipal dockage.

Sec. 41511. The reservation and dedication in section 41508 shall not interfere with or detract from any rights or privileges of fishing now enjoyed by private persons or the public, but the park described in this subpart shall be subject to the fish and game laws of this state in the same manner as though there had been no dedication. The waters in this park shall be free for all purposes of navigation. This subpart shall not interfere with the common law right of riparian owners to dockage and wharfage, and shall not interfere in any manner with dock or harbor lines or regulations of any municipality or of the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41512 Trespassers; officers to protect possession; operation of statute of limitations.

Sec. 41512. A person who has located upon or occupied or in the future locates upon or occupies any part of the park set aside in section 41508, except as provided in this subpart, is a trespasser against the state, and an action may be brought against the person in the name of the people of the state by the prosecuting attorney or the board of supervisors of any county in which the trespass occurs, and no statute of limitations shall be considered operative against the state so as to bar any suit or proceeding brought by or on behalf of the state regarding the possession of these swamp or submerged lands.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41513 Control by county commissioners; permissible destruction of submarine vegetation.

Sec. 41513. The board of commissioners of each county shall have the care and control of that part of the

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park described in this subpart within its own boundaries and that part lying opposite and immediately adjoining in the Great Lakes. The respective boards of commissioners, in their discretion, may allow the cutting or destruction of the rushes and submarine vegetation growing in the park in or opposite their respective counties.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41514 Destruction of submarine vegetation; consent required; violation as misdemeanor; penalty.

Sec. 41514. A person shall not cut or otherwise destroy, or cause the cutting or destruction of, any rushes or other submarine vegetation growing on the park described in this subpart without the consent of the board of commissioners of the county to which that portion of the park is immediately adjoining; and any person who willfully cuts or destroys the same, or causes such cutting or destruction to be done, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 and costs of prosecution, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41515 Driving ducks away from hunters; violation as misdemeanor; penalty; navigation.

Sec. 41515. A person shall not willfully scare or drive wild ducks or other wild waterfowl, or cause the same to be done, from or away from any person lawfully hunting wild ducks or wild waterfowl within the park described in this subpart, for the purpose of depriving or attempting to deprive the person of any or all of his or her opportunities of shooting or hunting the wild duck or other wild waterfowl. A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 and costs of prosecution, or both. This subpart does not detract from the right of passage over the waters described in this subpart, in good faith, or in the ordinary course of navigation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 417
GAME BIRD HUNTING PRESERVES

324.41701 "License" defined.

Sec. 41701. As used in this part, "license" means a license issued by the department to operate a game bird hunting preserve.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

324.41702 Game bird hunting preserves; license; fee; duration; Sunday hunting.

Sec. 41702. The department may issue licenses authorizing the establishment and operation of game bird hunting preserves pursuant to part 13. The fee for a license is $105.00 for a preserve of 320 acres or less and $180.00 for a preserve in excess of 320 acres. Unless revoked as provided by law, licenses issued under this section are valid from the date of issuance until June 30 of the third license year. Game bird hunting preserves licensed under this section may allow hunting on Sundays, notwithstanding the provisions of a local ordinance or regulation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.41703 Game bird hunting preserves; size; boundary signs.

Sec. 41703. Each game bird hunting preserve shall contain not less than 80 acres or more than 640 acres of land leased or owned by the licensee, except that those preserves whose operations are confined only to ducks may contain a minimum of 50 acres. The exterior boundaries of each preserve shall be clearly defined with

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signs erected at intervals of 150 feet or less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

324.41704 Species under game bird hunting preserve license; limitation; propagation, sale, and release of birds; requirements for wild turkeys or wild turkey hybrids.

Sec. 41704. (1) Only artificially propagated wild turkeys and wild turkey hybrids and other artificially propagated species as prescribed by the department may be hunted under a game bird hunting preserve license. A license holder may propagate and sell the prescribed birds, carcasses, or products, in addition to releasing the birds for hunting purposes, by adhering to all requirements, except breeder's license fee requirements of part 427 and orders issued by the department under that part.

(2) Wild turkey or wild turkey hybrids authorized under a license shall have 1 wing pinioned and shall be fenced and released in compliance with orders issued by the department under section 41710.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

324.41705 Licenses; determination by department of percentage of species hunted.

Sec. 41705. The licenses provided for in this part entitle the holders of the licenses and their lessees and licensees to take, by hunting, the percentage of each species released on the premises each year as the department determines.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41706 Tagging of birds; cost; reuse.

Sec. 41706. Except as otherwise provided by an order issued under section 41710, before a game bird shot under authority of a game bird hunting preserve license is consumed on the premises or removed from the property, a stamp-mark, band, tag, or seal as designated by the department shall be affixed to the carcass or to the container holding the carcass. The bands, tags, or seals shall be furnished at reasonable cost to the operator of the game bird hunting preserve by the department. Except as otherwise provided by an order issued under section 41710, a person shall not remove the stamp-mark, band, tag, or seal from the carcass until the carcass is prepared for consumption or from the container until each carcass in the container is prepared for consumption. Such items of identification shall not be reused by any person.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

324.41707 Species of wild animal or bird permitted to be hunted.

Sec. 41707. A wild animal, or a wild bird of a species other than those permitted to be hunted under authority of a license issued under this part, shall not be hunted or killed on a game bird hunting preserve except in accordance with the laws of this state governing the hunting of that species.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

324.41708 Operator's records; contents; inspection; reports.

Sec. 41708. Each operator of a game bird hunting preserve licensed under this part shall maintain a record of the names, addresses, and hunting license numbers of all persons hunting upon the preserve, together with the date upon which they hunted and the number of each species taken. The operator shall also maintain an accurate record of the total number, by species, of birds propagated, reared, or purchased and, for each release of birds, the date of the release and the number of individuals of each species released. The records shall be open for inspection by the department at any reasonable time. The licensee shall also provide complete and accurate reports when and as required by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

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Popular name: NREPA

324.41709 License; application; contents.

Sec. 41709. An application for a license under this part shall state the name and address of the applicant, the legal description of the premises to be licensed, the kind of birds to be covered by the license, and other information required by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.41710 Open season; duration; orders.

Sec. 41710. (1) By order, the department may establish an open season for game bird hunting preserves that shall be not less than 120 days. The department may issue other orders governing the administration of this part as the department considers expedient.

(2) Orders issued under subsection (1) shall be issued subject to the procedure under section 40107.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

324.41711 License fees; credit to game and fish protection account.

Sec. 41711. All money received from the sale of licenses and tags or seals as provided in this part shall be deposited in the state treasury to the credit of the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.41712 Violation as misdemeanor; penalty; grounds for suspension or revocation of license.

Sec. 41712. (1) A person who violates this part or an order issued under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 and the costs of prosecution, or both.

(2) In addition to the penalty provided in this section, a license issued under this part may be suspended or revoked, after a hearing as provided by law, if the license holder fails to comply with the requirements of this part, if a licensee fails to maintain or submit accurate reports and records as required by the department, or if a licensee is convicted of a violation of this part. Birds held under a license that is suspended or revoked shall then be disposed of only in a manner approved by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

PART 419
HUNTING AREA CONTROL

324.41901 Regulation and prohibitions in certain areas; powers of department; area closures; hearings, investigations, studies, and statement of facts; regulations.

Sec. 41901. (1) In addition to all of the department powers, in the interest of public safety and the general welfare, the department may regulate and prohibit hunting, and the discharge of firearms and bow and arrow, as provided in this part, on those areas established under this part where hunting or the discharge of firearms or bow and arrow may or is likely to kill, injure, or disturb persons who can reasonably be expected to be present in the areas or to destroy or damage buildings or personal property situated or customarily situated in the areas or will impair the general safety and welfare. In addition, the department may determine and define the boundaries of the areas. Areas or parts of areas may be closed throughout the year. The department, in furtherance of safety, may designate areas where hunting is permitted only by prescribed methods and weapons that are not inconsistent with law. Whenever the governing body of any political subdivision

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determines that the safety and well-being of persons or property are endangered by hunters or discharge of firearms or bow and arrows, by resolution it may request the department to recommend closure of the area as may be required to relieve the problem. Upon receipt of a certified resolution, the department shall establish a date for a public hearing in the political subdivision, and the requesting political authority shall arrange for suitable quarters for the hearing. The department shall receive testimony on the nature of the problems resulting from hunting activities and firearms use from all interested parties on the type, extent, and nature of the closure, regulations, or controls desired locally to remedy these problems.

(2) Upon completion of the public hearing, the department shall cause such investigations and studies to be made of the area as it considers appropriate and shall then make a statement of the facts of the situation as found at the hearing and as a result of its investigations. The department shall then prescribe regulations as are necessary to alleviate or correct the problems found.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41902 Submission of findings and recommendations; approval or disapproval of prescribed controls; ordinance; certified copy; repeal of ordinance; enforcement; rules.

Sec. 41902. (1) The department shall submit its findings and recommendations to the governing body of the political subdivision concerned. By majority vote, the governing body shall advise the department by certified resolution that it approves or disapproves the prescribed hunting or firearms controls. If the governing body disapproves the prescribed controls, further action shall not be taken. If the governing body approves the prescribed controls, a local ordinance shall be enacted in accordance with the provisions of law pertaining to the enactment of ordinances, which ordinance shall be identical in all respects to the regulations prescribed by the department. A certified copy of the ordinance shall be forwarded to the department. The governing body of the political subdivision, having established such an ordinance, by majority vote, may repeal the ordinance at any time. The department shall be informed of such action by certified resolution.

(2) State, local, and county law enforcement officers shall enforce ordinances enacted in accordance with this part.

(3) All rules promulgated under this section and section 41901 before March 17, 1986 shall remain in effect unless rescinded pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41903 Closure notice signs; materials, form, placement, maintenance, spacing, publication of notice; rescission of closure.

Sec. 41903. The department shall designate closure notice signs of approved material, overall size, number, and letter size and composition of message. At least 4 notices, relatively equally spaced, shall be posted on the boundaries of the closed area. A closure is not effective prior to the erection of closure notices by the petitioning political subdivisions and approval of the same by the department. The petitioning political subdivision shall place and maintain the signs and shall publish a notice of closure for 3 successive weeks, at least once in each week, in a newspaper published in the county in which the area to be closed is located. If no newspaper is published in the county, then the notice shall be published in a newspaper published in an adjoining county. If, in the judgment of the department, closure signs are not maintained so as to adequately give notice of the closure to a careful and prudent person, the closure may be rescinded by service of notice of rescission on the clerk or recording officer of the political subdivision, and in such case the closure shall terminate 30 days after service of notice of rescission.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41904 Prohibitions against discharge of firearms; exceptions.

Sec. 41904. Any prohibition against discharge of firearms made under authority of this part does not apply to peace officers or members of any branch of the armed forces in the discharge of their proper duties. The department may authorize the use of firearms to prevent or control the depredations of birds or animals in situations where significant damages are being caused by wildlife.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.41905 Violation of part or rules as misdemeanor.

Sec. 41905. Any person who violates this part or a rule promulgated under this part is guilty of a misdemeanor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 421
DOG TRAINING AREAS

324.42101 Special dog training area; permit; application; fee; size; limitation; additional permits.

Sec. 42101. Upon application of any club or organization having 10 or more members who are citizens of this state, or upon the application of 10 or more citizens of this state, and the payment of a registration fee of $5.00, the department, pursuant to part 13, may issue a permit authorizing the establishment and maintenance by the club, organization, or citizens on land owned by them, or over which they have legal control, of a special dog training area where dogs may be trained at any time during the year. A dog training area shall not be less than 40 acres or more than 240 acres, and permits shall not be issued for more than 6 special dog training areas in any 1 county. In counties having a population of 100,000 or more, the department may issue additional permits as the department considers to be in the public interest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.42102 Training dogs; conditions; rules; prohibitions.

Sec. 42102. Permit holders may at any time during the year train their own dogs or the dogs of other persons on land described in section 42101 or permit others to do so under conditions that are mutually agreed upon and under rules as may be considered expedient by the department. Hunting or the carrying or possession of firearms other than a pistol or revolver with blank cartridges at any time of year on lands described in section 42101 is unlawful.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42103 Dog training areas; posting boundary lines; notice; contents.

Sec. 42103. The boundary lines of each such special dog training area described in section 42101 shall be kept plainly and conspicuously posted by the permit holder with legible notices at least 10 inches by 12 inches in size placed not more than 100 yards apart which shall bear the following warning:

Special Dog Training Area
Hunting is Unlawful
This Land is Set Aside under Special Permit
For the Training of Dogs
Entering Hereon for the Purpose of Hunting or
Permitting Dogs to Enter without Proper Authorization
Is Punishable by Fine and/or Imprisonment
.....
(Name and address of permit holder to be printed here)

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42104 Area for field dog trials and dog training on state-owned lands; establishment; closing areas; fee; bond; care and maintenance of areas.

Sec. 42104. The department may establish areas that include the Gladwin, Brighton, Highland, Waterloo,

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Ionia, Escanaba state forest, and White Cloud areas for field dog trials and dog training on state owned lands or lands under the department's jurisdiction or control and may promulgate rules governing the operation and control of the areas as it considers desirable or expedient. The department may close the areas for any period to the hunting, trapping, or both, of any or all species of wild birds and wild animals or to dog training. The department may establish a fee for the use of the areas established by this section or may require a performance bond to insure cleanup measures and other factors, or may establish and require both a fee and a bond. Fees collected for the use of the areas, subject to annual appropriations by the legislature, shall be used in the care and maintenance of the areas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42105 Dog training areas; boundary fence or poster; mutilation, injury, or destruction prohibited.

Sec. 42105. A person shall not willfully, negligently, or maliciously cut, remove, cover up, deface, or otherwise mutilate, injure, or destroy any special dog training area boundary fence or wire or poster placed in accordance with this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42106 Violation as misdemeanor; penalty.

Sec. 42106. A person who violates this part or any rule promulgated under section 42102 or 42104, upon conviction, is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 and costs of prosecution, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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POSSESSION, SALE, REGULATION OF WILDLIFE

PART 425
FURS, HIDES, AND PELTS

324.42501 Protected game birds or game animals; dealers in furs, hides, plumage, or pelts; license; fees; designation by department; “plumage” defined.

Sec. 42501. (1) A person shall not engage in the business of buying, selling, dealing, or the tanning and dressing of raw furs, hides, or pelts of beaver, otter, fisher, marten, muskrat, mink, skunk, raccoon, opossum, wolf, lynx, bobcat, fox, weasel, coyote, badger, deer, or bear and the plumage, skins, or hides of protected game birds or game animals except as authorized by a license issued by the department under part 13. A license application shall be accompanied by a fee as follows:

(a) For any person who engages in the business of buying and selling raw furs, hides, and pelts of fur-bearing animals or the plumage, skins, or hides of protected game birds or game animals, the fee is $10.00.

(b) Each person in the business of manufacturing furs who buys raw pelts is a dealer, and the fee for each individual or agent who buys furs is, for a resident, $10.00 and, for a nonresident, $50.00.

(c) For any person who engages in the business of custom tanning or dressing of raw furs, the fee is $5.00. However, such a license does not authorize that person to buy or sell raw furs.

(2) Any person holding a fur dealer's license under this part is entitled to buy furs, hides, pelts, and the plumage, skins, or hides, and parts thereof, of protected game birds and game animals that are legally taken.

(3) The department may designate the plumage and skin of those game birds and game animals that may not be bought or sold if it determines that such a prohibition will best serve the public interest. The plumage and skins, or parts of plumage and skins, of migratory game and nongame birds may be bought and sold only in accordance with federal law or rule.

(4) For the purposes of this part, "plumage" means any part of the feathers, head, wings, or tail of any bird.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 160, Imd. Eff. June 11, 2014.

Popular name: Act 451

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Popular name: NREPA

324.42502 Fur dealer's license; forms and blanks; term; revocation.

Sec. 42502. The department may prepare suitable report forms and blanks covering the different kinds of licenses to be issued under this part. All licenses issued under this part are for the calendar year and shall expire on December 31 of each year. Licenses may be revoked at any time by the department for a violation of the law relating to the buying, selling, or dealing in furs, hides, or pelts of fur-bearing animals and the plumage, skins, or hides of protected game birds and game animals. Any fraudulent practice employed in connection with the buying or selling of the furs, hides, or pelts of any of the animals mentioned in this part and the plumage, skins, or hides of protected game birds and game animals, or the failure to make a report required by this part, is sufficient grounds for the revocation of a license issued under this part. Any person whose license has been revoked shall not secure another license except in the discretion of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42503 Shipping permits; contents; label; confiscation.

Sec. 42503. Any dealer who desires to ship or transport out of the state any fur-bearing animals or the raw skins of fur-bearing animals, or parts thereof, or the plumage, skins, or hides, or parts thereof, of protected game birds and game animals legally taken or killed in the state during the open season, shall first procure a permit from the department. The permit shall state the names of the consignee and consignor, destination and number and kinds of fur-bearing animals, or the raw skins of fur-bearing animals, or parts thereof, or the plumage, skins, or hides, or parts thereof, of protected game birds and game animals that are to be shipped or transported, and the permit shall be presented to transportation company with consignment. All shippers of fur-bearing animals, or the raw skins of fur-bearing animals, or parts thereof, or the plumage, skins, or hides, or parts thereof, of protected game birds and game animals are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. The label shall be securely attached to the package, and shall plainly indicate the names and addresses of the consignee and consignor and the complete contents of the package. A person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company shall not transport or receive for transportation or carriage, or sell or offer for sale, any fur-bearing animals legally taken during the open season for that animal, or the raw skins of such a fur-bearing animal, or part thereof, or the plumage, skin, or hide, or parts thereof, of protected game birds and game animals except as specifically provided for by this part. All fur-bearing animals, or the raw skins of fur-bearing animals, or parts thereof, or the plumage, skins, or hides, or parts thereof, of protected game birds and game animals possessed or that have been shipped or are being transported in violation of this part, shall be confiscated and disposed of as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42504 Report of pelts in possession on last day of season.

Sec. 42504. Within 10 days after the close of the respective open seasons provided by law for the taking of fur-bearing animals, game birds, and game animals, each person holding a license under this part shall report to the department stating the number and kinds of furs, hides, or pelts of each fur-bearing animal, and the plumage, skins, or hides, or parts thereof, of protected game birds and game animals in his or her possession on the last day of the open season for each fur-bearing animal, game bird, and game animal. The reports shall be notarized and sent by registered mail.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42505 Monthly reports.

Sec. 42505. On or before the tenth day of every month, each person licensed to do business under this part shall make a report to the department on blanks to be furnished by the department, stating the number and kinds of raw furs, hides, or pelts of fur-bearing animals, or the plumage, skins, or hides, or parts thereof, of protected game birds and game animals purchased or sold during the preceding month, and the name and address of the person from whom purchased and to whom sold. The report shall be notarized and sent by registered mail.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42506 Money received from sale of licenses; credit to game and fish protection account; use.

Sec. 42506. All money received from the sale of licenses as provided in this part shall be forwarded to the state treasurer and placed to the credit of the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010, and shall be used for the purpose necessary to the protection, propagation, and distribution of game and fur-bearing animals as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2002, Act 356, Imd. Eff. May 23, 2002;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.42507 Violation as misdemeanor; penalty.

Sec. 42507. A person or his or her agent or servant who violates this part is guilty of a misdemeanor, and shall forfeit to the state all furs, hides, and pelts of fur-bearing animals and the plumage, skins, or hides, or parts thereof, of protected game birds or game animals illegally bought or held, and reimburse the state for illegal furs or illegal plumage, skins, hides, or parts thereof, of protected game birds and game animals sold. If a fine and costs are imposed, the court shall sentence the offender to imprisonment until the fine and costs are paid, but for a period not exceeding the maximum jail penalty provided for this offense.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 427
BREEDERS AND DEALERS

324.42701 Definitions.

Sec. 42701. As used in this part:
(a) "Game" has the same meaning ascribed to that term in part 401.
(b) "License" means a game breeder's license issued pursuant to this part.
(c) "Stock" means game.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42702 Possession of game for propagation and dealing and selling of game; license; denial; zoning requirements; license nontransferable; validity.

Sec. 42702. (1) The department may, pursuant to part 13, issue licenses to authorize the possession of game for propagation and the dealing in and selling of game.

(2) The department shall deny an application for a new license under subsection (1) if the applicant is not the owner or lessee of the premises to be used for the purposes designated in the license application.

(3) Beginning on the effective date of the amendatory act that added this subsection, unless the premises to be used for the purposes designated in the license application are zoned agricultural, the department shall notify in writing the city or the township and, if applicable, village where the premises are located that an application has been filed under this section. The notice shall include a copy of the application. If, within 30 days after the notice is sent, the local unit of government notifies the department that the use designated in the license application would violate a local ordinance that prohibits the captivity of game animals and that does not violate the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474, the department shall deny the license application.

(4) A license issued under subsection (1) is nontransferable and is valid from July 1 to June 30 of the third license year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 191, Eff. June 1, 2001;—Am. 2004, Act 325, Imd. Eff. Sept.

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10, 2004;—Am. 2004, Act 537, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 569, Imd. Eff. Jan. 16, 2009.

Popular name: Act 451

Popular name: NREPA

324.42703 License to be valid and current; exemptions.

Sec. 42703. A person shall not maintain in captivity or propagate or sell game, except as otherwise provided by law, unless that person holds a valid and current license issued pursuant to this part. Public zoological parks are not required to secure a license. A license is not required of a person who purchases any carcass, product, or part of game sold from a person licensed pursuant to this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42704 License fees.

Sec. 42704. The fee for a license shall be established by the department as follows:

(a) If it is practicable to count the applicant's game, the fee shall be $45.00 for the total number of game not exceeding 500, and an additional fee of $15.00 shall be assessed for each additional number of game of 500 or less.

(b) If it is impracticable to count the game, the fee shall be $45.00 for 40 acres or less that is to be used by the applicant for game propagation purposes, and $15.00 for each additional 40 acres or less.

(c) If the fee for an applicant is determined by utilizing a combination of the methods provided in subdivisions (a) and (b), the fee shall be the larger one that can be charged under either subdivision (a) or (b).

(d) The maximum fee for a single license shall not exceed $150.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42705 Rights of licensee.

Sec. 42705. A person who has secured a license may possess, propagate, use, buy, sell, trap, kill, consume, ship, or transport any or all of the stock designated in that license, and offspring, products, carcasses, pelts, or other parts of the stock as provided in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42706 Islands, enclosures, and pens used for propagation purposes; character and location; construction; conditions to issuance of license or approval of enclosure; purchase of deer from state; applicability of subsections (2) and (3); “flush” or “flushed” defined.

Sec. 42706. (1) All islands, enclosures, and pens used for propagation purposes shall be of a character and in a location that the department approves as satisfactory to keep in complete and continuous captivity the stock covered by the license, and shall be constructed in a manner to prevent the entrance of wild stock of the same species. However, pinioned or wing-clipped birds may be kept in unroofed enclosures.

(2) After July 1, 1986, the department shall not issue a license to a person, or approve an enclosure or pen capable of enclosing deer, unless the following conditions are met:

(a) The township or city in which the enclosure or pen is to be located has granted authorization for the enclosure or pen to be located within the township or city.

(b) If there are deer within the area to be enclosed, the applicant or license holder flushes that area to eliminate those deer. The applicant or license holder shall submit the proposed method to be used to flush deer from the area to the department for approval.

(3) Any deer that cannot be flushed from the land that is to be enclosed and is covered by a license issued under this part shall be purchased from the state as provided in section 42707.

(4) Subsections (2) and (3) do not apply to a person who has a valid license on July 1, 1986, unless the license holder expands the lands covered by the license.

(5) As used in this section, "flush" or "flushed" means to move or chase from the area that is to be enclosed.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.42707 Purchase of and title to state-owned game; price.

Sec. 42707. If wild, state owned game animals are present on land that is covered by a license, the applicant may purchase the state owned game from the state and secure title to the game. Except as otherwise provided in this section, the price to be paid for the game shall be fixed by the department, but the price shall not exceed the market value that the game have for breeding purposes. However, the price of deer purchased from the state shall be $250.00 per deer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42708 Game covered by license; manner of taking or killing; requirement for wild turkey or wild turkey hybrids.

Sec. 42708. (1) Game covered by a license may be taken or killed in any manner and at any time, except that game birds covered by a license may not be shot, except by the holder of a license in special situations when the department promulgates rules or the department issues orders permitting the shooting of game birds.

(2) Wild turkey or wild turkey hybrids covered by a license shall have 1 wing pinioned within 14 days of hatching.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42709 Removal of game from premises; identification; seals, bands, and tags; removal of certain fertile eggs prohibited.

Sec. 42709. (1) Game, including the parts or products of game, may be removed from licensed premises only when identified as required by the department. This identification may be by bill of sale, invoice, or seals, tags, bands, or appropriate stamp mark affixed to carcasses and their parts or to wrappers, crates, or other containers. Required tags and seals shall be provided to the license holder by the department at reasonable cost. The use of seals, bands, and tags shall not be required on consignments of game sent to the department or to other state institutions to be used for scientific purposes.

(2) Live game may be removed from licensed premises only by licensed game breeders, shooting preserve operators, or persons holding permits authorizing the possession of the game. Wild turkeys or wild turkey hybrids shall not be removed from licensed premises unless they are pinioned.

(3) Fertile eggs from wild turkeys or wild turkey hybrids shall not be removed from licensed premises.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42710 Orders; rules.

Sec. 42710. (1) The department may issue orders considered necessary by the department to protect the public interest and to provide for the proper administration of this part. Orders under this part shall be issued according to the procedure for the issuance of orders provided for in part 401.

(2) The department may promulgate rules designating certain game that do not require protection under this part and that may be possessed, propagated, purchased, or sold without a license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.42711 Released or escaped game as property of state; permission to release game birds required.

Sec. 42711. (1) Game that are released or that escape from the premises of a person licensed under this part become the property of the state.

(2) Game birds shall not be released without the written permission of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.42712 Disposition of money.

Sec. 42712. All money received from the sale of licenses under this part shall be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Popular name: Act 451

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: NREPA

324.42713 Suspension or revocation of license.

Sec. 42713. (1) After providing an opportunity for a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the department may suspend or revoke a license under this part if any of the following apply:

(a) The licensee violates this part.

(b) The licensee fails to provide accurate reports and records within reasonable time limits as designated by the department.

(c) The premises used for the purposes identified in the license are located in a city or village and are zoned residential, the licensed use is a nonconforming use in that zone, and the licensee has been convicted of a crime or held responsible for a civil infraction directly related to the captivity of pheasants on the premises.

(2) If a licensee under this part is convicted of a violation of the game laws of this state, his or her license may be revoked or its renewal denied. In that case, the game held under the license may be disposed of only in a manner approved by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2008, Act 569, Imd. Eff. Jan. 16, 2009.

Popular name: Act 451

Popular name: NREPA

324.42714 Violation as misdemeanor; penalties.

Sec. 42714. A person who violates this part or an order issued under this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both. A person who is convicted of a second violation of this part or an order issued under this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $500.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 23, Imd. Eff. June 18, 2001.

Popular name: Act 451

Popular name: NREPA

PART 431
FOXES IN CAPTIVITY

324.43101 Foxes in captivity as domestic animals; protection; construction of part.

Sec. 43101. Silver, silver-black, black, and cross foxes, which of their nature, in the absence of efforts for their domestication, were known as wild, which are brought into or born in captivity upon a farm or ranch for the purpose of cultivating or pelting their furs, together with their offspring and increase, are domestic animals for the purpose of any statute or law relating generally to domestic animals, other than dogs and cats or other pets, or relating to farming or to animal husbandry or to the encouragement of agriculture, unless any such statute or law is impossible to apply to such fur-bearing animals. Such fur-bearing animals, together with their offspring and increase, are the subjects of ownership, lien, and all other property rights, in the same manner as purely domestic animals, in whatever situation, location, or condition the fur-bearing animals may be, and regardless of whether they remain in or escape from captivity. Such fur-bearing animals shall receive the same protection of law as, and in the same way and to the same extent are the subject of trespass or larceny as, other personal property. This part shall not be construed to include silver, silver-black, black, and cross foxes within the definition of livestock, or give any person any right to recovery for damage or destruction of the animal under the dog law of 1919, Act No. 339 of the Public Acts of 1919, being sections 287.261 to 287.290 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.43102 Brands or tattoo marks; recording; prima facie evidence of ownership.

Sec. 43102. An owner or prospective owner of a fur-bearing animal described in this part which is living in captivity is entitled, by written subscribed statement, to adopt distinctive brands or tattoo marks, not including Arabic numerals and not including brands or tattoo marks already in known use by others, for such fur-bearing animals, and to have the distinctive identifying brands or tattoo marks recorded in his or her name in the office of the commission of agriculture, upon paying a recording fee of $1.00 for each brand or each tattoo mark. All fees received by the department of agriculture under this part shall be retained by the department of agriculture and used to defray the expenses of administering this part. Such statements shall be recorded in a suitable book to be kept in the office of the commission of agriculture. The presence of a recorded brand or recorded tattoo mark upon such a fur-bearing animal is prima facie evidence of the ownership of the animal by the person in whose name the brand or tattoo mark is recorded, subject always to that person's right to make due transfer of title, right or interest in, or lien upon the animal.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43103 Prohibited acts; trespass on premises; killing, trapping, injuring or disturbing fur-bearing animal; consent.

Sec. 43103. Without the permission of the owner of a privately owned fur-bearing animal described in this part, a person shall not enter the enclosure within which the privately owned fur-bearing animal is kept, or trespass on private ground adjoining such an enclosure and knowingly annoy or disturb the animals. A person shall not knowingly and willfully kill, trap, or injure any fur-bearing animal owned by another person without the consent of the owner. However, a duly authorized peace or conservation officer may enter upon such premises in the performance of his or her regular duties.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43104 Violation of part as misdemeanor; penalty.

Sec. 43104. A person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 433
LIMITATION ON ACREAGE FOR PROPAGATION OR SPORTING PURPOSES

324.43301 Limitation on acreage held for sporting purposes.

Sec. 43301. A person shall not acquire, hold, or occupy by purchase, lease, or other evidence of title, possession, or right of occupancy or enclose by fences or other barriers in 1 tract an amount of real estate within this state exceeding 15,000 acres for the purpose of the preservation or propagation of game or fish or for use for yachting, hunting, boating, fishing, rowing, or any other sporting purpose.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43302 Limitation on acreage; location.

Sec. 43302. A person shall not acquire, hold, or occupy in the manner and for the purposes stated in section 43301 any real estate that is located within 2 miles of any other real estate acquired, held, or occupied for any of the uses or purposes mentioned in section 43301.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43303 Violation of part; fine.

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Sec. 43303. A person who violates this part is subject to a civil fine of $50.00 for each day that a violation of this part continues. The fine shall be recovered in the manner provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 2
HUNTING AND FISHING LICENSES

PART 435
HUNTING AND FISHING LICENSING

324.43501 Meanings of words and phrases.

Sec. 43501. For the purposes of this part, the words and phrases defined in sections 43502 to 43508 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43502 Definitions; A to C.

Sec. 43502. (1) "Accompany" means to go along with another individual under circumstances that allow one to come to the immediate aid of the other individual and while staying within a distance from the other individual that permits uninterrupted, unaided visual and auditory communication.

(2) "Amphibian" means a frog, toad, salamander, or other member of the class amphibia.

(3) "Apprentice license" means a license issued under section 43520(3).

(4) "Aquatic species" means a fish, reptile, amphibian, mollusk, aquatic insect, or crustacea or part thereof.

(5) "Base license" means a license issued under section 43523a.

(6) "Bow" means a device for propelling an arrow from a string drawn, held, and released by hand if the force used to hold the string in the drawn position is provided by the archer's muscles.

(7) "Crossbow" means a weapon consisting of a bow, with a draw weight of 100 pounds or more, mounted transversely on a stock or frame and designed to fire an arrow, bolt, or quarrel by the release of a bow string controlled by a mechanical or electric trigger with a working safety.

(8) "Crustacea" means a freshwater crayfish, shrimp, or prawn of the order decapoda.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2006, Act 280, Imd. Eff. July 10, 2006;—Am. 2006, Act 282, Imd. Eff. July 10, 2006;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2018, Act 4, Imd. Eff. Jan. 26, 2018.

Popular name: Act 451

Popular name: NREPA

324.43503 Definitions; F.

Sec. 43503. (1) "Fish" means all species of fish.

(2) "Fishing" means the pursuing, capturing, catching, killing, or taking of fish, and includes attempting to pursue, capture, catch, kill, or take fish.

(3) "Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. A pneumatic gun, as defined in section 1 of 1990 PA 319, MCL 123.1101, other than a paintball gun that expels by pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact, is also considered a firearm for the purpose of this act.

(4) "Firearm deer season" means any period in which deer may be lawfully hunted with a firearm.

(5) "Fur-bearing animals" includes badger, beaver, bobcat, coyote, fisher, fox, lynx, marten, mink, muskrat, opossum, otter, raccoon, skunk, and weasel.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 520, Imd. Eff. Dec. 28, 2012;—Am. 2015, Act 24, Eff. July 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.43504 Definitions.

Sec. 43504. As used in this part:

(a) "Game" has the meaning given that term in part 401.

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(b) "Game and fish protection account" means the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(c) "Wildlife and fisheries" includes any member of the wild animal kingdom, including any mammal, bird, fish, reptile, amphibian, or invertebrate found in this state at any point in its natural life cycle.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43505 Definitions; H to N.

Sec. 43505. (1) "Hunt" and "hunting" mean to pursue, capture, shoot, kill, chase, follow, harass, harm, rob, or trap a wild animal, or to attempt to engage in such an activity.

(2) "Identification" means a driver license issued by Michigan, another state, or a Canadian province as accepted by the department, a state of Michigan identification card issued by the secretary of state, or a sportcard issued by the department.

(3) "License" means a document or a tag, stamp, plastic card, or other device that may include a stamp or a tag that authorizes the licensee to hunt, fish, trap, or possess wild animals or aquatic species and other identification required by the department.

(4) "Minor child" means a person less than 17 years old.

(5) "Nonresident" means or refers to a person who is not a resident.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2006, Act 280, Imd. Eff. July 10, 2006;—Am. 2006, Act 282, Imd. Eff. July 10, 2006.

Popular name: Act 451

Popular name: NREPA

324.43506 Definitions; O to R.

Sec. 43506. (1) "Open season" means the time during which game animals, game birds, fur-bearing animals, and aquatic species may be legally taken or killed. Open season includes both the first and last day of the season or period.

(2) "Reptile" means a turtle, snake, lizard, or any other member of the class reptilia.

(3) "Resident" means or refers to any of the following:

(a) A person who resides in a settled or permanent home or domicile within the boundaries of this state with the intention of remaining in this state.

(b) A student who is enrolled in a full-time course at a college or university within this state and who resides in the state during the school year.

(c) A person regularly enlisted or commissioned as an officer in the armed forces of the United States and officially stationed in this state.

(d) A person regularly enlisted or commissioned as an officer in the armed forces of the United States who, at the time of enlistment, was a resident of this state and has maintained his or her residence in this state for purposes of obtaining a driver license or voter registration, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2006, Act 282, Imd. Eff. July 10, 2006.

Popular name: Act 451

Popular name: NREPA

324.43507 Definitions; S.

Sec. 43507. (1) "Senior citizen" means a resident 65 years of age or older.

(2) "Slingshot" means a Y-shaped device with an elastic strip attached between the prongs used for projecting a stone or other object.

(3) "Small game" includes all species of protected game birds and game animals except bear, deer, elk, moose, wild turkey, wolf, and fur-bearing animals.

(4) "Small game season" means that period between September 15 and March 31.

(5) "Sportcard" means a folder, document, plastic card, or other device issued by the department containing the individual's name, address, and vital statistics as required by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2012, Act 520, Imd. Eff. Dec. 28, 2012.

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Popular name: Act 451

Popular name: NREPA

324.43508 Definitions; T to W.

Sec. 43508. (1) "Take" means fishing, hunting, trapping, catching, capturing, killing, or the attempt to engage in such an activity.

(2) "Trap" and "trapping" mean the taking of wild animals by means of a trap.

(3) "Waterfowl" means ducks, geese, gallinules, and mergansers.

(4) "Wild animal" means a mammal, bird, fish, reptile, amphibian, or crustacea of a wild nature indigenous to this state or introduced to this state by the department or a species determined by the department to be of public benefit.

(5) "Wiggler" means a mayfly nymph or other aquatic insect nymphs or larvae.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43509 Taking aquatic species; taking or possessing wild animal; license.

Sec. 43509. (1) A person 17 years of age or older shall not take aquatic species, except aquatic insects, in or upon any waters over which this state has jurisdiction or in or upon any lands within the state, or possess aquatic species, except aquatic insects, without having in his or her possession a valid license as provided in this part.

(2) A person shall not take or possess a wild animal without having in his or her possession a valid license as provided in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2010, Act 29, Imd. Eff. Mar. 26, 2010.

Popular name: Act 451

Popular name: NREPA

324.43510 Carrying or transporting firearm, slingshot, bow and arrow, crossbow, or trap; license required; exception; applicability to taking of wild animal.

Sec. 43510. (1) Subject to subsection (2), except as provided in section 43513, and except for an individual hunting on a game bird hunting preserve licensed under part 417, an individual shall not carry or transport a firearm, slingshot, bow and arrow, crossbow, or a trap while in any area frequented by wild animals unless that individual has in his or her possession a license as required under this part.

(2) This act or a rule promulgated or order issued by the department or the commission under this act shall not be construed to prohibit an individual from transporting a pistol or carrying a loaded pistol, whether concealed or not, if either of the following applies:

(a) The individual has in his or her possession a license to carry a concealed pistol under 1927 PA 372, MCL 28.421 to 28.435.

(b) The individual is authorized under the circumstances to carry a concealed pistol without obtaining a license to carry a concealed pistol under 1927 PA 372, MCL 28.421 to 28.435, as provided for under any of the following:

(*i*) Section 12a of 1927 PA 372, MCL 28.432a.

(*ii*) Section 227, 227a, 231, or 231a of the Michigan penal code, 1931 PA 328, MCL 750.227, 750.227a, 750.231, and 750.231a.

(3) Subsection (2) does not authorize an individual to take or attempt to take a wild animal except as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2004, Act 129, Imd. Eff. June 3, 2004;—Am. 2006, Act 433, Imd. Eff. Oct. 5, 2006;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43511 Deer or elk season; transporting or possessing shotgun or rifle; license required; exception.

Sec. 43511. (1) Subject to subsection (2), and except as provided in section 43513, during the open season for the taking of deer or elk with a firearm, a person shall not transport or possess a shotgun with buckshot, slug load, ball load, or cut shell or a rifle other than a .22 caliber rim fire, unless the person has in his or her possession a license to hunt deer or elk with a firearm.

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(2) Subsection (1) does not apply during muzzle-loading deer season.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 433, Imd. Eff. Oct. 5, 2006.

Popular name: Act 451

Popular name: NREPA

324.43512 Repealed. 1998, Act 104, Eff. Mar. 23, 1999.

Compiler's note: The repealed section pertained to possession of valid turkey license in order to carry firearm or bow and arrow.

Popular name: Act 451

Popular name: NREPA

324.43513 Carrying, transporting, or possessing firearm, slingshot, bow, or crossbow; hunting license not required; hunting on game bird hunting preserve; carrying or possessing unloaded and uncocked weapon.

Sec. 43513. (1) An individual may carry, transport, or possess a firearm without a hunting license if the firearm is unloaded and either enclosed in a case or carried in a vehicle in a location that is not readily accessible to any occupant of the vehicle. An individual may carry, transport, or possess a slingshot, bow, or crossbow without a hunting license if the slingshot, bow, or crossbow is unloaded and uncocked, enclosed in a case, or carried in a vehicle in a location that is not readily accessible to any occupant of the vehicle.

(2) Regardless of whether the individual has a license or it is open season for the taking of game, an individual may carry, transport, possess, or discharge a firearm, a bow, or a crossbow if all of the following apply:

(a) The individual is not taking or attempting to take game but is engaged in 1 or more of the following activities:

(*i*) Target practice using an identifiable, artificially constructed target or targets.

(*ii*) Practice with silhouettes, plinking, skeet, or trap.

(*iii*) Sighting-in the firearm, bow, or crossbow.

(b) The individual is, or is accompanied by or has the permission of, either of the following:

(*i*) The owner of the property on which the activity under subdivision (a) is taking place.

(*ii*) The lessee of that property for a term of not less than 1 year.

(c) The owner or lessee of the property does not receive remuneration for the activity under subdivision (a).

(3) An individual may carry, transport, or possess a firearm, slingshot, bow, or crossbow without a hunting license if the individual is hunting on a game bird hunting preserve licensed under part 417.

(4) An individual may carry or possess an unloaded weapon at any time if the individual is traveling to or from or participating in a historical reenactment.

(5) As used in this section:

(a) "Uncocked" means the following:

(*i*) For a bow, that the bow is not in the drawn position.

(*ii*) For a crossbow, that the crossbow is not in the cocked position.

(*iii*) For a slingshot, that the slingshot is not in the drawn position.

(b) "Unloaded" means the following:

(*i*) For a firearm, that the firearm does not have ammunition in the barrel, chamber, cylinder, clip, or magazine when the barrel, chamber, cylinder, clip, or magazine is part of or attached to the firearm.

(*ii*) For a bow, that an arrow is not nocked.

(*iii*) For a crossbow, that a bolt is not in the flight groove.

(*iv*) For a slingshot, that the slingshot does not have ammunition in the projectile pocket.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 1998, Act 129, Eff. Mar. 23, 1999;—Am. 2006, Act 433, Imd. Eff. Oct. 5, 2006;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2018, Act 272, Eff. Sept. 27, 2018.

Popular name: Act 451

Popular name: NREPA

324.43514 Hunting small game and fishing without license permitted; conditions; exception.

Sec. 43514. (1) Until March 1, 2014, a resident, the resident's spouse, and the resident's children may hunt small game without a license upon the enclosed farmlands upon which they are regularly domiciled, at a time and in a manner permitted by law; except that they shall obtain a waterfowl hunting license for hunting waterfowl and a federal migratory bird hunting stamp as required by law.

(2) A resident, the resident's spouse, and the resident's children may fish without a license in water wholly

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within the limits of their enclosed farmlands or other enclosed lands upon which they are regularly domiciled, at a time and in a manner permitted by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43515 Permit authorizing developmentally disabled individual or resident of home for aged to fish without license.

Sec. 43515. The department may issue a permit authorizing a developmentally disabled individual or a resident of a home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, to fish without a license if the developmentally disabled individual or the resident of the licensed home for the aged is a member of a group accompanied by 1 or more adults licensed under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2014, Act 77, Imd. Eff. Mar. 28, 2014.

Popular name: Act 451

Popular name: NREPA

324.43516 Hunting, fur harvester, or fishing license; carrying license; exhibiting license upon demand; deer license with unused kill tag; exhibiting tag on request; electronic copy; consent to search electronic device not presumed; expanded use of electronic technology; tribal conservation officer; definition.

Sec. 43516. (1) Until March 1, 2018, an individual who has been issued a hunting, fur harvester's, or fishing license shall carry the license and shall exhibit the license upon the demand of a conservation officer, a law enforcement officer, a tribal conservation officer who complies with subsection (6), or the owner or occupant of the land if either or both of the following apply:

(a) The individual is hunting, trapping, or fishing.

(b) Subject to section 43510(2) and except as provided in section 43513, the individual is in possession of a firearm or other hunting or trapping apparatus or fishing apparatus in an area frequented by wild animals or fish, respectively.

(2) Subject to section 43510(2) and except as provided in section 43513, an individual shall not carry or possess afield a shotgun with buckshot, slug loads, or ball loads; a bow and arrow; a muzzle-loading rifle or black powder handgun; or a centerfire handgun or centerfire rifle during firearm deer season unless that individual has a valid deer license, with an unused kill tag, if issued, issued in his or her name. The individual shall exhibit an unused kill tag, if issued, upon the request of a conservation officer, a law enforcement officer, or the owner or occupant of the land.

(3) Beginning March 1, 2018, an individual who has been issued a hunting, fur harvester's, or fishing license shall carry the license or, if applicable, an electronic copy of the license and shall exhibit the license or, if applicable, an electronic copy of the license upon the demand of a conservation officer, a law enforcement officer, a tribal conservation officer who complies with subsection (6), or the owner or occupant of the land if either or both of the following apply:

(a) The individual is hunting, trapping, or fishing.

(b) Subject to section 43510(2) and except as provided in section 43513, the individual is in possession of a firearm or other hunting or trapping apparatus or fishing apparatus in an area frequented by wild animals or fish, respectively.

(4) An individual who displays an electronic copy of his or her license using an electronic device as provided in subsection (3) is not presumed to have consented to a search of the electronic device. This state, a law enforcement agency, a tribal conservation officer who complies with subsection (6), an employee of this state or a law enforcement agency, or the owner or occupant of the land is not liable for damage to or loss of an electronic device that occurs as a result of a conservation officer, a tribal conservation officer who complies with subsection (6), a law enforcement officer, or the owner or occupant of the land viewing an electronic copy of a license in the manner provided in this section, regardless of whether the conservation officer, tribal conservation officer who complies with subsection (6), law enforcement officer, or owner or occupant of the land was in possession of the electronic device at the time the damage or loss occurred.

(5) The department shall continue to explore the expanded use of electronic technology to provide additional services that will enhance hunting and fishing experiences for individuals in this state.

(6) A tribal conservation officer under subsection (1), (3), or (4) must be in uniform, display proper credentials, and be on official duty within the ceded territory of the treaty of March 28, 1836, 7 Stat 491.

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(7) As used in this section, "tribal conservation officer" means a conservation officer employed by the Great Lakes Indian fish and wildlife commission, the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, the Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, or the Little River Band of Ottawa Indians.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 129, Imd. Eff. June 3, 2004;—Am. 2006, Act 433, Imd. Eff. Oct. 5, 2006;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2016, Act 36, Eff. June 6, 2016;—Am. 2016, Act 461, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.43517 Hunting by minor child or adult who has a developmental disability; order establishing mentored hunting program.

Sec. 43517. (1) A parent or guardian of a minor child or a guardian of an adult who has a developmental disability shall not permit or allow the minor child or adult who has a developmental disability to hunt game under the authority of a license issued under this part except under 1 of the following conditions:

(a) The minor child hunts only on land upon which a parent or guardian is regularly domiciled or a parent or guardian, or another individual at least 18 years old authorized by a parent or guardian, accompanies the minor child. This subdivision does not apply under any of the following circumstances:

(*i*) The license is an apprentice license.

(*ii*) The minor child is less than 10 years old.

(*iii*) The minor child is an individual who has a developmental disability and is unable to obtain certification of completion of training in hunter safety.

(b) If the license is an apprentice license, a parent or guardian, or another individual at least 21 years old authorized by a parent or guardian, who is licensed to hunt that game under a license other than an apprentice license accompanies the minor child or adult who has a developmental disability.

(c) If the individual is less than 10 years old, the individual hunts only with a mentor in compliance with the mentored hunting program established by the commission under subsection (2).

(d) If the individual is an individual who has a developmental disability and is unable to obtain certification of completion of training in hunter safety, the individual hunts only with a mentor in compliance with the mentored hunting program established by the commission under subsection (2).

(e) If the adult who has a developmental disability has a guardian appointed under chapter 6 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644, and is unable to obtain certification of completion of training in hunter safety, the adult hunts only with a mentor in compliance with the mentored hunting program established by the commission under subsection (2).

(2) The commission shall issue an order under section 40113a establishing a mentored hunting program. The order must provide for at least all of the following:

(a) A mentor shall be at least 21 years of age before participating in the mentored hunting program.

(b) A mentor shall possess a valid license to hunt, other than an apprentice license, before engaging in any mentored hunting program.

(c) An individual shall not be a mentor unless the individual presents proof of previous hunting experience in the form of a previous hunting license, other than an apprentice license, or certification of completion of training in hunter safety issued to the individual by this state, another state, a province of Canada, or another country.

(3) As used in this section, "developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 280, Imd. Eff. July 10, 2006;—Am. 2006, Act 282, Imd. Eff. July 10, 2006;—Am. 2011, Act 109, Eff. Sept. 1, 2011;—Am. 2018, Act 399, Imd. Eff. Dec. 19, 2018;—Am. 2024, Act 96, Imd. Eff. July 23, 2024.

Popular name: Act 451

Popular name: NREPA

324.43518 “Department” defined; signature requirement for valid license.

Sec. 43518. (1) As used in this section to section 43544, "department" includes a person designated by the department to issue and sell licenses.

(2) A license issued under this part is not valid unless it is signed as required by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.43519 License requirements; effect of court order.

Sec. 43519. (1) To obtain any license, an applicant shall provide the department with 1 or more of the following as required by the department:

(a) Proof of residency or a signed affidavit of Michigan residency.

(b) Information required on the license application.

(c) The required license fee.

(d) Proof of identification.

(2) A person shall not obtain or attempt to obtain a license if a court order prohibits the person from obtaining that license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

324.43520 Hunting license; issuance to minor child; requirements; duties of issuing agent; proof of previous hunting experience or certification of completion of training in hunter safety; affidavit; information to be recorded; apprentice license; mentored hunting license; additional licenses; fee; report.

Sec. 43520. (1) Subject to other requirements of this part, the department may issue a hunting license to an adult who has a developmental disability, has a guardian appointed under chapter 6 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644, and is unable to obtain certification of completion of training in hunter safety, or to a minor child if all of the following requirements are met:

(a) A parent or guardian of the individual applies for the license on behalf of the individual.

(b) The parent or guardian represents that the requirements of section 43517, as applicable, will be complied with.

(c) The license fee is paid.

(2) An individual born after January 1, 1960 shall not purchase or attempt to purchase a hunting license, unless the individual presents proof of previous hunting experience in the form of a hunting license issued by this state, another state, a province of Canada, or another country or presents a certification of completion of training in hunter safety issued to the individual by this state, another state, a province of Canada, or another country. If an applicant for a hunting license does not have proof of such a previous license or a certification of completion of training in hunter safety, a person authorized to sell hunting licenses may issue a hunting license if the applicant submits a signed affidavit stating that the applicant has completed a course in hunter safety or that the applicant possessed such a hunting license previously. The person selling a hunting license shall record as specified by the department the form of proof of the previous hunting experience or certification of completion of hunter safety training presented by the applicant. This subsection does not apply to the issuance of an apprentice license or mentored hunting license. An apprentice license, mentored hunting license, or the equivalent does not satisfy the requirements of this subsection concerning proof of previous hunting experience.

(3) An individual who does not meet the requirements of subsection (2) may obtain an apprentice license for the same price as the corresponding regular license that the individual would otherwise be qualified to obtain. An individual 17 years old or older shall not hunt game under an apprentice license unless another individual at least 21 years old who possesses a license, other than an apprentice license, to hunt that game accompanies that apprentice licensee and does not accompany more than 1 other apprentice licensee. For the purposes of this subsection and section 43517(1)(b), an individual shall not go along with more than 2 apprentice licensees of any age for the purpose of accompanying those apprentice licensees while those apprentice licensees are hunting. If an individual has represented to an apprentice licensee or, if the apprentice licensee is a minor child, to the apprentice licensee's parent or guardian that the individual would accompany the apprentice licensee for the purposes of this subsection, the individual shall not go along with the apprentice licensee while the apprentice licensee is hunting unless the individual actually accompanies the apprentice licensee and possesses a license, other than an apprentice license, to hunt the same game as the apprentice licensee. An individual is not eligible to obtain a specific type of apprentice license, such as a deer license, a base license, or a turkey license, for more than 2 license years. An apprentice license must be distinguished from a license other than an apprentice license by a notation or other means.

(4) Only a minor who is less than 10 years old, a minor child with a developmental disability, or an adult who has a developmental disability and a guardian appointed under chapter 6 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644, may obtain a mentored hunting license. A minor who is less than 10 years old, a minor child with a developmental disability, or an adult who has a developmental disability and a

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guardian appointed under chapter 6 of the mental health code, 1974 PA 258, MCL 330.1600 to 330.1644, shall not hunt game under a mentored hunting license unless that individual complies with all requirements of the mentored hunting program established by the commission under section 43517.

(5) Except as otherwise provided in this subsection, the fee for a mentored hunting license is $7.50. A mentored hunting license is free for an individual with a developmental disability. A mentored hunting license includes all of the privileges conferred by all of the following:

(a) Base license.

(b) Deer license.

(c) All-species fishing license.

(d) Spring wild turkey hunting license and fall wild turkey hunting license.

(e) Fur harvester's license.

(6) An individual who purchases a mentored hunting license may apply for or purchase additional licenses pursuant to current regulations, including, but not limited to, all of the following:

(a) Antlerless deer licenses under section 43527a.

(b) A bear hunting license under section 43528.

(c) An elk hunting license under section 43529.

(7) An individual hunting with a license purchased under subsection (6) must comply with all requirements of the mentored hunting program established by the commission under section 43517.

(8) By September 1, 2023 and every 4 years after that date, the department shall submit a report to the standing committees of the senate and house of representatives with primary responsibility for conservation and outdoor recreation issues evaluating whether the fee revenue received by the department from mentored hunting licenses under subsection (5) is adequate to administer the mentored hunting program.

(9) As used in this section, "developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 280, Imd. Eff. July 10, 2006;—Am. 2006, Act 280, Imd. Eff. July 10, 2006;—Am. 2006, Act 282, Imd. Eff. July 10, 2006;—Am. 2011, Act 120, Eff. Sept. 1, 2011;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2018, Act 4, Imd. Eff. Jan. 26, 2018;—Am. 2024, Act 96, Imd. Eff. July 23, 2024.

Popular name: Act 451

Popular name: NREPA

324.43521 Discounting price of license.

Sec. 43521. Notwithstanding any other section of this part, the department may discount the price of a license for the following purposes:

(a) For marketing purposes to increase participation in hunting and fishing activities.

(b) The price of any license or application fee may be discounted or eliminated to achieve a harvest or management objective for that species.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2009, Act 69, Imd. Eff. July 9, 2009.

Popular name: Act 451

Popular name: NREPA

324.43522 Issuance of sportcard to persons not possessing driver license or other identification; fee.

Sec. 43522. If a person applying for a license or permit under this part does not possess a Michigan driver license or other identification, the department shall issue a sportcard. A person authorized by the department to issue licenses shall charge a $1.00 fee for each sportcard that he or she issues. The authorized person shall forward the required form and the fee collected pursuant to this section to the department. The department shall issue a license and a sportcard provided for in this part if the applicant satisfies the license requirements and pays the license fees.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

324.43522a Repealed. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Compiler's note: The repealed section pertained to deferment of license fee increase by director.

Popular name: Act 451

Popular name: NREPA

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324.43523 Repealed. 2013, Act 108, Eff. Mar. 1, 2014.

Compiler's note: The repealed section pertained to small game license and fees.

Popular name: Act 451

Popular name: NREPA

324.43523a Base license; small game; fur-bearing animals; fee; hours void; 7-day limited nonresident small game license; 3-day limited nonresident small game license; development and display of electronic license.

Sec. 43523a. (1) Except as otherwise provided in this part, an individual shall not hunt small game, unless the individual possesses a current base license. A base license authorizes the individual named in the license to hunt for small game, except for animals or birds that require a special license.

(2) If authorized in an order issued under part 401, an individual who possesses a current base license may take specified fur-bearing animals by means other than trapping during the open season for hunting these fur-bearing animals. However, an individual who goes on a bobcat hunt with a licensed hunter is not required to possess a base license if the individual does not carry a firearm, bow, or crossbow and does not own dogs used to chase or locate a bobcat during the hunt.

(3) The fee for a base license is as follows:

(a) Subject to subdivision (b), for a resident, $10.00.

(b) For a resident minor child or nonresident minor child, $5.00.

(c) Subject to subdivision (b), for a nonresident, $150.00.

(4) A base license is void between the hours of 1/2 hour after sunset and 1/2 hour before sunrise with the exception of coyote hunting.

(5) A nonresident may purchase a limited nonresident small game license entitling that individual to hunt for a 7-day period all species of small game that are available to hunt under a nonresident base license. The fee for a 7-day limited nonresident small game license is $80.00. Except for the purchase of a waterfowl hunting license under section 43525b, the purchase of a 7-day limited nonresident small game license does not entitle the holder to purchase any additional licenses.

(6) Beginning March 1, 2018, a nonresident may purchase a 3-day limited nonresident small game license entitling that individual to hunt for a 3-day period all species of small game that are available to hunt under a nonresident base license. The fee for a 3-day limited nonresident small game license is $50.00. Except for the purchase of a waterfowl hunting license issued under section 43525b, the purchase of a 3-day limited nonresident small game license does not entitle the holder to purchase any additional licenses.

(7) Not later than March 1, 2018, the department shall develop an electronic license that allows an individual to display an electronic copy of his or her base license using an electronic device.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2016, Act 461, Eff. Mar. 29, 2017;—Am. 2018, Act 3, Imd. Eff. Jan. 26, 2018.

Popular name: Act 451

Popular name: NREPA

324.43523b Combination hunt and fish license; resident; nonresident; fees.

Sec. 43523b. (1) Beginning March 1, 2014, the fee for a resident combination hunt and fish license is $75.00 and shall include all of the privileges conferred by all of the following:

(a) Resident base license.

(b) Two deer licenses.

(c) All-species fishing license.

(2) Beginning March 1, 2014, the fee for a nonresident combination hunt and fish license is $265.00 and shall include all of the privileges conferred by all of the following:

(a) Nonresident base license.

(b) Two deer licenses.

(c) All-species fishing license.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43524 Wild turkey hunting license; fees; lottery; issuance of license; use of fees; report; purchase of license beginning March 1, 2014; eligibility; application fee; use.

Sec. 43524. (1) An individual shall not hunt wild turkey without a wild turkey hunting license. The fee for

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a resident wild turkey hunting license is $15.00. The fee for a nonresident wild turkey hunting license is $69.00. Subject to the requirements of section 40113a, the commission may issue an order requiring that all applications for wild turkey hunting licenses, or applications for wild turkey hunting licenses for certain geographic areas, be entered into a lottery designed and run by the department. An individual selected in a lottery, upon meeting the requirements of this part, is authorized to purchase a wild turkey hunting license. The license shall be issued for a specified hunting period and confers upon the holder of the license the right to hunt wild turkeys.

(2) The department may charge a nonrefundable application fee not to exceed $4.00 for each application for a wild turkey hunting license that is entered into a lottery under subsection (1).

(3) From fees collected under subsection (1) or (2), the following amounts shall be used for scientific research, biological survey work on wild turkeys, creation and management of wild turkey habitat on state land, national forestland, and private land, annual wild turkey hunter surveys, disease testing for wild turkeys suspected of having a disease and voluntarily submitted to the department of natural resources, and other wild turkey management in this state:

(a)	Resident wild turkey hunting license	$ 9.50
(b)	Nonresident wild turkey hunting license	$ 50.00
(c)	Senior wild turkey hunting license	$ 1.00
(d)	Wild turkey hunting application	amount of application fee, if any, but not more than $ 3.00.

(4) The department shall, to the extent possible, use the money from subsection (3) to create and manage wild turkey habitat on state forestland, state game areas, national forestland, and private land, where appropriate. The department shall, before January 1 of each year, provide to the standing committees in the senate and house of representatives that primarily consider issues relating to natural resources a report detailing the expenditures for the prior year under subsection (3).

(5) Beginning March 1, 2014, only an individual holding a valid base license is eligible to purchase a wild turkey hunting license, pursuant to current regulations. The fee for a wild turkey hunting license is $15.00.

(6) Beginning March 1, 2014, the department may charge a nonrefundable application fee not to exceed $5.00 for each application for a wild turkey hunting license that is entered into a lottery under subsection (1).

(7) Beginning March 1, 2014, from fees collected under subsection (5) or (6), the following amounts shall be used for scientific research, biological survey work on wild turkeys, creation and management of wild turkey habitat on state land, national forestland, and private land, annual wild turkey hunter surveys, disease testing for wild turkeys suspected of having a disease and voluntarily submitted to the department of natural resources, and other wild turkey management in this state:

(a)	Wild turkey hunting license	$ 9.50
(b)	Senior wild turkey hunting license	$ 1.00
(c)	Wild turkey hunting application	amount of application fee, if any, but not more than $ 3.00.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2002, Act 81, Imd. Eff. Mar. 25, 2002;—Am. 2012, Act 81, Imd. Eff. Apr. 11, 2012;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43525 Repealed. 2013, Act 108, Eff. Mar. 1, 2014.

Compiler's note: The repealed section pertained to waterfowl hunting license and fees.

Popular name: Act 451

Popular name: NREPA

324.43525a Repealed. 2013, Act 108, Eff. Mar. 1, 2014.

Compiler's note: The repealed section pertained to combination deer license.

Popular name: Act 451

Popular name: NREPA

324.43525b Waterfowl hunting license; requirements; fee; issuance as stamp; use of fees; electronic display.

Sec. 43525b. (1) Except as otherwise provided in this part, an individual 16 years of age or older shall not

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hunt waterfowl without a current waterfowl hunting license issued by this state. The annual license requirement is in addition to the requirements for a base license and federal migratory bird hunting stamp. The fee for the waterfowl hunting license is $12.00.

(2) If issued as a stamp, a waterfowl hunting license shall be affixed to the base license of the individual and signed across the face of the stamp by the individual to whom it is issued.

(3) A collector may purchase a waterfowl hunting license, if it is issued as a stamp, without being required to place it on a base license, sign across its face, or provide proof of competency under section 43520(2). However, a license described in this subsection is not valid for hunting waterfowl.

(4) From the fee collected for each waterfowl hunting license, the department shall use the following amounts:

(a) $9.00 shall be used to acquire, restore, or enhance wetlands and other lands to be managed for the benefit of waterfowl. Except as otherwise provided in this subdivision, not more than 0.25% of the money under this subdivision shall be used to acquire lands. However, if all of the money appropriated from the natural resources trust fund for eco-region acquisition carried over from previous fiscal years is spent, then the 0.25% limitation under this subdivision does not apply. The department shall not acquire land under this subdivision until that acquisition is approved by the joint capital outlay subcommittee.

(b) $1.93 shall be used to operate, maintain, and develop managed waterfowl areas in this state.

(c) The remaining amount shall be retained under section 43541 or used for administration of this part.

(5) Not later than March 1, 2018, the department shall develop an electronic license that allows an individual to display an electronic copy of his or her Michigan waterfowl hunting license using an electronic device.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2016, Act 462, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

***** *324.43525c THIS SECTION IS REPEALED BY ACT 262 OF 2020 EFFECTIVE JANUARY 1, 2026* *****

324.43525c Pheasant hunting license; fees; deposit of funds into pheasant subaccount in the game and fish protection account.

Sec. 43525c. (1) Except as otherwise provided in this section, an individual 18 years of age or older shall not hunt pheasants without a current annual pheasant hunting license issued by this state. The annual pheasant hunting license requirement is in addition to the requirements for a base license. The fee for the pheasant hunting license is $25.00. The following individuals are not required to obtain an annual pheasant hunting license under this section:

(a) An individual only hunting pheasants at a game bird hunting preserve licensed under part 417.

(b) An individual hunting pheasants on private land, except for individuals hunting on land enrolled in the hunting access program.

(c) An individual hunting pheasants on public land in the Upper Peninsula.

(d) An individual who holds a lifetime small game license, lifetime sportsperson's license, or a comprehensive lifetime hunting and fishing license issued under section 44102.

(2) If issued as a stamp, a pheasant hunting license must be affixed to the base license of the individual and signed across the face of the stamp by the individual to whom it is issued.

(3) A collector may purchase a pheasant hunting license, if it is issued as a stamp, without being required to place it on a base license, sign across its face, or provide proof of competency under section 43520(2). However, a license described in this subsection is not valid for hunting pheasants.

(4) Except as provided in sections 43541 and 43555, the department shall deposit the fee collected for each pheasant hunting license in the pheasant subaccount of the game and fish protection account for the purposes stated in subsection (5).

(5) The pheasant subaccount is created in the game and fish protection account. The state treasurer may receive money or other assets from any source for deposit into the subaccount. The state treasurer shall direct the investment of the subaccount. The state treasurer shall credit to the subaccount interest and earnings from subaccount investments. Money in the subaccount at the close of the fiscal year remains in the subaccount and does not lapse to the game and fish protection account or the general fund. Money in the subaccount on January 1, 2026 is transferred to the game and fish protection account. The department is the administrator of the subaccount for auditing purposes. The department shall expend money from the subaccount, upon appropriation, only for costs associated with the purchase and release of live pheasants on state-owned land suitable for pheasants.

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(6) This section is repealed effective January 1, 2026.

History: Add. 2020, Act 262, Eff. Mar. 24, 2021;—Am. 2021, Act 6, Imd. Eff. Apr. 8, 2021.

Popular name: Act 451

Popular name: NREPA

324.43526 Repealed. 2013, Act 108, Eff. Mar. 1, 2014.

Compiler's note: The repealed section pertained to firearm deer license and fees.

Compiler's note: Act 451

Compiler's note: NREPA

324.43526a Repealed. 2012, Act 241, Eff. Jan. 1, 2017.

Compiler's note: The repealed section pertained to hunters helping landowners program.

324.43526b Electronic copy of kill tag; display using electronic device.

Sec. 43526b. The department may develop an electronic license that allows an individual to display an electronic copy of his or her kill tag under section 43524, 43527a, 43528, 43528a, 43528b, or 43529 using an electronic device.

History: Add. 2016, Act 461, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.43527 Repealed. 2013, Act 108, Eff. Mar. 1, 2014.

Compiler's note: The repealed section pertained to bow and arrow deer license and fees.

Popular name: Act 451

Popular name: NREPA

324.43527a Purchase of deer license beginning March 1, 2014; eligibility; application fee; kill tag; second deer license.

Sec. 43527a. (1) Beginning March 1, 2014, only an individual holding a valid base license is eligible to purchase a deer license or an antlerless deer license, pursuant to current regulations. The fee for a deer license or an antlerless deer license is $20.00.

(2) Beginning March 1, 2014, the department shall charge a nonrefundable application fee not to exceed $5.00 for each individual who applies for an antlerless deer license.

(3) The department may issue a kill tag with or as part of each deer license. The kill tag shall bear the license number. The kill tag may also include space for other pertinent information required by the department. The kill tag, if issued, is part of the license.

(4) Where authorized by the department, a resident may purchase a second deer license for the fee assessed under this subsection for the deer license for which that individual is eligible. However, a senior license discount is not available for the purchase of a second deer license. Where authorized by the department, a nonresident may purchase an additional deer license or antlerless deer license under this section for $170.00. The department may issue orders under part 401 designating the kind of deer that may be taken and the geographic area in which any license issued under this section is valid, when advisable in managing deer.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43527b Deer management assistance permits.

Sec. 43527b. The department may issue deer management assistance permits pursuant to current regulations.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43528 Bear hunting license; exception; eligibility beginning March 1, 2014; fees; kill tag; application fee; bear participation license.

Sec. 43528. (1) An individual shall not hunt bear unless the individual possesses a bear hunting license. However, an individual who goes on a bear hunt with a licensed hunter is not required to possess a bear hunting license if the individual does not carry a firearm, bow, or crossbow and does not own dogs used to

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chase or locate bear during the hunt. Beginning March 1, 2014, only an individual holding a valid base license is eligible to purchase a bear hunting license, pursuant to current regulations.

(2) The fee for a resident bear hunting license is $15.00. The fee for a nonresident bear hunting license is $150.00. Beginning March 1, 2014, the fee for a bear hunting license is $25.00.

(3) The department may issue a kill tag with, or as a part of, a bear hunting license. The kill tag shall bear the license number. The kill tag may also include space for other pertinent information required by the department. The kill tag, if issued, is part of the license.

(4) In addition to the license fees in subsection (2), the department shall charge a nonrefundable application fee not to exceed $4.00 for each individual who applies for a bear hunting license. Beginning March 1, 2014, in addition to the license fees in subsection (2), the department shall charge a nonrefundable application fee not to exceed $5.00 for each individual who applies for a bear hunting license.

(5) Beginning March 1, 2014, the following individuals chasing or locating bear with dogs during the open season for that game and who hold a valid base license are eligible for the purchase of a bear participation license for a fee of $15.00:

(a) Any individual possessing a firearm, crossbow, or bow and arrow.

(b) The owner, when present, of any dog chasing or locating bear.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 103, Imd. Eff. Mar. 5, 1996;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2008, Act 347, Imd. Eff. Dec. 23, 2008;—Am. 2009, Act 70, Imd. Eff. July 9, 2009;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43528a Moose hunting license; fees; kill tag.

Sec. 43528a. (1) A resident shall not hunt moose without a moose hunting license. Beginning March 1, 2014, only a resident holding a valid base license is eligible to purchase a moose hunting license, pursuant to current regulations. The fee for a moose hunting license is $100.00. The department may establish a nonrefundable application fee not to exceed $4.00 for each individual who applies for a moose hunting license. Beginning March 1, 2014, the department may establish a nonrefundable application fee not to exceed $5.00 for each individual who applies for a moose hunting license.

(2) The department may issue a kill tag with, or as part of, a moose hunting license. The kill tag shall bear the license number. The kill tag may also include space for other pertinent information required by the department. The kill tag, if issued, is part of the license.

History: Add. 2010, Act 366, Imd. Eff. Dec. 22, 2010;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43528b Wolf hunting license; eligibility beginning March 1, 2014; fee; kill tag.

Sec. 43528b. (1) An individual shall not hunt wolf without a wolf hunting license. Beginning March 1, 2014, only an individual holding a valid base license is eligible to purchase a wolf hunting license. The fee for a resident wolf hunting license is $100.00. The fee for a nonresident wolf hunting license is $500.00. The department may establish a nonrefundable application fee not to exceed $4.00 for each individual who applies for a wolf hunting license. Beginning March 1, 2014, the department may establish a nonrefundable application fee not to exceed $5.00 for each individual who applies for a wolf hunting license.

(2) The department may issue a kill tag with, or as part of, a wolf hunting license. The kill tag shall bear the license number. The kill tag may also include space for other pertinent information required by the department. The kill tag, if issued, is part of the license.

History: Add. 2012, Act 520, Imd. Eff. Dec. 28, 2012;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43528c Commercial hunting guide; license requirements; commercial forestland prohibition; revocation; annual report; exhibition of license upon demand; violations; civil fines; definitions.

Sec. 43528c. (1) Beginning March 1, 2024, an individual shall not act as a commercial hunting guide in this state unless that individual possesses both of the following:

(a) A valid license issued under subsection (2).

(b) A valid base license issued under section 43523a.

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(2) To obtain a license to act as a commercial hunting guide, an individual shall submit the application fee described in section 43528d and an application to the department. The application must be in a format determined by the department. The department shall only grant a license to an individual if the department determines all of the following:

(a) That the individual holds a valid certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or a comparable organization approved by the department, and that the individual can provide to the department, upon request, a copy of the certification.

(b) The individual has a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, or a sportcard issued under section 43522.

(c) The individual has not been convicted of any of the following within the past 3 years:

(*i*) A violation of any of the following:

(A) Section 40112.

(B) Section 40118(2), (3), (4), (5), (6), (14), (15), (16), or (17).

(C) Section 41105.

(D) Section 44524.

(E) Section 48738(2) or (3).

(F) Section 48739(1), (2), or (3).

(*ii*) Any felony.

(*iii*) A violation of a law of a participating state substantially corresponding to a violation described in subparagraphs (*i*) to (*ii*).

(d) The individual is eligible to purchase a license for the game species for which the individual is acting as a commercial hunting guide. This subdivision does not apply to an individual who is ineligible to obtain a hunting license solely because that individual has previously been issued a hunting license for that species.

(3) An individual shall not act as a commercial hunting guide unless that individual, when acting as a commercial hunting guide, carries a basic first aid kit that includes, but is not limited to, all of the following:

(a) Tourniquet, chest seals, and compression gauze.

(b) CPR mask.

(c) Trauma shears.

(d) Sterile eyewash.

(e) Mylar emergency blanket.

(f) Bandages.

(g) Moleskin.

(h) Tweezers.

(4) An individual shall not act as a commercial hunting guide on commercial forestland.

(5) A license issued under this section is valid for 3 years after the date it is issued. The department may revoke a license under this section, after notice and opportunity for hearing in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for any of the following reasons:

(a) The department determines that the individual is not eligible to hold a license under this section.

(b) The individual provides false information under this section.

(c) The individual fails to file an annual report under subsection (6), and that report remains unfiled for more than 90 days after the report is due.

(6) A commercial hunting guide shall file an annual report with the department, in a format determined by the department, that contains information related to all of the following:

(a) The counties of this state where the individual acted as a commercial hunting guide.

(b) The species of game for which the individual acted as a commercial hunting guide.

(c) The number of clients that the commercial hunting guide had during the year.

(d) The number of game animals harvested by the clients of the commercial hunting guide.

(e) Any additional information the department requires regarding the biological characteristics of the game animals harvested.

(7) Information submitted in a report under subsection (6) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) The department shall annually post on its website all of the following:

(a) The number of applications submitted under subsection (2) in the previous year.

(b) The number of licenses issued under this section in the previous year.

(c) A list of individuals who have valid licenses under this section.

(9) An individual shall carry that individual's commercial hunting guide license and shall exhibit the license upon the demand of a conservation officer, a peace officer, a tribal conservation officer, a park and

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recreation officer if commercial hunting guiding takes place on property regulated under part 741 or 781, or the owner or occupant of any land where the individual is acting as a commercial hunting guide.

(10) An individual who acts as a commercial hunting guide without a valid license issued under this section or who acts as a commercial hunting guide on commercial forestland is subject to a civil fine of not more than $500.00. An individual who acts as a commercial hunting guide without a valid license issued under this section or who acts as a commercial hunting guide on commercial forestland a second or subsequent time is subject to a civil fine of not more than $1,000.00. A civil fine collected under this subsection must be deposited in the game and fish protection account established in section 2010.

(11) An individual who provides false information to the department under this section is subject to a civil fine of not more than $500.00.

(12) As used in this section:

(a) "Commercial hunting guide" means an individual who, for a fee or other consideration of value, provides assistance to another individual in hunting game. Commercial hunting guide does not include any of the following:

(*i*) The owner of private land while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take game on that private land.

(*ii*) The owner, employee, or member of a game bird hunting preserve licensed under part 417, or a designee of the owner, employee, or member, while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take game birds authorized to be hunted on that game bird hunting preserve.

(*iii*) The owner or employee of a privately owned game ranch while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take privately owned game that the individual is permitted to own on the individual's privately owned game ranch. As used in this subparagraph, "privately owned game ranch" includes a cervidae livestock facility registered under the privately owned cervidae producers marketing act, 2000 PA 190, MCL 287.951 to 287.969.

(*iv*) An individual, business, agency, or nonprofit organization issued a permit from the department to provide damage or nuisance animal control services, while providing those damage or nuisance animal control services.

(*v*) An employee or member of an organization conducting a not-for-profit event to recruit, retain, or promote hunting, while providing assistance to another individual in hunting game during that event.

(*vi*) An individual who complies with subsection (2)(c) and who is working under the direct supervision of a licensed commercial hunting guide when a hunting client is present. As used in this subparagraph, "direct supervision" means that visual and vocal contact is constantly maintained between the individual and the licensed commercial hunting guide.

(*vii*) An individual who provides assistance when a hunting client is not present.

(*viii*) An individual who is compensated for providing assistance to an individual with a disability or physical limitation. As used in this subparagraph, "individual with a disability or physical limitation" means a disabled person as that term is defined in section 19a of the Michigan vehicle code, 1949 PA 300, MCL 257.19a.

(b) "Consideration of value" means an economic benefit, inducement, right, or profit, including monetary payment accruing to an individual or person. Consideration of value does not include a voluntary sharing of the actual expenses of the guiding activity by monetary contribution or donation of fuel, food, beverages, or other supplies.

(c) "Participating state" means that term as defined in section 1615.

History: Add. 2023, Act 221, Eff. Feb. 20, 2024.

Popular name: Act 451

Popular name: NREPA

324.43528d Commercial hunting guide license application fees.

Sec. 43528d. Except as otherwise provided in this section, the department shall charge a resident applying for a commercial hunting guide license under section 43528c an application fee of $150.00. The department shall charge a nonresident applying for a commercial hunting guide license under section 43528c an application fee of $300.00. Money collected under this section must be deposited in the game and fish protection account established in section 2010.

History: Add. 2023, Act 220, Eff. Feb. 20, 2024.

Popular name: Act 451

Popular name: NREPA

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324.43529 Elk hunting license; eligibility beginning March 1, 2014; fees; kill tag.

Sec. 43529. (1) A resident shall not hunt elk during the elk season without an elk hunting license. Beginning March 1, 2014, only a resident holding a valid base license is eligible to purchase an elk hunting license, pursuant to current regulations. The fee for an elk hunting license is $100.00. The department may establish a nonrefundable application fee not to exceed $4.00 for each individual who applies for an elk hunting license. Beginning March 1, 2014, the department may establish a nonrefundable application fee not to exceed $5.00 for each individual who applies for an elk hunting license.

(2) The department may issue a kill tag with, or as a part of, an elk hunting license. The kill tag shall bear the license number. The kill tag may also include space for other pertinent information required by the department. The kill tag, if issued, is part of the license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43530 Repealed. 2013, Act 108, Eff. Mar. 1, 2014.

Compiler's note: The repealed section pertained to hunting small game on game bird hunting preserves.

Popular name: Act 451

Popular name: NREPA

324.43531 Fur harvester's license; exception; fees; conditions to issuance of nonresident fur harvester's license; rights of licensee; eligibility beginning March 1, 2014; validity of license.

Sec. 43531. (1) Except as otherwise provided in section 43523(2) or section 43523a(2), an individual shall not trap or hunt fur-bearing animals unless the individual possesses a fur harvester's license. However, an individual who goes on a bobcat hunt with a licensed hunter is not required to possess a fur harvester's license if the individual does not carry a firearm, bow, or crossbow and does not own dogs used to chase or locate a bobcat during the hunt.

(2) The fee for a resident fur harvester's license is $15.00. The fee for a fur harvester's license for a resident or nonresident minor child 10 years old or older shall be discounted 50% from the cost of the resident fur harvester's license.

(3) Until March 1, 2014, the department may issue a nonresident fur harvester's license to a nonresident of this state if the state, province, or country in which the nonresident applicant resides allows residents of this state to obtain equivalent hunting and trapping privileges in that state, province, or country. The fee for an eligible nonresident fur harvester's license is $150.00. Nonresident fur harvester's licenses shall not be sold or purchased before November 15 of each year.

(4) An individual who holds a fur harvester's license may hunt fur-bearing animals during the season open to taking fur-bearing animals with firearms and may trap fur-bearing animals during the season open to trapping fur-bearing animals.

(5) Beginning March 1, 2014, only an individual holding a valid base license is eligible to purchase a fur harvester's license, pursuant to current regulations. The fee for a fur harvester's license is $15.00.

(6) Beginning March 1, 2014, for a nonresident holding a valid base license and a valid fur harvester's license, the fur harvester's license is not valid for fur-bearing species for which a bag limit has been established.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2008, Act 347, Imd. Eff. Dec. 23, 2008;—Am. 2009, Act 70, Imd. Eff. July 9, 2009;—Am. 2011, Act 120, Eff. Sept. 1, 2011;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43531b Issuance of free tags.

Sec. 43531b. Pursuant to current regulations, the department may issue free tags for survey purposes or for the enforcement of harvest limits.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

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324.43532 All-species fishing license; fees; electronic license.

Sec. 43532. (1) An all-species fishing license entitles the licensee to take and possess all aquatic species as prescribed by law.

(2) An individual 17 years of age or older shall not take or possess an aquatic species, except aquatic insects, in the waters over which this state has jurisdiction without an all-species fishing license. Except as otherwise provided in this subsection, the fee for a resident all-species fishing license is $25.00. Except as otherwise provided in this subsection, the fee for a nonresident all-species fishing license is $75.00. An individual under 17 years of age may take and possess aquatic species in the waters over which this state has jurisdiction without an all-species fishing license. However, an individual under 17 years of age may obtain an all-species fishing license. The fee for a resident or nonresident who is under 17 years of age for an all-species fishing license is $2.00.

(3) The department shall develop an electronic license that allows an individual to display an electronic copy of his or her all-species fishing license using an electronic device.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2002, Act 108, Imd. Eff. Mar. 27, 2002;—Am. 2010, Act 29, Imd. Eff. Mar. 26, 2010;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2016, Act 463, Eff. Mar. 29, 2017;—Am. 2020, Act 271, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: NREPA

324.43532a Additional charges; deposit.

Sec. 43532a. (1) The department shall charge an additional $1.00 for each of the following licenses:

(a) A base license issued under sections 43523a(3) and 43535(2).

(b) A combination hunt and fish license issued under section 43523b.

(c) Except for those licenses purchased by individuals under 17 years of age, an all-species fishing license issued under sections 43532(2) and 43536(1).

(2) The department shall deposit money generated under this section in the Michigan wildlife management public education subaccount created in section 43532b.

History: Add. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2013, Act 246, Eff. Mar. 27, 2014;—Am. 2020, Act 270, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: NREPA

324.43532b Michigan wildlife management public education subaccount; Michigan wildlife council.

Sec. 43532b. (1) The Michigan wildlife management public education subaccount is created within the game and fish protection account.

(2) The state treasurer may receive money or other assets from any source for deposit into the subaccount. The state treasurer shall direct the investment of the subaccount. The state treasurer shall credit to the subaccount interest and earnings from subaccount investments.

(3) Money in the subaccount at the close of the fiscal year shall remain in the subaccount and shall not lapse to the game and fish protection account or the general fund.

(4) The department shall be the administrator of the subaccount for auditing purposes.

(5) The Michigan wildlife council shall expend money from the subaccount, upon appropriation, only to support the program designed under subsection (18) and to pay the department's administrative costs in implementing this section. Not more than 5% of the annual appropriations from the subaccount shall be spent on the administrative costs of the department in implementing this section.

(6) The Michigan wildlife council is created within the department.

(7) The Michigan wildlife council shall consist of the following 9 members:

(a) The director or his or her designee.

(b) Four individuals who have purchased hunting or fishing licenses in this state on a regular basis, including at least once during each of the last 3 years, at least 1 of whom has purchased a hunting license and at least 1 of whom has purchased a fishing license, appointed by the governor with the advice and consent of the senate from a list recommended by statewide sportsmen's organizations.

(c) One individual representing local businesses in this state that are substantially impacted by hunting and fishing, appointed by the governor with the advice and consent of the senate.

(d) One individual representing agricultural producers in this state, appointed by the governor with the advice and consent of the senate.

(e) One individual with a media or marketing background, who is not an employee of the department,

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appointed by the governor with the advice and consent of the senate.

(f) One individual representing rural areas of this state whose economies are substantially impacted by hunting and fishing, appointed by the governor with the advice and consent of the senate.

(8) In appointing members under subsection (7), the governor shall make an effort to appoint members from all geographic areas of this state, at least 1 of whom is from the Upper Peninsula.

(9) The members first appointed to the Michigan wildlife council shall be appointed within 90 days after the effective date of this section.

(10) The appointed members of the Michigan wildlife council shall serve for terms of 4 years or until a successor is appointed, whichever is later, except that of the members first appointed 2 shall serve for 2 years, 3 shall serve for 3 years, and 3 shall serve for 4 years. The appointed members shall not serve more than 2 full terms.

(11) If a vacancy occurs on the Michigan wildlife council, the governor shall make an appointment for the unexpired term in the same manner as the original appointment.

(12) The governor may remove a member of the Michigan wildlife council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(13) The first meeting of the Michigan wildlife council shall be called by the director. At the first meeting, the Michigan wildlife council shall adopt bylaws and then elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the Michigan wildlife council shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by a majority of the members serving.

(14) A majority of the members of the Michigan wildlife council constitute a quorum for the transaction of business at a meeting of the Michigan wildlife council. A majority of the members serving are required for official action of the Michigan wildlife council.

(15) The business that the Michigan wildlife council may perform shall be conducted at a public meeting of the Michigan wildlife council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(16) A writing prepared, owned, used, in the possession of, or retained by the Michigan wildlife council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(17) Members of the Michigan wildlife council shall serve without compensation. However, members of the Michigan wildlife council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the Michigan wildlife council.

(18) The Michigan wildlife council shall do all of the following:

(a) Develop and implement, in conjunction with a third-party marketing or advertising agency, a comprehensive media-based public information program to promote the essential role that sportsmen and sportswomen play in furthering wildlife conservation and to educate the general public about hunting, fishing, and the taking of game. That education shall include, but is not limited to, teaching that hunting, fishing, and the taking of game are any of the following:

(*i*) Necessary for the conservation, preservation, and management of this state's natural resources.

(*ii*) A valued and integral part of the cultural heritage of this state and should forever be preserved.

(*iii*) An important part of this state's economy.

(b) Provide a semiannual report to the legislature on the program and expenditures under this section.

(c) Prepare an operational plan no later than 120 days after the first meeting of the Michigan wildlife council and no later than April 30 in subsequent years.

(d) Expend money from the Michigan wildlife management public education subaccount in accordance with the operational plan and in compliance with section 40501, except that all expenditures shall be within the scope of the activities and funding levels authorized in the operational plan.

(19) The Michigan wildlife council may give preference to Michigan-based firms when hiring a third-party marketing or advertising agency under subsection (18).

History: Add. 2013, Act 246, Eff. Mar. 27, 2014.

Popular name: Act 451

Popular name: NREPA

324.43533 24-hour or 72-hour fishing license; fees; electronic license.

Sec. 43533. (1) A resident or nonresident may purchase a 24-hour fishing license entitling that individual to take, for a designated 24-hour period, and possess all aquatic species as prescribed by law. The fee for a 24-hour fishing license is $10.00 per designated consecutive 24-hour period.

(2) A resident or nonresident may purchase a 72-hour fishing license entitling that individual to take, for a

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designated 72-hour period, and possess all aquatic species as prescribed by law. The fee for a 72-hour fishing license is $30.00 per designated consecutive 72-hour period.

(3) Not later than March 1, 2018, the department shall develop an electronic license that allows an individual to display an electronic copy of his or her 24-hour or 72-hour fishing license using an electronic device.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 356, Imd. Eff. July 1, 1996;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2010, Act 29, Imd. Eff. Mar. 26, 2010;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2016, Act 463, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.43534 Free fishing days.

Sec. 43534. (1) The department shall designate a Saturday and the following Sunday during January or February of each year as free winter fishing days. In addition, the department may designate 1 other day or 2 other consecutive days each year as free fishing days.

(2) During free fishing days, a resident or nonresident may fish for all species of fish in waters of this state designated by the department without purchasing a license or permit.

(3) A person who fishes during a free fishing day pursuant to subsection (1) has the same privileges and is subject to the same rules and regulations as the holder of a limited fishing license issued pursuant to section 43533.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1999, Act 233, Imd. Eff. Dec. 28, 1999.

Popular name: Act 451

Popular name: NREPA

324.43535 Senior license; discounted fees.

Sec. 43535. (1) Until March 1, 2014, a resident of this state who is 65 years of age or older may obtain a senior small game license, a senior firearm deer license, a senior bow and arrow deer license, a senior bear hunting license, a senior wild turkey hunting license, or a senior fur harvester's license. The fee for each senior license shall be discounted 60% from the fee for the resident license.

(2) Beginning March 1, 2014, a resident of this state who is 65 years of age or older may obtain a senior base license, a senior deer license, a senior wild turkey hunting license, or a senior fur harvester's license. The fee for each senior license shall be discounted 60% from the fee for the resident license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43536 Senior all-species fishing license; discounted fees; electronic license.

Sec. 43536. (1) A resident of this state who is 65 years of age or older may obtain a senior all-species fishing license. The fee for a senior all-species fishing license is discounted 60% from the fee for a resident all-species fishing license.

(2) Not later than March 1, 2018, the department shall develop an electronic license that allows an individual to display an electronic copy of his or her senior all-species fishing license using an electronic device.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2016, Act 463, Eff. Mar. 29, 2017.

Popular name: Act 451

Popular name: NREPA

324.43536a Obtaining license by active member of military; “active member of the military” defined.

Sec. 43536a. (1) Beginning March 1, 2014, an active member of the military may obtain any license under this part for which a lottery is not required at no cost upon presentation to a licensing agent of leave papers, duty papers, military orders, or other evidence acceptable to the department verifying that he or she is stationed outside of this state. The license is valid during the season in which that license would otherwise be valid.

(2) As used in this section, "active member of the military" means either of the following:

(a) An individual described by section 43506(3)(d).

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(b) An individual who meets all of the following requirements:

(*i*) The individual is a reserve component soldier, sailor, airman, or marine or member of the Michigan national guard and is called to federal active duty.

(*ii*) At the time the individual was called to federal active duty, he or she was a resident of this state.

(*iii*) The individual has maintained his or her residence in this state for the purpose of obtaining a driver license or voter registration, or both.

History: Add. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2003, Act 4, Imd. Eff. Apr. 22, 2003;—Am. 2004, Act 545, Imd. Eff. Jan. 3, 2005;—Am. 2013, Act 21, Imd. Eff. May 8, 2013;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2014, Act 281, Eff. Mar. 31, 2015.

Compiler's note: Enacting section 1 of Act 281 of 2014 provides:

"Enacting section 1. This act reenacts all or portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108. If any portions of 2012 PA 520 or 2013 PA 21 or 2013 PA 22 or 2013 PA 108 not amended by this act are invalidated pursuant to referendum or any other reason, then any such invalidated portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108 which are otherwise included in this act, shall be deemed to be reenacted pursuant to this act."

Enacting section 2 of Act 281 of 2014 provides:

"Enacting section 2. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

Public Act 281 of 2014 was proposed by initiative petition pursuant to Const 1963, art II, § 9. The initiative petition was approved by an affirmative vote of the majority of the Senate on August 13, 2014 and by the House of Representatives on August 27, 2014. The initiative petition was filed with the Secretary of State on August 27, 2014.

In Keep Michigan Wolves Protected v State of Michigan, an unpublished opinion issued November 22, 2016, (Docket No. 328604), the Michigan Court of Appeals held that 2014 PA 281, which amended sections of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, is unconstitutional as it violates the title-object clause of section 24 of article IV of the state constitution of 1963.

Popular name: Act 451

Popular name: NREPA

324.43537 Restricted or senior all-species fishing license; eligibility of legally blind; disabled veteran; resident license for which lottery not required; proof of eligibility; processing licenses; appropriations; "disabled veteran" defined.

Sec. 43537. (1) Until March 1, 2014, a resident who is declared legally blind is eligible to purchase a senior restricted or senior all-species fishing license. Beginning March 1, 2014, a resident who is declared legally blind is eligible to purchase a senior all-species fishing license.

(2) A disabled veteran is eligible to obtain any resident license under this part for which a lottery is not required free of charge.

(3) The department may demand proof of eligibility under subsection (1), (2), or (4). The licensee, when taking aquatic species or hunting, shall possess proof of his or her eligibility under subsection (1), (2), or (4), as applicable, and shall furnish the proof upon the request of a peace officer.

(4) The department shall process licenses issued under this section in the same manner as licenses issued to senior citizens for purposes of receiving appropriations from the legislature under section 43546.

(5) As used in this section, "disabled veteran" means either of the following:

(a) A resident who has been determined by the United States department of veterans affairs to be permanently and totally disabled as a result of military service and entitled to veterans' benefits at the 100% rate, for a disability other than blindness.

(b) A resident rated by the United States department of veterans affairs as individually unemployable.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2007, Act 60, Imd. Eff. Sept. 18, 2007;—Am. 2012, Act 339, Eff. Mar. 1, 2013;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43538 Fishing; reciprocity.

Sec. 43538. The department may permit a person licensed under the fishing laws of an adjacent state to fish in the inland lakes and rivers or portions of rivers of this state that constitute a part of the border of this state, if the adjacent state grants similar privileges to a person licensed in this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43539 Report by licensee.

Sec. 43539. The department may require each licensed hunter, trapper, and angler to make a report to the

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department of the number, kinds, and location of game animals, game birds, fur-bearing animals, and fish taken during the respective open season by the licensee. The department shall establish the prescribed manner in which the requested information is reported.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43540 License; application and issuance by mail, on-line computer service, or telephone; fees; delinquent payment.

Sec. 43540. (1) An application for 1 or more licenses issued under this part may be made by mail, on-line computer service, or telephone to the department, or to a person designated by the department, who shall forward the license issued to the applicant to an address as directed by the applicant. An applicant shall satisfy all the requirements of this part for obtaining a license before a license is issued by mail or telephone. The department may charge a fee for an application made by mail, on-line computer service, or telephone in addition to the fee for the license or licenses. Total fees collected by the department under this subsection in any license year shall not exceed the additional cost of providing mail or telephone service in that year.

(2) If a check or draft of a required fee is not paid on its first presentation, the fee is delinquent as of the date the check or draft was tendered. The person tendering the check or draft remains liable for the payment of each fee and any penalty.

(3) The department may revoke a license, duplicate license, application, or permit if the department has determined that a fee prescribed in this part has not been paid and remains unpaid after reasonable notice or demand.

(4) If a fee is still delinquent 15 days after the department has given notice to a person who tendered the check or draft, the department shall assess and collect a $15.00 penalty in addition to the license and transaction fee.

(5) The director may refuse to issue additional licenses under this part to a person who is delinquent in payment of fees or penalties provided in subsection (4) at the time the application is submitted.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

324.43540a Sportsmen against hunger program; implementation; duties of department; financial donations; contract with nonprofit organization to administer program; contract requirements; "program" defined.

Sec. 43540a. (1) Subject to subsection (4), by January 1, 2007, the department shall implement a program to distribute wild game to people in need. The program shall be known as the sportsmen against hunger program.

(2) Under the program, the department shall do all of the following:

(a) Collect donations of legally taken game that complies with all state and federal game laws, including any requirement that the parts of the game be intact.

(b) Contract for processing the donated game.

(c) Distribute the processed game to food banks, soup kitchens, and other charitable organizations that provide meals or food to people free of charge.

(d) Promote the program through the license distribution system and other means that will further the mission of the program.

(3) Under the program, the department may request financial donations to offset the cost of processing donated game. The financial donations are tax deductible.

(4) The department may contract for the administration of the program by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501, if the department determines that it is more efficient to do so. Subject to section 43540c(9), payments under the contract shall be adequate to cover the nonprofit organization's costs in administering the program. Before entering such a contract, the department shall issue a request for proposals. If the request for proposals does not yield a bid that meets the requirements of this section, the department is not required to implement the sportsmen against hunger program.

(5) To qualify to enter a contract under subsection (4), a nonprofit organization must have demonstrated a commitment to the goals of the program and have at least 5 years of experience in providing wild game or other food to people free of charge. The contract shall require that the contracting nonprofit organization do

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all of the following:

(a) Maintain a license under the charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(b) Maintain adequate staff to perform the tasks outlined in the contract.

(c) Annually undergo an independent financial audit and provide the audit information and report to the department.

(6) As used in this section, "program" means the sportsmen against hunger program created under subsection (1).

History: Add. 2005, Act 116, Imd. Eff. Sept. 22, 2005;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.43540c Sportsmen against hunger program; donation; creation; disposition of money or other assets; money remaining in fund; expenditure; costs; limitation; "fund" defined.

Sec. 43540c. (1) Subject to subsection (2), when a person applies for a license under this part, the department or the department's agent shall ask whether the person would like to donate $1.00 to the sportsmen against hunger program created by the department under section 43540a and, if so, shall collect the donation with the license fee. A person designated by the department to issue licenses shall not receive a commission under section 43541 for the donation.

(2) Subsection (1) applies to license applications made beginning January 1, 2006.

(3) A donation under subsection (1) is in addition to the license fee.

(4) The department shall transfer donations under subsection (1) to the state treasurer for deposit in the fund.

(5) The sportsmen against hunger fund is created within the state treasury.

(6) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(7) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(8) Money from the fund shall be expended, upon appropriation, only by the department for 1 or more of the following purposes:

(a) The costs of administering the fund, including the costs of collecting donations to the fund.

(b) The administration of the sportsmen against hunger program created under section 43540a, including, if applicable, the costs of any contract with a nonprofit organization to administer the sportsmen against hunger program, as authorized under section 43540a(4).

(9) The department shall not incur costs described in subsection (8) in excess of the amount of revenue in the fund available to cover such costs.

(10) As used in this section, "fund" means the sportsmen against hunger fund created in subsection (5).

History: Add. 2005, Act 117, Imd. Eff. Sept. 22, 2005.

Popular name: Act 451

Popular name: NREPA

324.43540d Repealed. 2010, Act 366, Eff. Dec. 22, 2011.

Compiler's note: The repealed section pertained to establishment of moose hunting advisory council.

324.43540e Wolf management advisory council.

Sec. 43540e. (1) The wolf management advisory council is created within the department.

(2) The council shall consist of at least the following members:

(a) The director of the department or his or her designee.

(b) One member representing an organization that promotes conservation in this state appointed by the director or his or her designee.

(c) One member representing organizations that promote hunting or fishing in this state appointed by the director or his or her designee.

(d) One member representing a tribal government appointed by the director or his or her designee.

(e) One member representing agricultural interests appointed by the director or his or her designee.

(f) One member representing an animal advocacy organization appointed by the director or his or her designee.

(3) The council shall meet at least annually.

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(4) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(5) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(6) A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, members of the council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the council.

(8) The council shall annually submit to the commission and to the legislature a report that makes nonbinding recommendations as to the proper management of wolves in this state.

History: Add. 2012, Act 520, Imd. Eff. Dec. 28, 2012.

Popular name: Act 451

Popular name: NREPA

324.43541 Retaining percentage of fees for sportcard, license, duplicate license, application, or permit; additional charges.

Sec. 43541. (1) A person authorized by the department to issue licenses on March 15, 1993, may retain 7.5% of the fees for each sportcard, license, duplicate license, application, or permit that the person sells. A person authorized by the department after March 15, 1993 to issue licenses may retain 5% of the fees for each sportcard, license, duplicate license, application, or permit that the person sells. The department shall consider any additional location established after March 15, 1993 at which licenses are sold as a new authorized agent for purposes of determining the percentage of fees that may be retained for sales at the new location by that authorized agent. Beginning March 1, 2014, any person authorized by the department to issue licenses may retain 7.5% of the fees for each sportcard, license, duplicate license, application, or permit that the person sells.

(2) In addition to the fees authorized under subsection (1), the department may also authorize a person who is authorized to issue licenses to charge and retain a 50-cent transaction fee for collecting migratory bird survey responses.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43542 Licenses; validity; fee; report.

Sec. 43542. (1) All licenses issued under this part are valid from March 1 through March 31 of the following year or as otherwise provided by order of the commission. The department shall designate the period of validity on the license or permit.

(2) The fee for a multiyear license, permit, or application shall be the annual fee for that license, permit, or application multiplied by the number of years designated by order of the commission.

(3) At least 6 months prior to the commission issuing an order under subsection (1), the department shall report to the legislature how the department will ensure that the money collected for any multiyear licenses or permits is accounted for and allocated to the appropriate fiscal year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2009, Act 34, Imd. Eff. June 4, 2009.

Popular name: Act 451

Popular name: NREPA

324.43543 Course of instruction in safe handling of firearms; instructors; registration; certificate of competency.

Sec. 43543. The department shall provide for a course of instruction in the safe handling of firearms and shall designate persons, without compensation, to serve as instructors and to award certificates. A person desiring to take the course of instruction shall register with an instructor certified by the department. Upon successful completion of the course, the person shall be issued a certificate of competency.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.43544 License, sportcard, or kill tag; loss or destruction; duplicate; certification of loss form; fees.

Sec. 43544. (1) If a license or sportcard issued pursuant to this part or a kill tag is lost or destroyed, a licensee may procure a duplicate from the department. To obtain a duplicate license, sportcard, or kill tag, the licensee shall file a certification of loss form with the department and shall pay the duplicate fee as provided in subsection (2) for each duplicate requested.

(2) If the licensee meets the requirements of subsection (1) and all other requirements of this part for procuring a license or sportcard, or, if required by this part, a kill tag, the department shall verify the purchase of the original and issue to the licensee the duplicates requested and collect the following applicable duplicate fees:

(a) Until March 1, 2014, and except as provided in subdivision (c), $3.00 for each license included in a certification of loss.

(b) Beginning March 1, 2014, the amount the individual would pay for each license included in a certification of loss.

(c) For a duplicate of a kill tag, the fee shall equal the amount that the individual would pay for a license to which the kill tag applies without regard to marketing discounts or multilicense discounts.

(d) For a duplicate of a sportcard, $1.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43545 Repealed. 2016, Act 461, Eff. Mar. 29, 2017.

Compiler's note: The repealed section pertained to prohibition against assessment or collection of license or permit fees.

Popular name: Act 451

Popular name: NREPA

324.43546 Senior hunting and fishing licenses; appropriating sum equal to fees not collected; crediting appropriation to game and fish protection account.

Sec. 43546. (1) Before June 1 of each year, the department shall determine the total number of senior hunting and fishing licenses issued and the total fees collected the preceding license year. The department shall determine the total fees that would have been collected if those senior citizens had been required to purchase full-price resident hunting and fishing licenses during the preceding license year. From this total, the department shall subtract the fees collected from the sale of senior hunting and fishing licenses during the preceding license year. The difference is the amount that would otherwise be collected.

(2) The legislature shall annually appropriate from the general fund a sum equal to the fees that would otherwise be collected as determined pursuant to subsection (1). The sum appropriated shall be credited to the game and fish protection account.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43547 Preparation and issuance of sportcards and licenses; information; equipment; conservation law enforcement stamps; issuance of licenses beginning March 1, 2014.

Sec. 43547. (1) The department shall prepare sportcards, if necessary, and licenses to comply with this part and may authorize persons to issue sportcards and licenses.

(2) A sportcard shall provide the following information as required by the department:

(a) The name of the applicant.

(b) The height and weight of the applicant.

(c) The address of the applicant.

(d) The birth date of the applicant.

(e) The applicant's social security number.

(f) Other information as required by the department.

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(3) A license may include the following information:

(a) The date and time of issuance of the license.

(b) The identification code of the person issuing the license.

(c) The form of proof of eligibility to receive a license by the applicant as required.

(d) Other information as required by the department.

(e) The applicant's date of birth.

(4) Until March 1, 2014, the department may require persons authorized to issue licenses under this part to purchase or rent equipment necessary to issue licenses. The purchase or lease charge shall not exceed the actual cost incurred by the department in making the equipment available for purchase or lease. However, notwithstanding the equipment rental or purchase charges otherwise required under this section, if the department requires the use of designated computer equipment to issue licenses, the department shall supply each licensed agent who is entitled to retain 7.5% of the fees received and was authorized on March 15, 1993 to issue licenses with a computer system at no charge to the licensed agent for each location at which that licensed agent sells licenses. A person who is eligible to receive equipment without charge may be required to purchase a service and maintenance contract for that equipment. The cost of the contract shall not be more than $200.00 for the first year of the contract and thereafter the actual cost to the state of maintaining the computer system. Equipment that is supplied without charge to a licensed agent shall be returned to the department at such time as the person is no longer a licensed agent.

(5) Until March 1, 2014, a person who is authorized after March 15, 1993 to issue licenses shall pay the full annual rental or purchase fee for equipment required under subsection (4).

(6) Until March 1, 2014, a person who on March 15, 1993 is authorized to issue licenses who rents the equipment for the issuance of licenses required under subsection (4) shall pay rent or service and maintenance contract cost, as applicable for that equipment not to exceed 50% of the total of the annual amount the person is authorized to retain under section 43541, or the rental charge otherwise determined by the department, whichever is less.

(7) The department may provide persons authorized to issue licenses under this part with conservation law enforcement stamps to enable the purchaser of the stamps to contribute to the wildlife resource protection fund created in section 43555. Conservation law enforcement stamps may be issued by the department in the amounts of $2.00 and $5.00.

(8) Beginning March 1, 2014, the department may require persons authorized to issue licenses under this part to rent equipment necessary for the issuance of licenses. A person who is authorized to issue licenses for less than a full license year shall pay rent of $5.00 per week until the person has been authorized to issue licenses for a full license year. Once a person has been authorized to issue licenses for a full license year, a person shall pay rent of $5.00 per week or $2.50 per week if that person's annual license sales under this part are less than the 5-year average license sales as of the effective date of the amendatory act that added this subsection for persons authorized to issue licenses under this part. The weekly rental fee shall be assessed and collected in a form and manner prescribed by the department. Rent shall not exceed 50% of the total of the annual amount the person is authorized to retain under section 43541.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43548 Persons authorized to issue limited fishing licenses without equipment; bond; remittance of money; limitation on fee; fees held in trust.

Sec. 43548. (1) The department may require a person authorized to issue limited fishing licenses without the equipment described in section 43547 to file a bond with the department. The type and amount of the bond shall be determined by the department.

(2) A person issuing a sportcard, license, or permit shall remit to the department money required to be charged for the sale of each license, duplicate license or sportcard, application, or permit by the method and at the frequency prescribed by the department.

(3) A person shall not charge a fee for a sportcard or a license in an amount that is more than the license and transaction fee printed on the sportcard or license by the department.

(4) All fees collected from the sale of sportcards, licenses, duplicate licenses or sportcards, applications, or permits, except for the fees and commissions provided in section 43541(1) and (2), are held in trust for the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

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Popular name: Act 451

Popular name: NREPA

324.43549 Violation of MCL 324.43548; penalties.

Sec. 43549. A person who violates section 43548, in addition to other penalties provided by law, forfeits the right to issue licenses and sportcards and forfeits the right to retain any percentage of the license or sportcard fees not received by the department within 48 hours after the date and time the license or sportcard fees should have been deposited as required by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

324.43550 Format of license.

Sec. 43550. The department shall select the format of the license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43551 Issuance of certain licenses; restriction.

Sec. 43551. The department may restrict the issuance of certain licenses to issuance only by department offices or employees.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43552 Quotas on licenses.

Sec. 43552. The department may establish a quota on the number of each kind of license that may be issued.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43553 Disposition of money received from sale of passbooks and licenses; payments; grants; youth hunting and fishing education and outreach fund; annual report; posting measures and metrics on website.

Sec. 43553. (1) The department shall transmit all money received from the sale of licenses to the state treasurer, together with a statement indicating the amount of money received and the source of the money.

(2) Except as provided in section 43555 and subsection (5), the state treasurer shall credit the money received from the sale of passbooks and licenses to the game and fish protection account.

(3) Except as provided in sections 43524, 43525, 43525b, and 43554 and subsection (4), money credited to the game and fish protection account shall be paid out by the state treasurer pursuant to the accounting laws of this state for the following purposes:

(a) Services rendered by the department, together with the expenses incurred in the enforcement and administration of the wildlife and fisheries laws of the state, including the necessary equipment and apparatus incident to the operation and enforcement of the wildlife and fisheries laws, and the protection, propagation, distribution, and control of wildlife and fish.

(b) The propagation and liberation of wildlife or fish and for their increase at the time, place, and manner as the department considers advisable.

(c) The purchase, lease, and management of lands, together with the necessary equipment for the purpose of propagating and rearing wildlife or fish, and for establishing and maintaining game refuges, wildlife sanctuaries, and public shooting and fishing grounds. Except as otherwise provided in this subdivision, not more than 0.25% of the money credited to the game and fish protection account shall be used to purchase lands under this subdivision. However, if all of the money appropriated from the natural resources trust fund for eco-region acquisition carried over from previous fiscal years is spent, then the 0.25% limitation under this subdivision does not apply. Land shall not be purchased under this subdivision until that purchase is approved by the joint capital outlay subcommittee.

(d) Conducting investigations and compiling and publishing information relative to the propagation, protection, and conservation of wildlife.

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(e) Delivering lectures, developing cooperation, and carrying on appropriate educational activities relating to the conservation of the wildlife of this state.

(4) The department may make direct grants to colleges and universities in this state, out of funds appropriated from the game and fish protection account, to conduct fish or wildlife research or both fish and wildlife research.

(5) The youth hunting and fishing education and outreach fund is created as a separate fund in the department of treasury. Until March 1, 2014, the state treasurer shall credit to the youth hunting and fishing education and outreach fund the money received from the sale of small game licenses and all-species fishing licenses under sections 43523 and 43532, respectively, to minor children. Beginning March 1, 2014, the state treasurer shall credit to the youth hunting and fishing education and outreach fund $1.00 received from the sale of each base license to minor children under section 43523a. Money in the youth hunting and fishing education and outreach fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(6) Money credited to the youth hunting and fishing education and outreach fund shall be paid out by the state treasurer pursuant to the accounting laws of this state for hunting and fishing education and outreach programs for minor children.

(7) The department and any other executive department of the state that receives money from the game and fish protection account or the youth hunting and fishing education and outreach fund shall submit an annual report to the legislature showing the amount of money received by the department or other executive department from the game and fish protection account or the youth hunting and fishing education and outreach fund and how that money was spent. An executive department required to submit a report as provided in this subsection shall send a copy of the report to the legislature and to the department.

(8) Not later than November 1, 2013, the department shall complete and post on its website a fisheries division strategic and tactical plan with measures and metrics.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2006, Act 280, Imd. Eff. July 10, 2006;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43554 Deer habitat; improvement; maintenance; management; use of license fee; limitation.

Sec. 43554. One dollar and fifty cents of the license fee for each firearm deer, bow and arrow deer, and resident sportsperson's license shall be used for improving and maintaining a habitat for deer and for the acquisition of lands for an effective program of deer habitat management. Beginning March 1, 2014, $1.50 of the license fee for each deer and resident sportsperson's license shall be used for improving and maintaining a habitat for deer and for the acquisition of lands for an effective program of deer habitat management. Except as otherwise provided in this section, not more than 0.25% of the money under this section shall be used to acquire lands. However, if all of the money appropriated from the natural resources trust fund for eco-region acquisition carried over from previous fiscal years is spent, then the 0.25% limitation under this section does not apply. Land shall not be acquired under this section until that acquisition is approved by the joint capital outlay subcommittee.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013.

Popular name: Act 451

Popular name: NREPA

324.43555 Wildlife resource protection fund; creation; transmission and deposit of additional fee; money credited; expenditures; voluntary contribution; annual report.

Sec. 43555. (1) Thirty-five cents from each license and stamp fee prescribed in this part, except for fees for licenses described in section 43553(5), shall be transmitted to the department for deposit in the wildlife resource protection fund created in this section.

(2) The wildlife resource protection fund is created as a separate fund within the state treasury. The state treasurer shall credit the money received from the department under this section to the wildlife resource protection fund. The money in the wildlife resource protection fund shall be expended by the department for the following purposes:

(a) Rewards for information leading to the arrest and prosecution of poachers and persons who obstruct or

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interfere in the lawful taking of animals or aquatic species in violation of section 40112 or 48702a, respectively. If a violation of section 40112 or 48702a involved killing a person engaged in lawfully taking an animal or aquatic species, the reward shall be $5,000.00. A person whose lawful taking of an animal or aquatic species is obstructed or interfered in is not eligible to receive a reward under this subdivision.

(b) Hiring conservation officers for the investigation of poaching and the investigation of tips regarding potential poaching.

(c) A promotional and educational campaign to inform the general public on 1 or more of the following:

(*i*) The harm and danger of poaching.

(*ii*) The reward for information that leads to the arrest and prosecution of poachers and persons who obstruct or interfere in the lawful taking of animals or aquatic species in violation of section 40112 or 48702a, respectively.

(*iii*) Other antipoaching programs undertaken by the department.

(*iv*) How to identify and report persons who obstruct or interfere in the lawful taking of animals or aquatic species in violation of section 40112 or 48702a, respectively.

(3) At the time a person purchases a license or stamp under this part, he or she may make a voluntary contribution in any amount to the wildlife resource protection fund to be expended for the purposes provided in subsection (2). A person who wishes to make such a contribution may purchase 1 or more conservation law enforcement stamps from a person authorized to issue licenses and sportcards under this part.

(4) The department shall annually report to the legislature on the expenditures from the wildlife resource protection fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 1998, Act 472, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

324.43556 Hunter access leases on private land; lease payments; control of hunter access by participating landowners; cancellation of lease agreement; forfeiture of lease payments; posting boundaries of leased land; cause of action for injuries; orders.

Sec. 43556. (1) The department may utilize the game and fish protection account for the purpose of acquiring and administering hunter access leases on private land.

(2) The department may determine and provide lease payments in amounts that are related to the benefits the leased land provides for public use if for a designated lease period a participating landowner agrees to allow public access to certain lands for the purpose of hunting. Department field personnel shall inspect the lands and determine their value to the program. Final approval of lease proposals shall be made by the department.

(3) Participating landowners have authority to control hunter access according to the terms of the lease agreement, including terms requiring a hunter to obtain verbal or written permission to hunt on the participating landowners' land.

(4) Pursuant to rules adopted under this section, participating landowners may cancel their lease agreement at any time prior to the expiration of the lease. Cancellation of the agreement prior to the expiration of the lease shall result in the forfeiture of all lease payments that have been received by the participating landowner for the year in which cancellation occurs.

(5) Participating landowners shall post, with signs provided by the department, the boundaries of land leased under this section.

(6) A cause of action shall not arise for injuries to persons hunting on lands leased under this section unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(7) The department may issue orders pursuant to part 401 governing the administration and operation of a hunting access program.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43557 License application lists, information, and publications; sale; price; disposition of

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proceeds.

Sec. 43557. The department may sell, or contract for the sale of, license application lists or information filed with the department pursuant to this part and related publications of the department. The department shall establish the price for the lists, information, and publications, and the proceeds of all sales pursuant to this section shall be credited to the game and fish protection account in the manner prescribed in section 43553.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43558 Prohibited conduct; misdemeanor; penalties; carrying firearm under influence of controlled substance or alcohol; effect of prior conviction; violation of subsection (1)(d) as misdemeanor; violation of 43516(3) penalties.

Sec. 43558. (1) A person is guilty of a misdemeanor if the person does any of the following:

(a) Makes a false statement as to material facts for the purpose of obtaining a license or uses or attempts to use a license obtained by making a false statement.

(b) Affixes to a license a date or time other than the date or time issued.

(c) Issues a license without receiving and remitting the fee to the department.

(d) Except as otherwise provided in this section, without a license, takes or possesses a wild animal, wild bird, or aquatic species, except aquatic insects. This subdivision does not apply to an individual less than 17 years of age who without a license takes or possesses aquatic species.

(e) Sells, loans, or permits in any manner another individual to use the individual's license or uses or attempts to use another individual's license.

(f) Falsely makes, alters, forges, or counterfeits a sportcard or a hunting, fishing, or fur harvester's license or possesses an altered, forged, or counterfeited hunting, fishing, or fur harvester's license.

(g) Uses a tag furnished with a deer license, bear hunting license, elk hunting license, or wild turkey hunting license more than 1 time, or attaches or allows a tag to be attached to a deer, bear, elk, or turkey other than a deer, bear, elk, or turkey lawfully killed by the individual.

(h) Except as provided by law, makes an application for, obtains, or purchases more than 1 license for a hunting, fishing, or trapping season, not including a limited fishing license, second deer license, antlerless deer license, or other license specifically authorized by law, or if the applicant's license has been lost or destroyed.

(i) Applies for, obtains, or purchases a license during a time that the individual is ineligible to secure a license.

(j) Knowingly obtains, or attempts to obtain, a resident or a senior license if that individual is not a resident of this state.

(2) Except as provided in subsection (5), a person who violates subsection (1) shall be punished by imprisonment for not more than 90 days or a fine of not less than $25.00 or more than $250.00 and the costs of prosecution, or both. In addition, the person shall surrender any license and license tag that was wrongfully obtained.

(3) An individual licensed to carry a firearm under this part is prohibited from doing so while under the influence of a controlled substance or alcohol or a combination of a controlled substance and alcohol. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for 90 days or a fine of $500.00, or both.

(4) An applicant for a license under this part who has previously been convicted of a violation of the game and fish laws of this state may be required to file an application with the department together with other information that the department considers expedient. The license may be issued by the department.

(5) An individual who violates subsection (1)(d), upon a showing that the individual was ineligible to secure a license under court order or other lawful authority, is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than $500.00 and not more than $2,500.00, or both, and the costs of prosecution.

(6) An individual who violates section 43516(3) is subject to the following:

(a) For a first offense, is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00.

(b) For a second or subsequent offense, is guilty of a misdemeanor as provided in section 43560.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 2013, Act 108, Imd. Eff. Sept. 17, 2013;—Am. 2022, Act 23, Eff. June 8, 2022.

Popular name: Act 451

Popular name: NREPA

324.43559 Violation; revocation of license; suspension order; compliance; rescission; failure to answer citation or notice to appear; failure to comply with court order or judgment.

Sec. 43559. (1) If a person is convicted of violating this part, or another law relative to hunting, fishing, or trapping that does not otherwise require the revocation of, or prohibit the securing of, 1 or more licenses, the court may order the revocation of 1 or more of the person's licenses and may by order provide that the person shall not secure 1 or more licenses for not less than the remainder of the year in which convicted and during the next succeeding year, or longer in the discretion of the court.

(2) The department shall comply with a suspension order issued as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, within 7 days after receipt of the suspension order.

(3) An order rescinding a suspension order issued under the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, is effective upon its entry by the court and purchase by the licensee of a replacement license.

(4) If a person is charged with, or convicted of, a violation of this part, or another law relative to hunting, fishing, or trapping, and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued, or fails to comply with the order or judgment of the court within 14 days after the notice is issued, the department shall suspend the person's hunting, fishing, and trapping licenses. If the person fails to appear within the 7-day period, or fails to comply with the order or judgment of the court within the 14-day period, the court shall immediately inform the department. The department shall immediately suspend the person's hunting, fishing, and trapping licenses and notify the person of the suspension by first-class mail sent to the person's last known address.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997;—Am. 1998, Act 95, Eff. Aug. 10, 1998;—Am. 2013, Act 37, Imd. Eff. May 28, 2013.

Popular name: Act 451

Popular name: NREPA

324.43560 Violation as misdemeanor; penalty; failure to exhibit license; civil infraction; civil fine.

Sec. 43560. (1) An individual who violates this part or a rule promulgated under this part, for which a penalty is not otherwise provided for in this section or this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $25.00 or more than $250.00 and the costs of prosecution, or both.

(2) An individual who fails to exhibit a hunting, fur harvester's, or fishing license in violation of section 43516(3) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2022, Act 15, Imd. Eff. Feb. 23, 2022.

Popular name: Act 451

Popular name: NREPA

324.43561 Rules.

Sec. 43561. The department may promulgate rules for the administration of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

PART 437
MICHIGAN GAME AND FISH PROTECTION TRUST FUND

324.43701 Definitions.

Sec. 43701. As used in this part:

(a) "Game and fish protection account" means the game and fish protection account of the Michigan

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conservation and recreation legacy fund provided for in section 2010.

(b) "Gas" means a mixture of hydrocarbons and nonhydrocarbons in a gaseous state which may or may not be associated with oil and includes liquids resulting from the condensation of those hydrocarbons and nonhydrocarbons.

(c) "Mineral" means an inorganic substance that can be extracted from the earth, except for oil or gas, and includes rock, metal ores, and mineral water.

(d) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

(e) "Trust fund" means the Michigan game and fish protection trust fund established in section 41 of article IX of the state constitution of 1963 and provided for in section 43702.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 50, Imd. Eff. July 23, 2001;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43702 Michigan game and fish protection trust fund; establishment; composition.

Sec. 43702. In accordance with section 41 of article IX of the state constitution of 1963, the Michigan game and fish protection trust fund is established in the state treasury. The trust fund shall consist of all of the following:

(a) All assets of the game and fish protection trust fund immediately prior to the effective date of the amendatory act that added section 2001.

(b) Bonuses, rentals, delayed rentals, royalties, and other revenues collected or reserved by the state under leases or direct sale contracts in effect on or after April 7, 1986, entered into by the state pursuant to section 502, 503, or 33936 or section 12 of former 1909 PA 280, or any other law enacted for leasing for the purpose of permitting extraction or removal of minerals, coal, oil, gas, or other resources from state owned lands, if these bonuses, rentals, delayed rentals, royalties, direct sale proceeds, and other revenues accrue from lands acquired by the state using revenues derived from the game and fish protection account, the game and fish protection trust account created in section 4 of the Kammer recreational land trust fund act of 1976, former 1976 PA 204, federal funds made available to the state under 16 USC 669 to 669i, commonly known as the federal aid in wildlife restoration act, or 16 USC 777 to 777*l*, commonly known as the federal aid in fish restoration act, or related state or federal funds.

(c) Gifts, grants, bequests or assets from any source.

(d) Other revenues as authorized by law.

(e) Interest and earnings accruing from assets of the trust fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 50, Imd. Eff. July 23, 2001;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43703 Transfer of interest and earnings; manner of maintaining corpus of trust fund; transfer of funds.

Sec. 43703. (1) The state treasurer shall transfer the interest and earnings from the trust fund to the game and fish protection account.

(2) Subject to subsection (3), the corpus of the trust fund shall be maintained by the state treasurer in a manner that will provide for future transfers to the game and fish protection account from the trust fund's interest and earnings.

(3) The legislature may annually appropriate and transfer not more than $6,000,000.00 from the corpus of the trust fund to the game and fish protection account.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 50, Imd. Eff. July 23, 2001;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

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"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43704 Investment of trust fund; report on accounting of revenues and expenditures.

Sec. 43704. (1) The state treasurer shall direct the investment of the trust fund. The state treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140*l*.

(2) The department shall annually prepare a report containing an accounting of revenues and expenditures from the trust fund. This report shall identify the interest and earnings of the trust fund from the previous year, the investment performance of the trust fund during the previous year, and the total amount of appropriations from the trust fund during the previous year. This report shall be provided to the senate and house of representatives appropriations committees and the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to natural resources and the environment.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 50, Imd. Eff. July 23, 2001;—Am. 2002, Act 56, Eff. Sept. 21, 2002.

Popular name: Act 451

Popular name: NREPA

324.43705 Joint legislative work group; establishment; purpose; composition; membership; appointment; service; vacancy; first meeting; quorum; compensation; assistance and staff support; report.

Sec. 43705. (1) A joint legislative work group on game and fish program revenue is established.

(2) The work group shall consist of representatives of the house and senate standing committees with primary responsibility for natural resources issues and the house and senate appropriations subcommittees on natural resources. Members shall be appointed on a bipartisan basis by the speaker of the house of representatives and the senate majority leader. The work group shall also include representatives of the natural resources commission and other interested parties.

(3) The members first appointed to the work group shall be appointed within 30 days after the effective date of the 2004 amendatory act that amended this section.

(4) Each member of the work group shall serve at the pleasure of the speaker of the house of representatives or the senate majority leader, whichever appointed the member.

(5) If a vacancy occurs on the work group, the vacancy shall be filled in the same manner as the original appointment was made.

(6) The first meeting of the work group shall be called by the senate majority leader. At the first meeting, the work group shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the work group shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 2 or more members.

(7) A majority of the members of the work group constitute a quorum for the transaction of business at a meeting of the work group. A majority of the members present and serving are required for official action of the work group.

(8) Members of the work group shall serve without compensation. However, members of the work group may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the work group.

(9) Assistance and staff support to the work group may be provided by the house and senate fiscal agencies.

(10) By December 31, 2004, and annually thereafter, the work group shall issue to the members of the legislature a report on game and fish program revenue. The report shall include, but need not be limited to, tax credit issues and alternative funding options to establish stable sources of long-term financial support for game and fish protection programs.

History: Add. 2001, Act 50, Imd. Eff. July 23, 2001;—Am. 2004, Act 311, Imd. Eff. Aug. 27, 2004.

Popular name: Act 451

Popular name: NREPA

PART 439
MICHIGAN NONGAME FISH AND WILDLIFE TRUST FUND

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324.43901 Definitions.

Sec. 43901. As used in this part:

(a) "Nongame fish and wildlife" means fish or wild animals that are unconfined and not ordinarily taken for sport, fur, or food, and the habitat that supports them. However, nongame fish and wildlife includes fish and wild animals designated as game species when located in an area of this state where the taking of that species of fish or wild animal is prohibited.

(b) "Trust fund" means the Michigan nongame fish and wildlife trust fund established in section 42 of article IX of the state constitution of 1963 and provided for in section 43902.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43902 Michigan nongame fish and wildlife trust fund; establishment; composition; investment; annual report.

Sec. 43902. (1) In accordance with section 42 of article IX of the state constitution of 1963, the Michigan nongame fish and wildlife trust fund is established in the state treasury. The trust fund shall consist of all of the following:

(a) All assets of the nongame fish and wildlife trust fund immediately prior to the effective date of the amendatory act that added section 2001, which money is hereby transferred to the Michigan nongame fish and wildlife trust fund.

(b) All money credited to the trust fund pursuant to section 439 of the income tax act of 1967, 1967 PA 281, MCL 206.439, and section 811*l* of the Michigan vehicle code, 1949 PA 300, MCL 257.811*l*.

(c) Gifts, grants, bequests, or assets from any source.

(d) Other revenues as authorized by law.

(e) Interest and earnings accruing from assets of the Michigan nongame fish and wildlife trust fund.

(2) The state treasurer shall direct the investment of the trust fund. The state treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140*l*.

(3) The department shall annually prepare a report containing an accounting of revenues and expenditures from the trust fund. This report shall identify the interest and earnings of the trust fund from the previous year, the investment performance of the trust fund during the previous year, and the total amount of appropriations from the trust fund during the previous year. This report shall be provided to the senate and house of representatives appropriations committees and the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to natural resources and the environment.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 69, Eff. Mar. 28, 2001;—Am. 2002, Act 55, Eff. Sept. 21, 2002;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.43903 Retention of certain money in trust fund on permanent basis; expenditures.

Sec. 43903. (1) The Michigan nongame fish and wildlife trust fund shall maintain a principal balance of not less than $6,000,000.00, which shall be retained in the trust fund on a permanent basis.

(2) The interest and earnings of the trust fund and any money not otherwise retained on a permanent basis under subsection (1) shall be expended for the purposes of implementing the management plan described in section 43904. In implementing the management plan described in section 43904, the department may expend money from the Michigan nongame fish and wildlife trust fund for grants to state colleges and universities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

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324.43904 Plan for management of nongame fish and wildlife resources.

Sec. 43904. The department shall develop and implement a long-range plan for the management of Michigan's nongame fish and wildlife resources. The plan shall be reviewed and updated as necessary every 5 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43905 Duties of department.

Sec. 43905. The department shall do all of the following:

(a) Develop long-range nongame wildlife plans.

(b) Provide information to the public about the value of nongame fish and wildlife and their habitats.

(c) Review and develop proposals for projects to implement the long-range management plan.

(d) Determine the interests and opinions of the public in managing nongame fish and wildlife.

(e) Encourage public involvement by offering projects and activities with which the public can become involved to increase their knowledge and understanding of nongame fish and wildlife resources in this state.

(f) Integrate the nongame fish and wildlife program with other department programs that affect or benefit nongame fish and wildlife or their habitats.

(g) Purchase and develop critical nongame wildlife habitats in this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2000, Act 69, Eff. Mar. 28, 2001.

Popular name: Act 451

Popular name: NREPA

324.43906 Determination of projects to be funded; solicitation and approval of proposals.

Sec. 43906. The department shall determine which projects should be funded with money from the trust fund. The department shall solicit and approve proposals from individuals, groups, and institutions for the management of nongame fish and wildlife species. In order for a proposal to be approved, the proposal must comply with the long-range plan once completed and must further the management of nongame fish and wildlife species identified in the plan.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.43907 Public information program.

Sec. 43907. The department shall develop and implement a public information program to present the values and benefits of nongame fish and wildlife and their habitats to our society, including the means by which citizens can observe and enjoy nongame fish and wildlife; to inform the public as to how the nongame fish and wildlife fund is being utilized to meet the goals set forth in the plan; and to inform the public on the existence of the nongame fish and wildlife fund and its purpose.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 441
GAME AND FISH LIFETIME LICENSE TRUST FUND

324.44101 Definitions.

Sec. 44101. As used in this part:

(a) "Resident" means either of the following:

(*i*) A person who resides in a settled or permanent home or domicile within the boundaries of this state with the intention of remaining in this state.

(*ii*) A student who is enrolled in a full-time course of study at a college or university within this state.

(b) "Trust fund" means the game and fish lifetime license trust fund created in section 44104.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.44102 Lifetime hunting or fishing licenses; fees; privileges, responsibilities, and duties; validity; comprehensive lifetime hunting and fishing license.

Sec. 44102. (1) From March 1, 1989 to February 28, 1990, certain lifetime hunting or fishing licenses may be purchased by a resident of this state as provided in this part, for the following fees:

(a) The fee for a lifetime small game license, equivalent to the license available annually pursuant to section 43523, is $220.00.

(b) The fee for a lifetime firearm deer license, equivalent to the license available annually to take 1 deer in a season pursuant to section 43526, is $285.00.

(c) The fee for a lifetime bow and arrow deer license, equivalent to the license available annually to take 1 deer in a season pursuant to section 43527, is $285.00.

(d) The fee for a lifetime sportsperson's license, equivalent to the license available pursuant to section 43521, is $1,000.00.

(e) The fee for a comprehensive lifetime hunting and fishing license is $1,025.00 and shall include all of the following:

(*i*) Resident small game license.

(*ii*) Resident firearm deer license.

(*iii*) Resident bow and arrow deer license.

(*iv*) Resident fishing license.

(*v*) Resident trout and salmon license.

(*vi*) Resident bear hunting license.

(*vii*) Waterfowl hunting license.

(*viii*) Resident fur harvester's license.

(f) The fee for a lifetime fishing license, equivalent to the resident annual fishing license issued pursuant to section 43532, is $220.00.

(g) The fee for a lifetime trout and salmon license, equivalent to the annual trout and salmon license issued pursuant to section 43532, is $220.00.

(2) A lifetime license issued pursuant to this section shall allow the holder of that license, throughout his or her lifetime, the same privileges, responsibilities, and duties as would the equivalent annual license or stamp issued pursuant to part 435. However, a lifetime license issued under this part does not guarantee the holder of that license the right to take game except in compliance with harvest regulations and license and permit conditions established for that species by the department.

(3) A lifetime license issued to a person who is a resident of this state at the time the license is purchased continues to be valid even if the holder of that license becomes a nonresident.

(4) A person who holds a lifetime sportsperson license may purchase a comprehensive lifetime hunting and fishing license for $25.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44103 Submission of application and fee; contents of application; notice of change in name or address; purchase of lifetime license for another person; issuance of certificate; minor child; eligibility of holder of certificate to hunt or fish; review of application; mailing license; denial of application; retention of certain amounts; tender of money and information; report; return of information, unsold license, and money to department; replacement lifetime license; forwarding proceeds to state treasurer.

Sec. 44103. (1) A resident of this state may purchase a lifetime license by submitting a completed application accompanied by the fee required in section 44102 to a person authorized by the department to sell lifetime licenses between March 1, 1989 and February 28, 1990. The application shall provide information required by the department including:

(a) The name of the applicant.

(b) The age of the applicant.

(c) The height, weight, and eye color of the applicant.

(d) The address of the applicant.

(e) If the applicant has a driver license, the driver license number of the applicant.

(f) The social security number of the applicant.

(2) The holder of a lifetime license shall notify the department if he or she has a name or address change.

(3) A person may purchase a lifetime license for another person, and upon receipt of full payment, the

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department shall issue a certificate entitling the designated person to apply for a license as provided for in this part. If a lifetime license is purchased and a certificate issued in the name of a minor child who is under the lawful age to utilize the license, the completed application shall be submitted at a district or regional office of the department when the child is of lawful age to utilize the license. The holder of a certificate is not eligible to hunt or fish pursuant to the lifetime license until he or she completes the application process and receives a license from the department.

(4) Upon receipt of the completed application from the person authorized to sell lifetime licenses and receipt of the fee, the department shall review the application and mail the lifetime license to the applicant within 7 days. However, if the department determines that the applicant is not eligible for the equivalent license or stamp under part 435, the department shall return the fee to the applicant, minus the amount retained by the person authorized by the department to sell lifetime licenses, with notification of the denial of the application for a lifetime license.

(5) A person authorized by the department to sell lifetime licenses may retain the following amount:

(a) Six dollars from each lifetime fishing license, small game license, and trout and salmon license.

(b) Eight dollars from each lifetime firearm and bow and arrow deer license.

(c) Fifteen dollars from each lifetime sportsperson license and each comprehensive lifetime hunting and fishing license.

(6) A person authorized to sell lifetime licenses shall, before the twenty-fifth day of each month, tender to the department the money received from the fifteenth day of the preceding month to the fifteenth day of the month in which payment is tendered for the lifetime licenses sold during that period, along with any other relevant information required by the department.

(7) A person authorized to sell lifetime licenses, before March 31, 1990, shall file with the department a complete report of all lifetime licenses sold between March 1, 1989 and February 28, 1990. All information required in subsection (1), unsold lifetime licenses, and remaining money, not previously sent to the department, shall be returned to the department.

(8) If a license issued under this part is lost, damaged, or destroyed, the licensee may apply to the department for a replacement lifetime license by filing an affidavit and meeting the requirements of this part for procuring a lifetime license. However, the fee for a lifetime license shall be waived if the licensee presents the department with the damaged license or the facts presented regarding the destruction or loss of the lifetime license are verified by a police report or other verification approved by the department. The department or a conservation officer may require the holder of a lifetime license to obtain a replacement license from the department if the license is mutilated or illegible.

(9) The department shall forward the proceeds of the sale of lifetime licenses to the state treasurer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.44104 Game and fish lifetime license trust fund; creation; purpose; crediting money received; investment of trust fund.

Sec. 44104. (1) The game and fish lifetime license trust fund is created within the state treasury for the benefit of the people of this state to assist in providing adequate long-term funding for the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(2) The state treasurer shall credit money received from the sale of lifetime hunting and fishing licenses under this part to the trust fund.

(3) The state treasurer shall invest the trust fund in the same manner as surplus funds are invested.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.44105 Maintenance and investment of corpus, interest, and earnings of trust fund; crediting certain amount to game and fish protection account.

Sec. 44105. (1) Except as otherwise provided in subsection (2) , the corpus of the trust fund and the interest and earnings of the trust fund shall be maintained and invested by the state treasurer as provided in section 44104.

(2) For each lifetime license issued under this part, the state treasurer shall credit annually to the game and

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fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010 from the accumulated interest and earnings of the trust fund, and from the corpus of the trust fund if the accumulated interest and earnings of the trust fund are insufficient, that amount of money that the department would have received had the holder of the lifetime license purchased the equivalent annual license during the license year. For a comprehensive lifetime hunting and fishing license, the equivalent annual license for purposes of calculations required by this section shall be the annual sportsperson license available pursuant to section 43521.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.44106 Violation of MCL 324.44103; penalty.

Sec. 44106. In addition to any other penalty provided by law, a person who violates section 44103 shall forfeit the right to issue lifetime licenses and shall forfeit the right to retain the fee provided in section 44103(5) for lifetime licenses not received by the department within 20 days after the date the fees should have been tendered as provided in section 44103.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 3
FISHERIES

CHARTER AND LIVERY BOATS

PART 445
CHARTER AND LIVERY BOAT SAFETY

CAUTION! This document is from an archive and may contain outdated information.

324.44501 Definitions.

Sec. 44501. As used in this part:

(a) "Boat livery" means a place of business or any location where a person rents or offers for rent any vessel other than a nonmotorized raft to the general public for noncommercial use on the waters of this state. Boat livery does not include a place where a person offers cabins, cottages, motel rooms, hotel rooms, or other similar rental units if vessels are furnished only for the use of persons occupying the units.

(b) "Carrying passengers for hire" or "carry passengers for hire" means the transporting of any individual on a vessel other than a nonmotorized raft for consideration directly or indirectly paid to the owner of the vessel, the owner's agent, the operator of the vessel, or any other person who holds any interest in the vessel.

(c) "Charter boat" means a vessel other than a nonmotorized raft that is rented or offered for rent to carry passengers for hire if the owner or the owner's agent retains possession, command, and control of the vessel.

(d) "Class A vessel" means a vessel, except a sailboat, that carries for hire on navigable waters not more than 6 passengers.

(e) "Class B vessel" means a vessel, except a sailboat, that carries for hire on inland waters not more than 6 passengers.

(f) "Class C vessel" means a vessel, except a sailboat, that carries for hire on inland waters more than 6 passengers.

(g) "Class D vessel" means a vessel that is propelled primarily by a sail or sails and carries for hire on navigable waters not more than 6 passengers or carries passengers for hire on inland waters.

(h) "Class E vessel" means a vessel that carries not more than 6 passengers for hire and meets either of the following requirements:

(*i*) Is utilized primarily as a river-drift boat that is propelled primarily by hand.

(*ii*) Is a vessel that is 18 feet or less in length operated primarily on a river or tributary to the Great Lakes, Lake St. Clair, or their connecting waterways.

(i) "Equipment" means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to, a vessel; or a marine safety article, accessory, or equipment intended for use by an individual on board a vessel; but does not include radio

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equipment.

(j) "Inland waters" means all waters of this state, except navigable waters.

(k) "Livery boat" means a vessel, other than a nonmotorized raft, that is rented or offered for rent by a boat livery or a boat owner or his or her agent if the boat livery or boat owner or his or her agent relinquishes or offers to relinquish complete physical control of the vessel to the renter while retaining legal title to the vessel.

(*l*) "Navigable waters" means those waters of the state over which this state and the United States Coast Guard exercise concurrent jurisdiction, including the Great Lakes and waters connected to the Great Lakes, to the upstream limit of navigation as determined by the United States Army Corps of Engineers.

(m) "Navigable waters livery boat" means a livery boat other than a nonmotorized canoe or kayak that is more than 20 feet in length and is rented or offered for rent for use on navigable waters.

(n) "Operate", when used with reference to a vessel, means to start any propulsion engine or to physically control the motion, direction, or speed of the vessel.

(o) "Owner", when used in reference to a vessel, means a person who claims lawful possession of the vessel by virtue of legal title or an equitable interest in a vessel that entitles that person to possession of the vessel.

(p) "Passenger" means an individual carried on board a charter boat except any of the following:

(*i*) The owner of the vessel or the owner's agent.

(*ii*) The pilot and members of the crew of the vessel who have not contributed consideration for their transportation either before, during, or after the voyage.

(q) "Peace officer" means a sheriff or sheriff's deputy; village or township marshal; officer of the police department of any city, village, or township; officer of the Michigan state police; or other police officer or law enforcement officer who is trained and licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, and includes the director and conservation officers employed by the department.

(r) "Personal watercraft" means a vessel that meets all of the following requirements:

(*i*) Uses a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion.

(*ii*) Is designed without an open load carrying area that would retain water.

(*iii*) Is designed to be operated by 1 or more individuals positioned on, rather than within, the confines of the hull.

(s) "Pilot's license" means a vessel operator's license issued by the United States Coast Guard or other federal agency, or a license issued by the department to an operator of a charter boat that is operated on inland waters.

(t) "Training or instructional purposes" means the teaching of any individual in the handling and navigation of a vessel or the techniques of waterskiing.

(u) "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water irrespective of the method of operation or propulsion.

(v) "Waters of the state" means any waters within the territorial limits of this state and includes those waters of the Great Lakes which are under the jurisdiction of this state.

(w) "Waterways account" means the waterways account of the Michigan conservation and recreation legacy fund provided for in section 2035.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012;—Am. 2016, Act 294, Eff. Jan. 2, 2017.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.44502 Conditions to renting or leasing charter boat or carrying passengers for hire; possession and display of valid pilot's license; obtaining vessel inspection certificate and pilot's license.

Sec. 44502. (1) A person shall not rent or lease, or offer to rent or lease, a charter boat, and a person shall not carry passengers for hire on a vessel on the waters of this state unless all of the following conditions are satisfied:

(a) The department has inspected the vessel, if required by this part, and has issued a certificate of inspection that is valid and current for the vessel.

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(b) The operator of the vessel is a licensed pilot or is under the direct supervision of a licensed pilot who is on board the vessel.

(c) The person complies with the reporting requirements of section 44508.

(2) The licensed pilot of a charter boat shall possess a valid and current pilot's license issued in his or her name and shall immediately display that license upon demand of any peace officer.

(3) A person shall not operate a charter boat that carries 7 or more passengers on navigable waters without first obtaining a current vessel inspection certificate and a pilot's license from the United States coast guard or other federal agency.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44503 Conditions to advertising or arranging for carrying passenger on charter boat.

Sec. 44503. A person shall not advertise or arrange for the carrying of any passenger on a charter boat unless the charter boat has been issued a valid and current certificate of inspection provided for in section 44502 or operates under a reciprocal agreement pursuant to section 44513.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44504 Rules establishing minimum safety standards for charter boats; vessel ventilation and rail height.

Sec. 44504. (1) The department shall promulgate rules to establish minimum safety standards for charter boats. The safety standards shall be designed to ensure the safety and well-being of persons utilizing a charter boat and shall include all of the following:

(a) Methods for determining that a charter boat is of a structure suitable for carrying passengers and crew and is in a condition to enable it to be navigated safely.

(b) Necessary equipment and operating requirements.

(c) Minimum public liability insurance requirements.

(d) Methods for determination of maximum passenger capacity.

(e) Suitable tests to determine the sufficiency of the charter boat's structure, equipment, and stability.

(2) Except rules addressing vessel ventilation and rail height, rules pertaining to safety standards promulgated under the authority of former Act No. 228 of the Public Acts of 1965 shall remain in effect as provided in section 44526. Vessel ventilation and rail height shall be consistent with generally accepted and federally approved manufacturing processes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44505 Public liability insurance; notice of cancellation or expiration.

Sec. 44505. An insurance carrier that issues public liability insurance required by this part or a rule promulgated under this part shall notify the department immediately, in writing, whenever the insurance is canceled or expires and is not renewed.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44506 Rules for licensing pilots of charter boats.

Sec. 44506. The department shall promulgate rules for the licensing of pilots of charter boats on inland waters. Rules promulgated under this section shall be designed to ensure that pilots of charter boats have the training and skills necessary to ensure the safety and well-being of charter boat passengers, crew members, and members of the general public.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44507 Inspection of charter boats and equipment; certificate of inspection; number of crew; effect of noncompliance.

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Sec. 44507. (1) Except for an inspection under section 44511(2) and except for a class E vessel that is a charter boat, the department shall inspect or arrange for the inspection of every charter boat and its equipment once every 24 months while the charter boat is at dockside and at least once every 72 months while the charter boat is in dry dock to determine if the charter boat and its equipment comply with the rules promulgated under section 44504. In addition, the department may at any time inspect or provide for the inspection of any charter boat if the department has reasonable cause either to believe that a provision of this part has been violated or that an inspection is necessary to ensure the safety of life and property. This subsection shall not apply to a class E vessel that is a charter boat; however, the department may inspect a class E vessel that is a charter boat if necessary to ensure the safety of life and property.

(2) If, after the inspection provided for in section 44502 and payment of the fees prescribed in section 44511, it is found that the charter boat and its equipment complies with this part and the rules promulgated under this part, the department shall issue to the owner of the charter boat a certificate of inspection to be furnished by the department. The certificate of inspection shall:

(a) Contain the maximum passenger, crew, and total person capacity of the charter boat.

(b) Be prominently displayed on the charter boat while the charter boat is operated upon waters of the state.

(c) Expire on May 31 of the second year following the year in which the charter boat was dockside inspected, except that the department may extend the expiration date if conditions exist that prevent the launching or the inspection of the charter boat before the expiration of the certificate of inspection.

(3) The department may determine the number of crew necessary for the safe operation of a charter boat.

(4) If it is determined by the department that a charter boat or its equipment does not comply with this part, or the rules promulgated under this part, or applicable federal law or regulations, a certificate of inspection shall not be issued and any current certificate of inspection may be revoked by the department pursuant to chapter 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.291 to 24.292 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.44508 Availability of fish in waters utilized by charter boats; catch activity committee; composition; duties; reports; charter boat operator duties.

Sec. 44508. (1) The department may research the availability of fish in the waters of this state that are utilized by charter boats.

(2) The department shall form a catch activity committee that is composed of 2 individuals from the department and 2 representatives from the Michigan charter boat association. The catch activity committee shall do all of the following:

(a) Advise on changes to the catch activity report form that pertains to the number, type, and location of fish taken from charter boats in this state.

(b) Advise on research priorities concerning the information gathered pursuant to this section.

(3) The department shall distribute to each charter boat operator in possession of a valid certificate of inspection, information related to any required catch activity report, and each charter boat operator shall complete the required report in the manner prescribed in subsection (5).

(4) The department shall compile an annual report based on information contained in catch activity reports submitted to the department under subsection (5). The annual report must not disclose the identity of a charter boat operator who provides information under subsection (5).

(5) A charter boat operator shall do each of the following:

(a) Maintain on board each charter boat under the operator's control a daily record of all catch activity of that charter boat for the current and previous calendar month.

(b) Make available for inspection the daily catch activity records required to be maintained under this subsection on the request of a peace officer.

(c) Complete a catch activity report for each charter boat under the operator's control. All charter boat operators regulated by this state shall provide the department with twice-monthly catch activity reports, except that all charter boat operators must report more frequently if a consent decree, decree, federal court order, memorandum of understanding, or other legally binding agreement establishes more frequent reporting. The department may issue orders requiring catch activity reports to be submitted twice monthly and specifying the information required, consistent with any consent decree, decree, federal court order, memorandum of understanding, or other legally binding agreement.

(d) The operator of a charter boat that is used for fishing on 2 or more bodies of water within a reporting

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period shall complete for that charter boat a separate catch activity report for each body of water fished, and shall submit each report to the department in the manner prescribed by this section.

(e) If a charter boat operator in possession of a valid certificate of inspection issued under section 44507 does not submit to the department the required catch activity report within 30 days after being notified that the report is delinquent, the department may revoke the state certificate of inspection issued for that vessel.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2023, Act 239, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

324.44509 Operation of charter boat in violation of terms of certificate of inspection.

Sec. 44509. (1) A person shall not operate a charter boat in violation of the terms of a certificate of inspection.

(2) Subsection (1) does not apply when the charter boat is being utilized by the owner of the charter boat exclusively for noncommercial purposes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44510 State pilot's license or renewal; examination; reexamination; revocation; issuance; duration.

Sec. 44510. (1) The department shall examine, or provide for the examination of, all applicants for a state pilot's license or renewal of an existing state pilot's license pursuant to the rules promulgated under section 44506 to ensure that an applicant has the skill, knowledge, and experience necessary to pilot a charter boat. If the department has reasonable cause to believe it necessary, the department may reexamine the holder of a state pilot's license at any time to determine continued compliance with the rules. If it is determined by the department that the holder of the state pilot's license no longer complies with the rules, the department may revoke the license pursuant to chapter 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.291 to 24.292 of the Michigan Compiled Laws.

(2) If, after the applicant has successfully completed the examination and paid the fees prescribed in section 44511, the department determines that the applicant is qualified pursuant to the rules promulgated under section 44506, the department shall issue to the applicant a state pilot's license to be furnished by the department.

(3) A state pilot's license shall be issued for a 3-year period.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.44511 Application for charter boat inspection or state pilot's examination; filing; fee; form; furnishing required information; false information; signature as certification of true and correct information; inspection fee schedules for dry dock and dockside inspection; inspection without fee or for reduced fee; examination fee for state pilot's license; forfeiture of application fee; disposition and use of inspection fees.

Sec. 44511. (1) The owner of a charter boat required to be inspected under this part and a person required to be licensed as a state pilot under this part shall file an application with the required fee for the charter boat inspection or the state pilot's examination with the department on a form prescribed and furnished by the department. Persons applying for a certificate of inspection or a state pilot's license shall furnish information reasonably required by the department. A person shall not file an application for charter boat inspection or state pilot's examination that contains false information. A person filing an application shall certify by the person's signature that the information furnished on the application is true and correct.

(2) If a charter boat has never been inspected, the owner shall pay the department an inspection fee for dry dock and dockside inspection according to the following schedule:

(a)	Class A and D vessels	$250.00
(b)	Class B vessels	$120.00
(c)	Class C vessels	$350.00

(3) For each required dry dock or dockside inspection of a charter boat other than an inspection under subsection (2), the owner shall pay the department a fee according to the following schedule:

(a) Class A and D vessels

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(*i*)	Dockside inspection	$100.00
(*ii*)	Dry dock inspection	$150.00
(b)	Class B vessels	
(*i*)	Dockside inspection	$ 60.00
(*ii*)	Dry dock inspection	$ 60.00
(c)	Class C vessels	
(*i*)	Dockside inspection	$150.00
(*ii*)	Dry dock inspection	$200.00

(4) If the department inspects any charter boat at an interval other than as required by this part, the inspection shall be conducted without an inspection fee for a dockside inspection and for a reduced fee to be determined by the department for a dry dock inspection. If a 24-month dockside inspection and a 72-month dry dock inspection are required in the same year, the owner shall only pay the fee for the dry dock inspection, as provided in subsection (3).

(5) For each examination of a person for a state pilot's license, the applicant shall pay a fee of $30.00 to the department.

(6) The charter boat inspection fee or state pilot's license examination fee shall be forfeited to the department and credited to the marine safety subaccount of the waterways account if the owner of the charter boat or the applicant for a state pilot's license fails to keep an appointment, which has been mutually agreed upon between the owner or the applicant and the department, for an inspection or reinspection of the charter boat or a state pilot's license examination, without notifying the inspecting officer or the department's marine safety section within the department's law enforcement division at least 24 hours prior to the scheduled appointment. Upon the forfeiture of an application fee, the owner of the charter boat or the applicant for a state pilot's license shall submit a new application and the required fee before the department conducts any inspection of the charter boat or conducts any examination of the applicant for a state pilot's license.

(7) The revenue received for inspection fees under this section shall be deposited in the state treasury to the credit of the marine safety subaccount of the waterways account and shall only be used to pay for inspections required by this part, and to maintain the education and enforcement program provided for in section 44513(2). The revenue division of the department of treasury shall annually provide to the department an accurate total of revenue collected and shall annually credit that amount to the marine safety subaccount of the waterways account.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2012, Act 249, Imd. Eff. July 2, 2012.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.44512 Petition for evidentiary hearing; appeal.

Sec. 44512. (1) A person denied a state pilot's license or the owner of a charter boat for which a certificate of inspection has been denied or revoked may petition the department for an evidentiary hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) A person who owns a charter boat may petition the department for an evidentiary hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, regarding the determination of the maximum passenger, crew, or total person capacity of the charter boat.

(3) A person who is aggrieved by the decision of the department under subsection (1) or (2) may appeal the action of the department in the manner provided in chapter 6 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.301 to 24.306 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44513 Reciprocity; annual operating permit; amount and use of fees; education and enforcement program; printed materials.

Sec. 44513. (1) The department may enter into reciprocal agreements with other states and countries concerning the operation and inspection of charter boats from those states and countries that operate on the

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waters of this state. Reciprocity shall be granted only if a state or country can establish to the satisfaction of the department that their laws concerning charter boats meet or exceed the laws of this state. A charter boat shall not operate on the waters of this state under a reciprocal agreement pursuant to this section except as authorized under an annual operating permit issued by the department pursuant to part 13. The fee for an annual operating permit is $100.00. The department shall utilize the fees for annual operating permits issued pursuant to this section to provide funds for the education and enforcement program provided for in subsection (2).

(2) The department shall develop an education and enforcement program designed to eliminate the operation of charter and livery boats that have not been inspected as required by this part and to prepare printed materials to provide the public with information regarding the safety features and requirements necessary for the lawful operation of charter and livery boats.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.44514 Repealed. 2012, Act 249, Imd. Eff. July 2, 2012.

Compiler's note: The repealed section pertained to conditions for operation of boat livery.

324.44515 Rules requiring equipment and minimum safety standards for livery boats.

Sec. 44515. The department shall promulgate rules requiring equipment and minimum safety standards for livery boats that are rented or leased to the public by boat liveries. The rules shall be for the purpose of ensuring the safety of those persons utilizing the facilities of boat liveries and shall include all of the following:

(a) Safe operation standards.

(b) Maximum vessel load capacity.

(c) Maximum horsepower of any motor to be used to propel the vessel.

(d) Required equipment and equipment standards to ensure the safety of the general public.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44516 Boat livery; annual inspection decal, plate, or tab; permit application; inspection fee; inspection by sheriff's department; permit; issuance; display; powers and duties of department and conservation officer; items to be furnished by department of natural resources.

Sec. 44516. (1) A boat livery shall not rent a motorized livery boat unless the livery boat has a current annual inspection decal, plate, or tab as provided under section 44518.

(2) Regardless of whether the livery boats are motorized or nonmotorized, a person shall not operate a boat livery except as authorized by a permit issued pursuant to part 13. Subject to subsection (7), the owner of a boat livery shall submit an application for a boat livery permit to the sheriff's department of the county where the boat livery is located. The application for a boat livery permit shall include all of the following:

(a) The boat livery name.

(b) The mailing address of the boat livery.

(c) The location of the boat livery.

(d) The waters of the state on which the boat livery rents vessels.

(e) The number of each of the following available for rent:

(*i*) Motorized livery boats, other than navigable waters livery boats.

(*ii*) Nonmotorized livery boats, other than navigable waters livery boats.

(*iii*) Navigable waters livery boats.

(3) An application for a boat livery permit shall be accompanied by an inspection fee of $100.00 for each navigable waters livery boat that the boat livery rents or offers to rent. A fee collected under this subsection shall be forwarded to the department of treasury to be credited to the marine safety subaccount of the waterways account. An inspection of a navigable waters livery boat shall be a comprehensive dockside inspection.

(4) If the boat livery rents or offers for rent 1 or more motorized livery boats, after the sheriff's department receives an application for a boat livery permit under subsection (3), the county sheriff or a deputy sheriff shall inspect the motorized livery boats and associated equipment to determine if they meet the minimum safety standards established under rules promulgated under this part.

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(5) A boat livery permit shall be issued if any of the following apply:

(a) One or more motorized livery boats and their associated equipment pass inspection under subsection (4).

(b) The boat livery rents or offers for rent 1 or more nonmotorized livery boats.

(6) A boat livery owner shall prominently display a boat livery permit issued under subsection (5) on the site of the boat livery. The permit expires on May 31 of the year following the year in which the permit is issued.

(7) The department and a conservation officer shall exercise the powers and perform the duties of the county sheriff's department and a sheriff or deputy sheriff under this section and section 44518 under any of the following circumstances:

(a) If the county does not receive state aid under section 80117 to conduct a marine safety program.

(b) If the boat livery rents or offers to rent a navigable waters livery boat.

(8) The department of natural resources shall furnish boat livery permit application forms, blank boat livery permits, registration decals, and inspection decals, plates, or tabs to the sheriff's department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.44517 Repealed. 2012, Act 249, Imd. Eff. July 2, 2012.

Compiler's note: The repealed section pertained to inspection fees for livery boats.

324.44518 Affixing inspection decal, plate, or tab to motorized livery boat; expiration; fees; information; amount, disposition, and use of fees.

Sec. 44518. (1) The sheriff of the county where a boat livery is located or a deputy sheriff shall affix or cause to be affixed an inspection decal, plate, or tab to each motorized livery boat that passes the inspection under section 44516.

(2) An inspection decal, plate, or tab under subsection (1) expires on May 31 of the year following the year in which the inspection decal, plate, or tab is issued. The inspection decal, plate, or tab shall bear all of the following information:

(a) The maximum number of persons permitted to be carried aboard the motorized livery boat.

(b) The maximum horsepower of a motor permitted to be used on the motorized livery boat.

(c) Any other information that the department may reasonably require.

(3) A boat livery owner shall pay to the sheriff or deputy sheriff a fee of $2.00 for each decal, plate, or tab affixed under subsection (1) to a motorized livery boat other than a navigable waters livery boat. Fees collected under this subsection shall be forwarded as follows:

(a) Except as provided in subdivision (b), to the treasurer of the county in which the fee is collected to be credited for the purpose of reimbursing the sheriff's department for expenses incurred under this part.

(b) If, pursuant to section 44516(7), a conservation officer performs the inspection, to the department of treasury to be credited to the marine safety subaccount of the waterways account.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.44519 Removing, damaging, or mutilating inspection decal, plate, or tab.

Sec. 44519. A boat livery owner, the designated representative of the boat livery owner, or any other person, except an inspecting officer, shall not remove, damage, or mutilate a valid inspection decal, plate, or tab affixed to a livery boat except that when a livery boat is sold, damaged, destroyed, or removed from rental or leasing service, the boat livery owner or his or her designated representative shall remove the valid inspection decal, plate, or tab and return it to the inspecting officer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.44520 Written rental contract required for certain livery boats; relinquishing physical control; responsibility of individual renting livery boat; display of information.

Sec. 44520. (1) The owner of a boat livery shall not rent a livery boat more than 20 feet in length to be used on navigable water except pursuant to a written rental contract between the boat livery owner and the renter.

(2) A boat livery owner or agent of the owner shall not relinquish physical control of any livery boat to the person renting the livery boat or someone in that person's party if any of the following apply:

(a) The equipment required pursuant to rules promulgated under this part is not aboard the livery boat.

(b) The livery boat contains a number of individuals in excess of the maximum number approved for the livery boat and required to be displayed under subsection (4).

(c) The livery boat is equipped with a motor with a horsepower rating in excess of the maximum horsepower approved for the livery boat and indicated on the inspection decal, plate, or tab affixed to the livery boat.

(3) The individual renting a livery boat, or an individual in the renter's party, is not responsible for a violation of a rule described in subsection (2)(a) if the livery boat or equipment was in violation when the owner relinquished possession of the livery boat to the renter or the individual in the renter's party.

(4) A livery boat shall display the maximum number of persons and maximum weight of persons, gear, and other items the livery boat is capable of safely carrying under normal conditions. The information may be displayed on the inspection decal, plate, or tab required for a motorized livery boat; on a manufacturer's plate, decal, plate, or tab; or by other means.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 249, Imd. Eff. July 2, 2012.

Popular name: Act 451

Popular name: NREPA

324.44520a Nonmotorized livery boat; liability for injury or death to user; notice; definitions.

Sec. 44520a. (1) An owner of a nonmotorized livery boat is not liable for an injury to or the death of a user of the nonmotorized livery boat resulting from a risk inherent in the use or operation of a nonmotorized livery boat.

(2) An owner of a nonmotorized livery boat shall display in conspicuous locations a notice specifying that a user of the nonmotorized livery boat accepts the risk inherent in the use or operation of a nonmotorized livery boat.

(3) As used in this section:

(a) "Owner of a nonmotorized livery boat" means the person who owns the nonmotorized livery boat, the boat livery that rents or furnishes the nonmotorized livery boat for use, or an employee or agent of the owner or boat livery.

(b) "Risk inherent in the use or operation of a nonmotorized livery boat" means a danger or condition that is an integral part of the use or operation of a nonmotorized livery boat and is limited to 1 or more of the following:

(*i*) Wave or other water motion.

(*ii*) Weather conditions.

(*iii*) Contact or maneuvers necessary to avoid contact with another vessel or a manmade object in or near the water.

(*iv*) Contact or maneuvers necessary to avoid contact with rock, sand, vegetation, or other natural objects in or near the water.

(*v*) Malfunction of equipment, except for equipment owned by the owner of a nonmotorized livery boat.

(*vi*) Failure to use or wear a personal flotation device or to have lifesaving equipment available, except if the owner of a nonmotorized livery boat failed to provide the personal flotation device or lifesaving equipment when required by law to do so.

(*vii*) The actions of a vessel operator, except if the owner of a nonmotorized livery boat rented the livery boat to an operator who the owner knew or in the exercise of reasonable care should have known was disqualified by law from operating the livery boat.

(*viii*) Having on board a number of persons or weight of persons, gear, and other items that exceeds the maximum approved for the livery boat, except in any of the following circumstances:

(A) If the owner of a nonmotorized livery boat knowingly relinquished physical control of the livery boat to a user of the nonmotorized livery boat with a number of persons or weight of persons, gear, and other items on board that exceeds the maximum approved for the livery boat or did not properly inform the user of the nonmotorized livery boat of the maximum weight or number of persons approved for the livery boat.

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(B) If a nonmotorized livery boat did not display the maximum number of persons or maximum weight of persons, gear, or other items permitted to be carried on board as required under section 44520 when the boat livery owner relinquished physical control of the livery boat to a user of the nonmotorized livery boat.

(c) "User of the nonmotorized livery boat" means an individual who participates in the use or operation of the nonmotorized livery boat regardless of whether the individual rented the nonmotorized livery boat.

History: Add. 2006, Act 183, Imd. Eff. June 12, 2006;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012.

Popular name: Act 451

Popular name: NREPA

324.44521 Presenting rental contract or lease agreement for examination by peace officer; prohibited conduct by person renting, leasing, or operating livery boat.

Sec. 44521. (1) Any person renting, leasing, or operating a livery boat on navigable waters that is more than 20 feet in length shall present for examination, upon demand of any peace officer, a copy of the rental contract or lease agreement.

(2) A person renting, leasing, or operating a livery boat on waters of the state shall not do any of the following:

(a) Permit the operation of the livery boat without the equipment required by rules promulgated under this part.

(b) Permit the operation of the livery boat if it contains a number of persons in excess of the maximum number approved for the livery boat and indicated on the inspection decal, plate, or tab affixed to the livery boat.

(c) Permit the operation of the livery boat, if it is equipped with a motor with a horsepower rating in excess of the maximum horsepower approved for the livery boat and indicated on the inspection decal, plate, or tab affixed to the livery boat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44522 Rental of personal watercraft; prohibition; certification required; rental agreement; contents; validity; liability; violation of subsection (1) or (2) as misdemeanor; impoundment.

Sec. 44522. (1) A boat livery shall not rent a personal watercraft to any of the following:

(a) A person who is under 14 years of age.

(b) A person who does not display to the boat livery owner or the owner's agent, if it is required under part 802, a boating safety certificate that is issued by the department or the United States Coast Guard Auxiliary or an electronic copy, in a format approved by the department of such a boating safety certificate, unless the individual obtains training in the safe use of a personal watercraft from the boat livery before the personal watercraft is rented. The department shall provide to boat liveries guidelines for the training required under this subdivision.

(2) A person who rents a personal watercraft from a boat livery shall not permit an individual to operate the personal watercraft if the individual has not obtained a boating safety certificate as required under part 802.

(3) A boat livery shall provide a copy of the written rental agreement to each individual who rents a personal watercraft from the boat livery and who has obtained the training required under subsection (1). The written rental agreement shall include all of the following information:

(a) The name of the person who rents a personal watercraft from the boat livery.

(b) The date or dates of the rental.

(4) The written rental agreement described under subsection (3) is a valid boating safety certificate under part 802 only for the person named in the certificate on the date or dates of the rental of the personal watercraft.

(5) A person who rents a personal watercraft from a boat livery is liable for any injury resulting from the negligent operation of the personal watercraft, whether the negligence consists of a violation of the statutes of this state, or the failure to observe the ordinary care in operation required by the common law. If the personal watercraft is operated by an individual other than the person who rents the personal watercraft, the person who rents the personal watercraft is not liable under this subsection unless the personal watercraft is being operated with his or her expressed or implied consent. It is rebuttably presumed that the personal watercraft is

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being operated with the consent of the person if it is operated by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the person's family.

(6) A person who violates subsection (1) or (2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not less than $100.00 or more than $500.00, or both. A person who violates subsection (1) or (2) twice within a 3-year period is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both. A person who violates subsection (1) or (2) 3 or more times within a 5-year period is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $2,000.00, or both.

(7) In addition to any penalty imposed under subsection (6), upon a person's second or subsequent violation of subsection (1), the court may issue an order impounding the personal watercraft that was rented in violation of subsection (1) for not more than 1 year. The cost of storage for an impoundment ordered under this subsection shall be paid by the owner of the personal watercraft.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 262, Eff. Mar. 23, 1999;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012;—Am. 2018, Act 400, Eff. Mar. 19, 2019.

Popular name: Act 451

Popular name: NREPA

324.44522a Inspection by peace officer.

Sec. 44522a. In addition to inspections conducted for purposes of section 44516 or under section 80166, a peace officer may inspect any livery boat at a boat livery. The peace officer shall give the owner of the boat livery at least 72 hours' advance notice of an inspection under this section and shall conduct the inspection at a reasonable time.

History: Add. 2012, Act 249, Imd. Eff. July 2, 2012.

Popular name: Act 451

Popular name: NREPA

324.44523 Petition for evidentiary hearing.

Sec. 44523. (1) A boat livery owner denied a permit to operate a boat livery by an inspecting officer designated by the department may petition the department for an evidentiary hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) A boat livery owner may petition the department for an evidentiary hearing pursuant to the administrative procedures act, Act No. 306 of the Public Acts of 1969, regarding the determination by the inspecting officer of the maximum vessel load capacity of a livery boat, the maximum horsepower of any motor to be used to propel a livery boat, and any equipment requirements or standards.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44524 Violation as misdemeanor; penalties; failure to submit activity reports; civil infraction; seizure, condemnation, and confiscation of vessel; issuance of appearance ticket.

Sec. 44524. (1) Except as otherwise provided in this section, a person who violates this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) A person who fails to submit catch activity reports as required under section 44508(5)(c) and (d) is responsible for a state civil infraction and shall be ordered to pay a civil fine as follows:

(a) For the first violation during a calendar year, $100.00.

(b) For a second or subsequent violation during a calendar year, $200.00.

(3) If a person fails to submit catch activity reports for 2 or more reporting periods, and has been cited by the department for each violation, the department shall not authorize the person to operate a charter boat until the delinquent reports are submitted to the department.

(4) When a vessel is operated in violation of section 44502, 44509, or 44516(1) or (2), the vessel may be seized as evidence, and upon conviction of the owner, the vessel may be condemned and confiscated in the same manner as provided for under part 16.

(5) A peace officer may issue an appearance ticket to any person violating this part or a rule promulgated under this part.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 249, Imd. Eff. July 2, 2012;—Am. 2023, Act 239, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

324.44525 Applicability and construction of part.

Sec. 44525. (1) Except for the reporting requirements of section 44508, this part does not apply to a vessel that is required to be inspected by federal law or regulations for the purposes of carrying passengers for hire and that carries a valid and current certificate of inspection issued pursuant to federal law.

(2) This part does not require a person to secure a state pilot's license if that person has been issued a valid and current federal pilot's license from the United States coast guard or other federal agency.

(3) This part does not apply to a vessel 20 feet or less in length that is used primarily for training or instructional purposes and is not used at any time as a charter boat or a livery boat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.44526 Effect of rules.

Sec. 44526. Except as otherwise provided in section 44504, rules promulgated pursuant to former Act No. 244 of the Public Acts of 1986 or an act repealed by that former public act remain in effect until replaced by rules promulgated pursuant to former Act No. 244 of the Public Acts of 1986 or this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

AQUATIC SPECIES

PART 451
FISHING FROM INLAND WATERS

324.45101 Inland lakes; fishing prohibited; exception.

Sec. 45101. A person shall not take any fish from any of the inland lakes of this state, within which fish are planted at the expense of the people of this state, if the public is excluded from taking fish from those waters. However, this part does not apply to any small inland lakes covering less than 250 acres in which fish are planted without the written consent of the persons who together own in fee simple the submerged acreage.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45102 Violation of part; penalty.

Sec. 45102. A person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not less than $10.00 or more than $100.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 453
FISHING WITH HOOK AND LINE

324.45301 Lawful fishing with hook and line.

Sec. 45301. In any of the navigable or meandered waters of this state where fish have been or are propagated, planted, or spread at the expense of the people of this state or the United States, the people have the right to catch fish with hook and line during the seasons and in the waters that are not otherwise prohibited by the laws of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45302 Fishing rights; action; defense.

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Sec. 45302. An action shall not be maintained against a person entering upon the waters for the purpose of fishing, by the owner, lessee, or other person having the right of possession of adjoining lands, except for actual damage done. In such an action, the defendant under a proper notice may dispute at trial the plaintiff's right to either title or possession of the land claimed to have been trespassed upon.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 455
FROGS

324.45501 Repealed. 2018, Act 20, Imd. Eff. Feb. 14, 2018.

Compiler's note: Part 455 of the natural resources and environmental protection act is repealed. The heading "FROGS" was not legislatively repealed and remains as a part heading in the act.

Popular name: Act 451

Popular name: NREPA

324.45502 Repealed. 2018, Act 20, Imd. Eff. Feb. 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.45503 Repealed. 2018, Act 20, Imd. Eff. Feb. 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.45504 Repealed. 2018, Act 20, Imd. Eff. Feb. 14, 2018.

Popular name: Act 451

Popular name: NREPA

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PART 457
MUSSELS

324.45701 Definitions.

Sec. 45701. As used in this part:

(a) "Mussel" means the pearly freshwater mussel, clam, or naiad, and the shells of the pearly freshwater mussel, clam, or naiad.

(b) "Crowfoot bar" means a bar of any material bearing a series of hooks designed to catch or adapted for catching mussels by the insertion of the hooks between the shells of mussels.

(c) "Hand rod" means any mechanism of capture that is adapted for picking the mussels singly from the bottom of waters and is operated by the picker holding the hand rod in the hand.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45702 Mussels; registration and license requirements.

Sec. 45702. A person shall not take, catch, or kill mussels by means of any kind of apparatus or in any manner in any of the inland waters of this state without first registering with the department and obtaining a license issued for this purpose in accordance with this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45703 License; application; form; fee.

Sec. 45703. A person shall not take, catch, or kill mussels in any of the inland waters of this state without applying to the department on a form provided for that purpose by the department. The application shall be accompanied by a fee of $3.00, if the applicant is a resident of this state, and a fee of $50.00, if the applicant is a nonresident of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.45704 License; issuance; duration; contents; possession; exhibition.

Sec. 45704. The department shall upon receipt of an application and the proper fee issue a license to take, catch, or kill mussels. All licenses shall begin July 1 and expire on September 30, following issuance. Licenses shall be consecutively numbered as issued, and a record of licenses and their numbers shall be kept by the department. A license shall state whether it is a resident or nonresident license, the address of the licensee, and the amount paid for the license. The license shall also state what waters have been closed to the capture of mussels by the department. Every person while taking, catching, or killing mussels shall have the license required by this section in his or her possession and shall exhibit the license when requested to do so by an authorized officer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45705 Applications and licenses; record; receipts; disposition; "nonresident" defined.

Sec. 45705. The department shall keep a record of all applications and licenses issued and on the first day of each month shall pay to the state treasurer all money received for the sale of licenses issued under this part, and the money shall be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010 and shall be disbursed by the state treasurer for services of the department and for the department's expenses in enforcing this part and the game and fish laws of this state, for propagation, and for biological investigations and such other investigations as may be necessary. For the purposes of this part, a nonresident of this state is a person who has not resided within this state for a period of at least 6 consecutive months immediately prior to the time application is made for a license under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.45706 Mussels; number of boats permitted; crowfoot bars; hand rods; prohibited devices; mufflers.

Sec. 45706. Any person to whom a license has been issued under this part may operate not more than 1 boat, with or without a motor, in taking, catching, or killing mussels. The person may use 1 additional boat, with or without a motor, for the purpose of towing only when an apparatus for taking, catching, or killing mussels is not used or kept on the boat. A person engaged in taking, catching, or killing mussels on the waters shall not possess more than 4 crowfoot bars, shall have not more than 2 of the bars in the water at 1 time, and shall not use or possess a crowfoot bar of greater than 20 feet in length. A person may also use his or her hands or a device known as a hand rod in taking, catching, or removing mussels from the waters. However, a person shall not use to gather mussels a fork, dredge, tongs, or other device that when used digs deeply into the bed of the stream. All boats propelled by an internal combustion engine or motor and used in taking, catching, killing, or conveying mussels taken under this part shall be equipped at all times with a quiet muffler for the exhaust.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45707 Mussels; limitation on catch of certain undersized species.

Sec. 45707. A person shall not take, catch, kill, offer for sale, or possess, in a quantity of more than 1% by weight, mussels of the varieties known either as mucket or pocketbook species of a size less than 3 inches at the greatest dimension. Undersized mussels shall be immediately culled and returned to the water from which they were taken without avoidable injury.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.45708 Mussels; closed areas; orders of department; publication; effective date.

Sec. 45708. The department may, for the conservation of the mussel resources of the state, prescribe areas in any part of the state from which mussels shall not be taken for a period specified by the department. A person shall not take, catch, or kill mussels in closed waters. All orders of the department affecting mussels shall be published once a year in a newspaper of general circulation published within each county containing or having on its boundary waters affected by the order. All such orders shall take effect at the time established in the order, but not less than 21 days after the publication of the order. The department may extend the time within which the order takes effect.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45709 Mussels; report to department by license holder; prerequisite to new license.

Sec. 45709. On or before December 31 of the year in which any license was issued, the holder of the license shall make a written report to the department, on a form furnished by the department, under oath if requested to do so, stating the total weight of mussel shells taken, caught, or killed under the license, the names and locations of waters from which the mussels were taken, the weight of shells taken from each water, the amount of money received for shells sold, and any other information required by the department in determining the trend of the industry and available supply of mussels. The department may deny a new license to the holder until the report is made in accordance with this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45710 Taking mussels for culture or scientific investigation; permit required.

Sec. 45710. A person shall not take from any of the inland waters of this state any kind of mussels in any manner for the purpose of culture or scientific investigation without first obtaining a permit from the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45711 Violation of part; penalty; default.

Sec. 45711. A person who violates this part is guilty of a misdemeanor, punishable by a fine of not less than $10.00 or more than $100.00 and costs of prosecution, and in default of the payment of the fine, by imprisonment for not more than 90 days, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 459
PROPAGATION OF GAME FISH IN PRIVATE WATERS

324.45901 Definitions.

Sec. 45901. As used in this part:

(a) "Game fish" includes all species of fish in the families of salmonidae (trout and salmon), thymallidae (grayling), esocidae (northern pike and muskellunge), serranidae (white bass and striped bass), centrarchidae (bass, bluegill, and crappie), percidae (perch and walleye), acipenseridae (sturgeon), ictaluridae (catfish), and coregonidae (whitefish).

(b) "Genetically engineered" refers to a fish whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques.

(c) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2003, Act 270, Eff. Mar. 30, 2004.

Popular name: Act 451

Popular name: NREPA

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324.45902 Game fish; license for propagation for sale.

Sec. 45902. (1) A person shall not propagate, rear, or have in possession for the purpose of offering for sale or selling any kind of game fish except as authorized by a license issued by the department pursuant to part 13. A license is nontransferable and expires on December 31 of the year for which issued. A separate license is required for each place of business where game fish are propagated, reared, or possessed for the purpose of sale or offering for sale.

(2) This part does not apply to the following:

(a) The sale, offering for sale, or possession of dead, fresh, or frozen brook trout, brown trout, or rainbow trout lawfully taken in and exported from another state or country or that have been procured from a licensed dealer within this state.

(b) The propagation, rearing, possession, or sale of game fish pursuant to a registration or permit issued pursuant to the Michigan aquaculture development act, 1996 PA 199, MCL 286.871 to 286.884.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 200, Imd. Eff. May 17, 1996;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.45903 Game fish; license; application; contents; fee.

Sec. 45903. Any person owning or having control of private waters in this state who desires a license under this part shall make application for the license to the department, accompanied by a fee of $5.00. The application shall state the name and address of the applicant and include the description of the premises where game fish are to be propagated, reared, possessed, or offered for sale, together with additional information as may be required. Upon receipt of the application and fee, the department, if satisfied that this part and the rules promulgated under this part have been complied with, shall issue a license to the applicant.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.45904 Game fish; sale; posting of license.

Sec. 45904. A person shall not propagate, rear, or possess, for the purpose of offering for sale or selling, any game fish, except at the location described in his or her license. The license shall be conspicuously posted at the person's place of business at all times.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45905 Rules; enforcement.

Sec. 45905. The department may promulgate and enforce rules as may be necessary to carry out the intent of this part and to protect the public interest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.45906 Importation of game fish or viable eggs; prohibition or restriction; rules.

Sec. 45906. (1) A person shall not import into this state any live game fish, including viable eggs of any game fish, except as authorized by a license as provided for in this part issued by the department pursuant to part 13. A license under this subsection does not apply to a genetically engineered variant of a live game fish species unless the genetically engineered variant is specifically identified in the license.

(2) The department may promulgate rules under this part to prohibit or restrict the importation of any species of game fish or other fish if the importation of that species would endanger the public fishery resources of this state. A prohibition or restriction in rules promulgated under this subsection applies to a genetically engineered variant of a fish species identified in the prohibition or restriction unless the prohibition or restriction specifically provides otherwise. A prohibition or restriction in rules promulgated under this subsection may be limited to a genetically engineered fish.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

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324.45907 License fees; crediting game and fish protection account.

Sec. 45907. All money received from the sale of licenses provided for in this part shall be paid over to the state treasurer and shall be credited by the state treasurer to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.45908 Violation of part or rules as misdemeanor; penalty; suspension or revocation of license.

Sec. 45908. (1) Except as provided in subsection (2), a person who violates this part or the rules promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both. In addition to the penalty, any license issued under this part may be revoked.

(2) A person who knowingly violates section 45906 or a rule promulgated under section 45906 with respect to a genetically engineered fish or with respect to any fish species that is not naturalized in this state is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both. In addition, any license issued to the person under this part may be revoked, and the person is liable for damages to natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize such damages.

(3) Any license issued under this part may be suspended or revoked by the department after a hearing, upon reasonable notice, when any of the operations under it fail to comply with the requirements of this part or the rules promulgated under this part. Whenever any license is suspended or revoked, the fish held under the license shall be disposed of only in a manner approved by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2003, Act 270, Eff. Mar. 30, 2004.

Popular name: Act 451

Popular name: NREPA

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PART 461
REGULATING FISHING IN NORTHPORT HARBOR

324.46101 Northport harbor; fishing for perch or smelt prohibited.

Sec. 46101. (1) A person shall not take any of the species of fish known as perch with gill nets, pound nets, trap nets, seines, setlines, or set hooks, or any other device except a hook and line, and no nets of any description for the taking of perch shall be set within 200 feet of any dock in the waters of Northport harbor (known as Northport bay), and within a line beginning at the extreme southern end of lot 3, section 36, town 32 north, range 11 west of Northpoint point at the water's edge; thence on a line southerly across Northport bay to Bellows (Gull) island; thence southerly on a line from Bellows (Gull) island to most northerly point of lot 3, section 25, town 31 north, range 11 west; thence due west to the east shore of lot 1, section 25, town 31 north, range 11 west; thence northerly following the bay shore to the place of beginning. A person shall not set any trap or pound net in that part of Northport harbor north of a line beginning at the extreme southern end of lot 3, section 36, town 32 north, range 11 west of Northport point at the water's edge and extending west to the town line between 31 north and 32 north in the village of Northport.

(2) A person shall not use a bait net in shallow waters along the shores of Northport harbor during the smelt spawning season to obtain smelt for other than a commercial purpose.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.46102 Violation of part as misdemeanor; penalty.

Sec. 46102. A person who violates this part is guilty of a misdemeanor, punishable by a fine of not more than $100.00, or imprisonment for not more than 90 days, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

PART 463
FISHING LAWS IN ST. JOSEPH RIVER

324.46301 St. Joseph river; applicability of general laws.

Sec. 46301. All general laws relative to fishing on inland lakes are applicable to the waters in that part of the St. Joseph river formerly known as Municipal pond, and now known as Union Lake, Union City, Branch county, Michigan, extending from a point known as Arbogast bridge westward to and including the Riley dam.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 465
FISHING SHANTIES

324.46501 Definitions.

Sec. 46501. As used in this part:

(a) "Fishing shanty" means a fishing house or any other structure or shelter placed on the ice on the waters over which this state has jurisdiction.

(b) "Local unit of government" means a county, city, township, village, or other governmental unit. Local unit of government does not include the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.46502 Fishing shanty; affixing identification of owner.

Sec. 46502. (1) Except as otherwise provided in subsection (3), a person shall not set, place, erect, cause to be set, placed, or erected, or use a fishing shanty at any time upon the ice in waters over which this state has jurisdiction, unless information identifying the owner as prescribed in this subsection is affixed to each side of the outside of the fishing shanty in legible alphanumeric characters not less than 2 inches in height. The alphanumeric characters must be readily visible and consist of materials that are not soluble in water. The information identifying the owner under this subsection must be 1 of the following:

(a) The owner's name and address.

(b) The owner's driver license number.

(c) The number of the owner's sportcard issued under section 43522.

(2) Placing the information identifying the owner on a piece of wood, plastic, or other material and affixing that piece of material to the fishing shanty does not satisfy the requirements of this section.

(3) The identification requirement in subsection (1) does not apply to a tent or other temporary shelter if the tent or shelter is removed from the ice at the conclusion of each day's fishing activity.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.46503 Repealed. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Compiler's note: The repealed section pertained to removal of fishing shanties erected upon waters within Upper Peninsula.

Popular name: Act 451

Popular name: NREPA

324.46504 Repealed. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Compiler's note: The repealed section pertained to removal of fishing shanties erected upon waters within certain counties.

Popular name: Act 451

Popular name: NREPA

324.46505 Repealed. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Compiler's note: The repealed section pertained to removal of fishing shanties erected upon waters within certain counties.

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Popular name: Act 451

Popular name: NREPA

324.46506 Repealed. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Compiler's note: The repealed section pertained to placement of fishing shanties if removed at conclusion of each day's fishing activity.

Popular name: Act 451

Popular name: NREPA

324.46507 Fishing shanty; removal; conditions; violation; date for removal.

Sec. 46507. (1) A person who sets, places, erects, or causes to be set, placed, or erected any fishing shanty upon the ice of any water within the jurisdiction of this state shall remove the fishing shanty before ice conditions are unsafe for its removal or before the date set by the department under subsection (2) and on a daily basis following that date. Failure to remove a fishing shanty within the time specified in this section is a violation of this part, and the department or the local unit of government may then authorize the removal and storage or destruction of the fishing shanty.

(2) The department shall set the date by which a fishing shanty must be removed under this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.46508 Ordinance, rule, or regulation of local unit of government; effect.

Sec. 46508. A local unit of government shall not pass an ordinance, rule, or regulation regulating the placement, use, marking, or removal of a fishing shanty on the ice of any waters over which this state has jurisdiction. An ordinance, rule, or regulation described in this section that is in effect on April 1, 1994 is void. However, if a person fails to remove a fishing shanty within the time specified by the department under section 46507, a local unit of government may remove the fishing shanty from the ice or water and store or destroy the fishing shanty.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 25, Imd. Eff. Feb. 14, 2018.

Popular name: Act 451

Popular name: NREPA

324.46509 Violation as misdemeanor; penalty; reimbursement to governmental entity; violation of 46502 civil infraction.

Sec. 46509. (1) Except as otherwise provided in this section, a person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not less than $100.00 or more than $500.00, or both, and costs of prosecution.

(2) Upon conviction for the violation of this part, the court shall order the defendant to reimburse the governmental entity that removes or provides for the removal of the fishing shanty from the water or ice an amount equal to 3 times the cost of removal.

(3) An individual who violates section 46502 is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2022, Act 23, Eff. June 8, 2022.

Popular name: Act 451

Popular name: NREPA

PART 467
MODIFICATION OF COMMERCIAL FISHING LAWS

324.46701 Commercial fishing laws; suspension by department.

Sec. 46701. Notwithstanding any other act or part to the contrary, any statute or law of this state governing commercial fishing may be suspended, abridged, extended, or modified by the department when, in the opinion of the department, that action is necessary for the better protection, preservation, maintenance, and harvesting of the fish. The existing statutes and laws regulating commercial fishing shall remain in full force and effect unless suspended, abridged, extended, or modified by order of the department in the manner provided in this part or by subsequent acts of the legislature.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.46702 Effective date of order; copy to licensees.

Sec. 46702. The effective date of any order issued by the department under this part shall be not less than 30 days from and after the date of its issuance. Within 10 days after the date of its issuance, a copy of the order shall be sent by first-class mail to all persons of record licensed under part 473.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.46703 Violation of order; penalty; revocation of license.

Sec. 46703. A person who violates any order issued under this part is guilty of a misdemeanor. Each violation is a separate and distinct offense and, in addition to the penalties provided in this part, any license issued under authority of part 473 to any person convicted in any 1 license year of 3 violations of any order or orders promulgated under authority of this part, or of any act or part regulating commercial fishing, shall be automatically revoked and canceled for the remainder of the license year for which issued. The revocation shall prohibit for the balance of the license year the use of any boats, nets, or other gear covered by the license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.46704 Construction of part.

Sec. 46704. Nothing in this part confers upon the department the power to alter any provisions of the statutes relating to forfeitures, penalties, or license fees.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 469
TAKING RAINBOW TROUT IN SOO RAPIDS AND ST. MARYS RIVER

324.46901 Soo Rapids and certain connecting waters of St. Marys river; closed seasons on rainbow trout; excepted waters.

Sec. 46901. A person shall not take or attempt to take rainbow trout in the waters of the Soo Rapids, and the United States power canal and tailrace, the north and south canals, the locks and the approaches thereto, between the international railway bridge and a line drawn from the ferry dock immediately below the St. Marys falls in Sault Ste. Marie, Michigan, to the ferry dock in Sault Ste. Marie, Ontario, all being a part of the St. Marys river, Chippewa county, except from June 1 to November 30. This section does not apply to the Michigan northern power canal, which is a part of the connecting waters between Lake Superior and Lake Huron for the purpose of regulating fishing in that area.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.46902 Violation of part as misdemeanor; penalty.

Sec. 46902. A person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not less than 10 days or more than 90 days, or a fine of not less than $10.00 or more than $100.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 471
FISHERIES MAINTENANCE

324.47101 Department; fish-breeding duties; property tax exempt; superintendent of fisheries; duties.

Sec. 47101. The department shall select suitable locations within this state at which to establish and

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maintain fish-breeding establishments for the propagation and cultivation of whitefish, and such other kinds of food fish as the department may direct, for the purpose of stocking such fish and replenishing the supply of the fish in the inland and bordering waters of this state. All property owned or leased by the department shall be exempt from taxation so long as held and used for state purposes under this part. The department shall employ a competent person as superintendent of fisheries, whose duty it shall be to devote his or her entire time to gathering ova, hatching and planting, or distributing fish, and superintending generally the practical operations of the work.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47102 Accounts; records.

Sec. 47102. The department shall keep proper books of accounts and records of its transactions, and also of all operations and experiments in the discharge of the duties under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.47103 Duties of department.

Sec. 47103. The department may take or cause to be taken any fish in any manner or at any time, for the purposes connected with the fish culture or with scientific observation. The department shall further discharge any duties required of it by law relating to the fishing interests or to enforce laws relating to the protection of fish and fisheries in this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47104 Appropriation; carrying forward unexpended balance.

Sec. 47104. The unexpended balance of any appropriation to implement this part at the end of the year for which the appropriation is made shall be carried forward to the credit of the department, if the department certifies to the state treasurer that the money is needed for the purchase of additional grounds, for making permanent improvements upon any of its property, or for equipment or labor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2002, Act 356, Imd. Eff. May 23, 2002.

Popular name: Act 451

Popular name: NREPA

324.47105 Joint action with other states.

Sec. 47105. In case appropriations by other states contiguous to the waters of this state are made, and a disposition for joint action with this state is expressed, the department, with the approval of the governor, may arrange for and carry into effect joint action for replenishing the supply of food fish in the contiguous waters.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 473
COMMERCIAL FISHING

324.47301 Fish in Great Lakes; property of state.

Sec. 47301. All fish of whatever kind found in the waters of Lakes Superior, Michigan, Huron, and Erie, commonly known as the Great Lakes, the bays of the Great Lakes, and the connecting waters between those lakes within the jurisdiction of this state are the property of the state, and taking the fish from those waters is a privilege. All fish in waters described in this section shall be taken, transported, sold, and possessed only in accordance with this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47301a Obstruction or interference in lawful taking of fish; prohibited conduct;

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injunction; violation as misdemeanor; penalty; applicability of section to peace officer; definitions.

Sec. 47301a. (1) A person shall not obstruct or interfere in the lawful taking of fish by a person licensed under this part.

(2) A person violates this section when the person intentionally or knowingly does any of the following:

(a) Operates a vessel or a device designed to be used on the water which does not meet the definition of vessel in a manner likely to significantly alter the behavior of aquatic species in order to hinder or prevent the lawful taking of an aquatic species.

(b) Wades or swims in a manner or at a location likely to cause a significant alteration in the behavior of aquatic species in order to hinder or prevent the lawful taking of an aquatic species.

(c) Tosses, drops, or throws any stone, rock, or other inert material in order to hinder or prevent the lawful taking of an aquatic species.

(d) Drives, herds, or disturbs any aquatic species in order to hinder or prevent the lawful taking of an aquatic species.

(e) Blocks, impedes, or harasses another person who is engaged in the process of lawfully taking fish.

(f) Uses a natural or artificial visual, aural, olfactory, gustatory, or physical stimulus to affect animal behavior in order to hinder or prevent the lawful taking of fish.

(g) Erects barriers to deny ingress or egress to waters where the lawful taking of fish may occur. This subdivision does not apply to a person who erects barriers to prevent trespassing on his or her property.

(h) Interjects himself or herself into the area where nets or fishing lines are cast by a person lawfully taking fish.

(i) Affects the condition or placement of personal or public property intended for use in the lawful taking of fish in order to impair the usefulness of the property or prevent the use of the property.

(j) Enters or remains upon private lands without the permission of the owner or the owner's agent, for the purpose of violating this section.

(k) Engages in any other act or behavior for the purpose of violating this section.

(3) Upon petition of an aggrieved person or a person who reasonably may be aggrieved by a violation of this section, a court of competent jurisdiction, upon a showing that a person was engaged in and threatens to continue to engage in illegal conduct under this section, may enjoin that conduct.

(4) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than $500.00 or more than $5,000.00, or both, and the costs of prosecution. A person who violates this section a second or subsequent time is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not less than $1,000.00 or more than $10,000.00, or both, and the costs of prosecution. In addition to the penalties provided in this subsection, any permit or license issued by the department authorizing the person to take aquatic species shall be revoked. A prosecution under this section does not preclude prosecution or other action under any other criminal or civil statute.

(5) This section does not apply to a peace officer while the peace officer performs his or her lawful duties.

(6) As used in this section:

(a) "Aquatic species" means fish, reptiles, mollusks, crustacea, minnows, wigglers, and amphibians of the class amphibia.

(b) "Take" and "taking" mean to fish for by any lawful method, catch, kill, capture, trap, or shoot any species of fish, reptiles, amphibians, mollusks, wigglers, or crustacea regulated by this part, or to attempt to engage in any such activity.

(c) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

History: Add. 1996, Act 317, Eff. July 1, 1996.

Popular name: Act 451

Popular name: NREPA

324.47302 Fishing license; limited number to be issued; qualifications; provisions; expiration date; suspension or revocation; renewal; transfer.

Sec. 47302. (1) Notwithstanding the provisions of this or any other part or act, the department, when in the department's opinion it is necessary for the better protection, preservation, management, harvesting, and utilization of the fisheries in the waters described in section 47301 may limit the number of fishing licenses to be issued under this part and fix and determine the qualifications of persons to whom licenses are issued. In determining the number of licenses that the department issues during any license year, the department shall

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consider the number of persons holding licenses, the number of licensees needed to harvest the fish known or believed to be harvestable, the capacity of the boats and equipment owned and used by licensees to harvest those fish, and any other facts that may bear upon the allowing of a limited number of licensed persons to engage in commercial fishing in an economical and profitable manner. In determining the qualifications of the licensees, the department shall consider the kind, nature, and condition of the boats and fishing equipment and gear to be used by the applicant, the years of experience the applicant has had in commercial fishing, and the quantity and kinds of fish that the applicant has caught during the previous 5 years, and other facts that may assist the department in determining that the applicant is capable of engaging in commercial fishing in a proper and profitable manner and will comply with the laws applicable to commercial fishing.

(2) In addition to the requirements of this part and rules promulgated under this part, the license issued by the department may contain provisions that do 1 or more of the following:

(a) Establish the amount of fish to be taken by species and kind.

(b) Designate the areas in which the licensee is permitted to fish.

(c) Specify the season when and the depths where the licensee may conduct commercial fishing operations.

(d) Specify the methods and gear that the licensee shall use.

(e) Specify other conditions, terms, and restrictions that are considered necessary in implementing this part, including, but not limited to, the right to inspect the licensee's fishing operations in the waters, on board, or ashore.

(3) All licenses issued by the department pursuant to this part expire on December 31 of the year in which issued.

(4) The department may suspend or revoke any license issued under this part if the licensee fails to fulfill or violates any of the conditions, terms, or restrictions of the license. The department shall afford the licensee a hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any person whose license has been suspended or revoked is not eligible to apply for or receive a license for the ensuing 2 calendar years following the suspension or revocation.

(5) Any licensee licensed on November 15, 1968 has the right to have his or her license renewed from year to year by the department if the licensee continues to meet the qualifications set forth in this section and the qualifications specified in any rules promulgated under this section regardless of the determination of the number of licenses to be issued under this part. Licenses described in this section are not transferable without the permission of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.47303 Fish and game protection account; receipts; use.

Sec. 47303. The department shall provide financial remuneration to the state for fish taken for commercial purposes by collection from the licensee of not more than 5% of the price received by the licensee. Money received shall be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010 to be used in the development and management of the fisheries resource.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.47305 Rules.

Sec. 47305. For the purpose of carrying out this section and sections 47302 and 47303, the department may promulgate rules as may be necessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47306 Commercial fishing law; setting of nets or hook lines prohibited; connecting waters.

Sec. 47306. A person shall not place or set any kind of a net or set hook lines or take or attempt to take any

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kind of fish with a net or set hook lines, except minnow seines as provided in section 47309, in any of the connecting waters between Lake Superior and Lake Huron and the connecting waters between Lake Huron and Lake Erie. For the purposes of this part, the connecting waters between Lake Superior and Lake Huron are all of that part of the straits of St. Mary in this state, extending from a line drawn from Birch point range front light to the most westerly point of Round island, thence following the shore of Round island to the most northerly point thereof, thence from the most northerly point of said Round island to Point Aux Pins light, Ontario, to a line drawn east and west from the most southerly point of Little Lime island; and the connecting waters of Lake Huron and Lake Erie are all of the St. Clair river and all of lake St. Clair and all of the Detroit river extending from fort Gratiot light in Lake Huron to a point in the lower Detroit river where the center line of Oak street, city of Wyandotte, Wayne county, Michigan, extended due east, would intersect the international boundary line. The boundary line between Lake Michigan and Lake Huron is a line extending due north from old Mackinac point lighthouse across the straits of Mackinac.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47307 Setting of nets or hook lines prohibited; channel at mouth of stream or outlet of inland lake; fishing from docks; spearing through ice.

Sec. 47307. A person shall not set any net, set hook lines, or other device for the purpose of taking or catching fish within 160 rods on either side of the thread of the stream at the mouth of any river or outlet of an inland lake emptying into Lakes Superior, Michigan, Huron, or Erie, commonly known as the Great Lakes, or the bays of the Great Lakes, navigable for vessels drawing 10 feet or more, leaving an open channel of 1 mile in width for the free passage of fish, extending at right angles from the shoreline as near as may be, 2 miles from shore. However, within the next 1/2 mile on either side of any such rivers or outlets of inland lakes, nets, set hook lines, or other devices shall not be used for the purpose of taking fish that will extend a greater distance than 1 mile from shore. The purpose of the limitations in this section is to leave an open channel of 1 mile in width 1 mile out, and 2 miles in width for the second mile out, for the free passage of fish. No net or other device for taking fish shall be set or used within 40 rods on either side of the thread of the stream at the mouth of any other river or the outlet of any other inland lake leaving an open channel of 80 rods in width for the free passage of fish, extending at right angles with the shoreline as near as may be 2 miles out from shore. For the purpose of this section, the shore commences at the average low-water mark. If the location of the open channel or the average low-water mark is in dispute, this location shall be determined by the department. Except as provided in sections 47311 and 47313, a person may at all times catch any kind of fish in all of the waters named in this part, and from the docks, harbors of refuge, or breakwaters, with a hook and line except largemouth black bass, smallmouth black bass, bluegills, sunfish, brook or speckled trout, rainbow and steelhead trout, brown and Loch Leven trout, northern pike, pike-perch, perch, or muskellunge, which shall only be taken or possessed in the manner and at the time specified by the laws of this state protecting those fish. A person may also spear carp, suckers, mullet, redhorse, sheepshead, lake trout, herring, smelt, perch, pike-perch, northern pike, muskellunge, sturgeon, whitefish, ciscoes, pilot fish or menominee white fish, catfish, dogfish, and garpike through the ice in the connecting waters as defined in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47308 Set hook lines, spears, and gill nets; use permitted; marketing prohibited; unused bait.

Sec. 47308. Except as otherwise provided by law, a person may use in the waters of Lakes Michigan, Superior, Huron, and Erie, and the bays of those lakes, within the jurisdiction of this state, set hook lines or spears for the purpose of taking fish; and for the purpose of securing bait for use in baiting said hook lines, a person may use gill nets as provided in section 47309. However, a person shall not market or possess for the purpose of marketing any fish taken in bait nets. All unused bait, fresh or old, shall be taken ashore.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47309 Nets; use; meshes.

Sec. 47309. A person shall not possess on any boat licensed under this part or use in the waters of Lakes

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Michigan, Superior, Huron, and Erie, and the bays of those lakes, within the jurisdiction of this state, any pound or trap net, gill net, seine, or any fixed, set, or movable net of any kind or description, the meshes of which are different than the following:

(a) Gill nets with meshes of not less than 4-1/2 inches shall be used for the taking of whitefish, lake trout, and yellow pickerel. In Lake Erie, the nets shall have meshes not less than 4-3/4 inches. The nets shall be set not nearer than 20 rods from the shore of the mainland fronting Lake Superior and its bays. The nets shall be set not nearer than 20 rods from the shore of the mainland fronting Lake Michigan southerly from Seven Mile Point, Emmet County, during the months of March, April, and May. There shall be no nets, except gill nets, of any kind with mesh larger than 2-3/4 inches set in the waters of Lake Superior within a radius of 50 miles of the village of Houghton, Michigan, during the period between October 10 and November 4, except by permit from the department for the taking of spawn from trout for the fish hatcheries.

(b) Gill nets with meshes of not less than 2-1/2 inches or more than 2-3/4 inches may be set in water of any depth, and gill nets with meshes of not less than 2-1/2 inches or more than 3 inches may be set in waters not exceeding 100 feet in depth, for the purpose of taking herring, chubs, perch, and pilot fish, commonly called menominees, wherever and whenever they will not take to exceed 10% by weight of other fish, such percentage to be determined by the department, by inspection of the fish taken in the nets. All uninjured fish, except herring, chubs, perch, and pilot fish, shall be returned to the waters from which they were taken with as little injury as possible, by the persons lifting the nets; all sound, undersized, and dead fish found in the nets are the property of the state, and shall not be sold or disposed of, but shall be dressed and brought in and delivered immediately to the department at the fishing port of the person taking the fish. The sound, undersized, and dead fish shall be then disposed of by the department. If more than 10% of fish other than herring, chubs, perch, and pilot fish are taken, then all of the other fish shall be disposed of by the department. An angler may have in his or her possession, not to exceed in quantity the percentage allowed of lake trout, whitefish, yellow pickerel, perch, or suckers, of a weight or length less than established by this part, which are caught in 2-1/2 inch to 2-3/4 inch or 2-1/2 inch to 3 inch mesh gill nets, as provided for in this subsection, but the same may be shipped and disposed of only under the direction of the department. All undersized fish taken over under this section shall be disposed of by the department to state, county, or charitable institutions. Parties handling the fish shall be paid not more than 3 cents per pound for boxing, packing, and icing the fish. The department shall remove or cause to be removed any of the nets if, from the inspection provided in this section, the department determines that the nets are taking more fish of species other than herring, chubs, perch, and pilot fish than allowed by this section.

(c) Gill nets with meshes of not less than 2-1/4 inches or more than 2-3/4 inches may be used to take blue back herring in the waters of Lake Superior and Whitefish Bay, and those waters of the Straits of Mackinac bounded on the Lake Huron end by a line drawn from the southernmost tip of St. Martin Point, Mackinac County, to the westernmost tip of Lime Kiln Point on Bois Blanc Island, thence in a southerly direction to the northernmost tip of Point Au Sable in T 38 N, R 2 W, Cheboygan County, and bounded on the Lake Michigan end by a line drawn from the southernmost tip of Seul Choix Point in Schoolcraft County in an easterly direction to the Lansing Shoal Lighthouse, thence to the White Shoal Lighthouse, thence in a southeasterly direction to the westernmost tip of Waugoshance Point in Emmet County, and Green Bay of Lake Michigan, as defined in section 47311, wherever they will not interfere with or take whitefish or lake trout or any other fish protected under the laws of this state.

(d) The department may issue permits to allow the use of gill nets having meshes not less than 1-1/2 inches or more than 1-3/4 inches for taking smelt and alewife for commercial purposes under rules and regulations as the department prescribes.

(e) Gill nets with meshes of not less than 1-1/4 inches or more than 1-3/4 inches may be used to secure bait for use in baiting hook lines, if the nets will not take undersized fish.

(f) Pound nets having meshes not less than 4-1/2 inches in the lifting pot, crib, or pocket and in the heart and tunnel, and having meshes not less than 5 inches in the lead, shall be used for taking whitefish and lake trout. In the pound nets, meshes not more than 3-1/2 inches may be used in 1 side of the pot or in the back, being that part of the pot opposite the tunnel entrance. In fishing with the pound nets, or any other pound nets permitted by this part, the crib or pot and hearts and lead shall extend to or above the surface of the water; the crib or pot and hearts shall be entirely open at the top, the sides or walls of the pot or crib and of the hearts shall be held vertically as near as possible and shall have 5 or more stakes driven into the earth at the bottom of the lake to hold the net in place. A pound net permitted under this part or any part of the webbing of the net shall not be set in water of a depth greater than 80 feet. Pound nets fished through the ice may be held in place by fastening them to the ice without the use of stakes.

(g) Pound nets having meshes not exceeding 3-1/2 inches in the lifting pot or crib and in the tunnel inside the pot or crib, and having meshes not less than 3-1/2 inches in that part of the tunnel outside of the pot or crib

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and in the heart and lead, may be used for taking all legal fish except whitefish and lake trout. Saginaw Bay shall be considered rough fish grounds, and other similar bays may be designated by the department as rough fish grounds if the catch of whitefish and lake trout taken in pound nets and trap nets during the last 2 preceding years averaged less than 12% of the total catch, on which grounds all legal fish caught in pound nets and trap nets having meshes not exceeding 3-1/2 inches in the lifting pot or crib may be taken and all lake trout and whitefish taken in such nets set in all other waters shall be returned uninjured to the waters. The department may issue permits to allow the use of pound nets having meshes less than 3-1/2 inches in that part of the tunnel outside of the pot or crib and in the heart and lead for the taking of smelt and alewife for commercial purposes, under rules and regulations as the department may prescribe, which may include the waters in which the nets may be fished and the period of time during which they may be used.

(h) Trap nets having meshes not less than 4-1/2 inches in the lifting pot, crib, or pocket and in the heart and tunnel and having meshes not less than 5 inches in the lead shall be used for taking whitefish and lake trout. In such trap nets, meshes not more than 3-1/2 inches may be used in the tunnel inside the pot, in either the front, back, or 1 side of the pot for a distance not exceeding 5 feet from the bottom of the net and in that portion of the bottom of the net connected thereto for a distance not exceeding 5 feet, and in the connecting ends for a depth and width not exceeding 5 feet, for the purpose of shoaling fish. These trap nets shall not be used in any of the waters under the jurisdiction of this state except in Lakes Huron and Erie and then only in such a manner that no trap net or any part of the webbing of the net is set in water of a depth greater than 150 feet. Trap nets having meshes as described in this subsection and with no part of the lifting pot or crib over 15 feet in depth may be used to take whitefish and lake trout in Lakes Superior and Michigan in water of a depth not greater than 150 feet.

(i) Trap nets having meshes not exceeding 3-1/2 inches in the lifting pot or crib and in the tunnel inside the pot or crib and having meshes not less than 3-1/2 inches in that part of the tunnel outside of the pot or crib and in the heart and lead may be used for taking all legal fish except whitefish and lake trout. The depth of no part of the lifting pot or crib shall be greater than 15 feet. No such trap nets and no part of the webbing of the net shall be set in water of a depth greater than 50 feet in Lakes Michigan and Superior, or in water of a depth greater than 150 feet in Lakes Huron and Erie. The department may issue permits to allow the use of trap nets having meshes less than 3-1/2 inches in that part of the tunnel outside the pot or crib and in the heart and lead for the taking of smelt and alewife for commercial purposes, under rules and regulations as the department may prescribe, which may include the waters in which such nets may be fished and the period of time during which they may be used. Trap nets having a lifting pot or crib not exceeding 4 feet in depth may have webbing less than 3-1/2 inches in the 2 sides of inner heart.

(j) Any pound net or trap net with meshes in the lifting pot or crib between 3-1/2 and 4-1/2 inches, or any lifting pot or crib of such nets with meshes between 3-1/2 and 4-1/2 inches, is illegal and shall be seized and confiscated when found in use. Hoop nets, fyke nets, drop nets, and gobbler nets are considered under this part to be trap nets.

(k) Seines having wings with meshes of not less than 4 inches, and the pocket or bag, the bag of which shall be not more than 1/4 the length of the seine, having meshes of not less than 2-1/4 inches, may be used to take carp, yellow pickerel, perch, herring, and other rough fish if they do not interfere with or take whitefish or lake trout. All seines in use or set along the shores of the waters listed in section 47301, when unattended, shall have a metal tag securely attached to the seine bearing the commercial fishing license number of the owner or user of the seine. Minnow seines not to exceed 80 feet in length and 8 feet in width may be used in the Great Lakes and connecting waters.

(*l*) The measurement of the mesh of all nets and seines as prescribed in this section shall be by extension measure. The size of the mesh of all nets or netting used in fishing as provided by this part shall be determined by extension measure, and the measurement shall be made of meshes irrespective of where the net or netting is found, whether in the water, on boat, on reel, on dock, or in any other place on land. Extension measure means the distance between the extreme angles of any single mesh, and the measurements shall be taken between and inside the knots. All measurements of the mesh in gill nets or gill netting shall be made with a flexible steel gauge constructed and used as prescribed in this section. All measurements of the mesh of gill nets or gill netting shall be made by inserting in the mesh parallel with the selvage a gauge made of spring steel free from rust, of a length equal to the number of inches prescribed in this section for the mesh measured. The ends of the gauge shall be free of sharp edges or burrs. The gauge shall not be graduated, and any necessary markings shall be placed near the ends of the gauge. The length of the gauge measured parallel with the long edge shall not at any point exceed or be less than the prescribed length by more than 2/1000 of an inch. Its width at any point shall not exceed 9/16 of an inch or be less than 7/16 of an inch. Its thickness shall be such that when it is set vertically on a solid anvil with its upper end loaded with a dead weight between 7-1/2 and 8-1/2 ounces, the gauge shall deflect at its middle 1/10 of its length. The meshes to be

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gauged shall be at least 3 meshes removed from the selvage or side lines and shall not be stretched or manipulated in any way prior to or after the insertion of the gauge, and the same mesh shall not be gauged more than once. In gauging a mesh, the flexible gauge shall be held only by the ends and bent between thumb and forefinger, the bent rule shall then be inserted in the mesh parallel with the selvage and with the collapsed mesh, and finger pressure shall be released immediately, not gradually. If the gauge does not straighten out completely under its own tension within 2 seconds after its release in the mesh without slipping a knot or breaking the twine, the mesh is unlawful, and if the majority of 10 or more meshes selected at random by the enforcement officer from any part or parts of the gill net or from the entire gill net or from any gill netting being gauged are found to be unlawful, the gill net or gill netting if found in use or in or upon any licensed commercial fishing boat shall be seized and confiscated. If found in possession but not in use, any such gill net or gill netting shall be sealed by the enforcement officer with a suitable seal provided by the department and, when once sealed and for so long as the seal remains intact on the net or netting, may be possessed by the owner until disposed of or destroyed by the owner as provided in this section. The gill net or gill netting shall not be disposed of or destroyed except under direction of a conservation officer and, until that time, shall be available for inspection by the department or any conservation officer. Any person who, without authority from the department, breaks or destroys a seal attached to a gill net or gill netting, or any person who refuses or neglects to produce for inspection any sealed gill net or gill netting, or who disposes of or destroys a sealed gill net or gill netting except under the direction of a conservation officer, is guilty of a misdemeanor and upon conviction is subject to the penalty provided for in section 47327. A person shall not use any gill net of a greater measurement than 11 feet in depth in any of the waters of the Great Lakes and the bays of the Great Lakes. In Lake Erie, a gill net shall not be over 36 meshes deep.

(m) Gill nets having meshes not less than 8 inches may be used for taking carp in Wildfowl Bay in Huron County.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2022, Act 34, Imd. Eff. Mar. 15, 2022.

Popular name: Act 451

Popular name: NREPA

324.47310 Taking, catching, or attempting to take or catch fish with gill net, pound net, or trap net in certain waters; transfer of fishing licenses; license or permit for chubs; applicability of section.

Sec. 47310. (1) Except as provided in subsections (2) and (3), within the jurisdiction of this state the holder of a license or permit issued under this part shall not take, catch, or attempt to take or catch any fish with a gill net, pound net, or trap net in Lake Erie and the connecting waters of Lake Erie and Lake Huron, or in the portions of Lake Michigan and Lake Huron located south of a line extending due east and west of the forty-fifth parallel of latitude, or in the rivers and streams which connect with any of the bodies of water described in this subsection from April 15 to September 15.

(2) Subsection (1) does not apply to a license or permit holder who prior to September 15, 1984 holds a license or permit issued under this part to take, catch, or attempt to take or catch any fish with a gill net, pound net, or trap net in those waters described in subsection (1). Fishing licenses described in this subsection are not transferable without the permission of the department.

(3) The department may issue a license or permit that authorizes the holder of the license or permit to take, catch, or attempt to take or catch coregonus, commonly known as chubs, with a gill net, pound net, or trap net as follows:

(a) Except as provided in subdivision (b), in those waters described in subsection (1) that exceed 240 feet in depth.

(b) In those waters of Lake Michigan located south of a line extending due west of the south pier of Grand Haven harbor that exceed 180 feet in depth.

(4) This section does not apply after December 31, 1986.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47311 Closed seasons; setting of nets or hooks; disposition of fish taken during closed season; revocation of license; chilling fish.

Sec. 47311. (1) A person shall not take from any of the waters listed in section 47301 any of the following:

(a) Lake trout, in Lake Huron and Lake Michigan from October 1 to December 10; in Lake Superior from October 5 to November 4.

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(b) Whitefish, in Lake Huron, Lake Michigan, and Lake Superior from November 1 to November 30.

(c) Pike-perch (yellow pickerel), northern pike, from April 1 to May 20. In Saginaw Bay, as defined in section 47339, a person shall not take pike-perch from March 5 to April 10. A person may spear pike-perch through the ice during the closed season in Lake Huron and the connecting waters of the Great Lakes for noncommercial use only.

(d) Perch, from April 15 to May 20. In the waters of Lake Michigan only, a person may take perch from April 25 to June 1. In Saginaw Bay, perch of legal size may be taken at any time. A person may take perch with hook and line at any time.

(e) White bass, in Lake Michigan at any time of the year. A person may take white bass with hook and line at any time.

(f) Suckers, from April 15 to May 20. In Saginaw Bay, suckers may be taken at any time. A person may take suckers with hook and line at any time.

(g) Black crappie, also known as calico bass, in Lake Huron from June 1 to August 25. In Lake Erie, Lake Michigan, and Lake Superior, black crappie may not be taken at any time.

(2) In the waters of Green Bay of Lake Michigan within the jurisdiction of this state, which for the purpose of this part are those waters lying inside a line drawn from the most southerly part of Point Detour to the most easterly points of Sumner and Poverty Islands, thence due south to the Michigan-Wisconsin boundary line, thence along the boundary line to the shore, a person shall not from April 15 to May 20 set, place, or use any gill net having meshes less than 4-1/2 inches. The department may issue permits under such rules and regulations as prescribed by the department to allow the use of gill nets having meshes not less than 2-1/4 inches or more than 2-3/4 inches for taking herring from the waters of Green Bay from April 15 to May 20, if the nets will not interfere with or take any other species of fish. The closed seasons established by this section do not apply to Lake Erie and the lower Detroit River, where nets shall not be set and fish of any kind shall not be taken with nets from January 1 to March 10. A person may take carp with seines at any time from these waters.

(3) In every case, the season shall open and close at 12 noon on the dates named in this section.

(4) All live fish on which the season is closed shall be liberated and returned to the water with as little injury as possible, and any sound, dead fish, on which the season is closed, shall be dressed, brought ashore, and delivered immediately to the department at the department's fishing port, which fish shall be disposed of in the same manner as provided for the disposition of undersized fish in section 47309.

(5) A person shall not set nets or hooks for the taking of lake trout or whitefish before the first day of the open season for taking the fish, and the license of any person shall be immediately revoked upon conviction of unlawfully setting nets before the first day of the open season as provided in this part, and revocation shall prohibit the use of boat and gear by that person during the balance of the year for which a license was issued. A person engaged in the taking of fish for commercial purposes from May 15 to September 15 under this part shall carry sufficient ice and properly chill the fish at the time and place of their removal from the waters.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2022, Act 34, Imd. Eff. Mar. 15, 2022.

Popular name: Act 451

Popular name: NREPA

324.47312 Taking fish for fish culture; commercial fishing; closing.

Sec. 47312. The department may authorize the taking of trout, whitefish, and yellow pickerel for the purpose of fish culture at any time during the open or closed seasons provided in this part, when it is determined by test nets set under the direction of the department that at least 20% of the fish taken are females and at least 40% of these females are ripe and ready to spawn. However, when all spawn needed for state and federal hatcheries has been secured, the department may close all commercial fishing during the remainder of the closed season. The department may close all commercial fishing during the closed season on those grounds that are so located as to prevent proper handling of spawn or where it appears that little or no spawn is being taken.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47313 Spawn; handling; violation of part; unlawful taking of trout.

Sec. 47313. All persons engaged in fishing for whitefish, trout, yellow pickerel, or perch in the waters named in this part shall from the beginning of the spawning season for these fish, such time to be determined by test under the direction of the department, until the beginning of the closed season provided by section

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47311 and before and after the closed season, strip all ripe fish, both male and female, save all of the spawn, properly impregnate it, and deliver it to the department at its fishing port, and all such persons shall have a sufficient number of people on each boat and all the equipment needed properly to save, handle, impregnate, and deliver such spawn. The saving, handling, impregnating, and delivering of spawn shall be done under the direction of the department and in accordance with such regulations and under such supervision as prescribed by the department. However, the department shall not discriminate against any person engaged in fishing during the closed or open season, having on each boat a sufficient number of people and all the equipment needed properly to save, handle, impregnate, and deliver such spawn at any port or fishing ground when it has been determined that fish are ripe for spawning. This determination shall be made by setting test nets on each fishing ground where spawn will be taken. A person engaged in commercial fishing that fails to properly save, handle, impregnate, and deliver such spawn during any period when spawn are ripe is guilty of a violation of this part. A person shall not take from the waters of the Great Lakes any lake or Mackinaw trout during the closed season established by this part for those fish, except by the use of gill nets, trap nets, and pound nets after tests have been made and the percentage of ripe fish secured as provided for in section 47312.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47314 Spawn; propagation; planting of fry; violation of part.

Sec. 47314. The department shall deliver to designated representatives of the United States bureau of fisheries and to the state fish hatcheries as much of this spawn as may be desired by the bureau and state hatcheries for propagation and planting in the waters of the lakes within the jurisdiction of this state, and the remainder of the spawn shall be properly impregnated and planted upon the spawning beds from which it was taken. The persons so fishing shall plant upon the spawning beds the fry hatched from such proportion of the spawn as may have been taken from the fish caught by the persons when directed to do so by the department. A person refusing or failing to comply with this section is guilty of a violation of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47315 Taking fish for fish culture; powers of department or department's designee; sale; disposition of proceeds.

Sec. 47315. The department, or a designee of the department acting in compliance with a permit issued by the department, may take fish in any manner, in any of the waters mentioned in this part, at any and all seasons of the year, for the purpose of fish culture or scientific investigation; may have and hold ripe and unripe fish in order to take spawn from the fish; may sell all of those ripe and unripe fish; and may devote the proceeds of the sales exclusively toward defraying the expenses incurred in taking the fish and fertilizing and planting the spawn from the fish.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2022, Act 34, Imd. Eff. Mar. 15, 2022.

Popular name: Act 451

Popular name: NREPA

324.47316 Shipments; marketing; seizure as illegal.

Sec. 47316. A person shall not ship or transport within this state any fish in packages or containers without plainly and correctly marking each package or container with the name of the consignor and the kinds of fish contained in the package. A railroad company, boat line, express company, motor truck company, aerial freight or express company, or other transportation company or common carrier, or any agent of any such company, or the owner of any boat, airplane, car, truck or other vehicle operated privately or as a common carrier, or the agent or representative of such owners, shall not accept for shipment or transport any package or container of fish unless it is properly marked as prescribed in this section. The presence in any package or container of 10% by weight of any fish that is illegal to ship shall make the entire contents of the package or container subject to seizure as an illegal shipment.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47317 Possession of shipment of illegal fish; construction.

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Sec. 47317. The possession of any package or shipment of illegal fish offered to any common carrier as described in section 47316 shall be construed to be and shall remain in the consignor until delivered to the consignee. However, if any common carrier as described in section 47316 is not able or refuses or neglects to show from whom the consignment of any shipment of fish was received, the shipment shall be considered to be in possession of the common carrier having the shipment in transit, and they may be proceeded against the same as the original owner.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47318 Repacking after opening; detention of legal shipment prohibited.

Sec. 47318. Any package or car of fish in transit opened by the department, if found to be a lawful shipment under this part, shall be repacked in as good a condition as possible. A package or car of fish legally shipped shall not be detained in transit by or for inspection.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47319 Minimum length and weight requirements; unlawful possession and marketing.

Sec. 47319. (1) A person shall not market, possess, transport, or offer for sale at any time in this state, whether caught within or outside of this state, any of the following:

(a) Whitefish, of a length less than 17 inches.

(b) Lake trout, of a weight less than 1-1/2 pounds in the round, and 1-1/4 pounds when dressed.

(c) Ciscowet trout, of a weight less than 1-1/2 pounds in the round.

(d) Perch, of a length less than 8-1/2 inches in the round and filleted perch of a weight less than 1-3/4 ounces; perch with heads and tails off of a length less than 5-1/2 inches.

(e) Suckers, of a length less than 14 inches.

(f) Northern pike, of a length less than 20 inches.

(g) Catfish, of a length less than 17 inches. Catfish of not less than 15 inches in length may be taken from the waters of Lake Erie.

(h) Pike-perch (yellow pickerel), of a length less than 15-1/2 inches in the round and filleted pike-perch (yellow pickerel) of a weight less than 9 ounces. Pike-perch (yellow pickerel) not less than 13 inches in length may be taken from Lake Erie. Pike-perch (yellow pickerel) not less than 13 inches in length taken from the waters of Lake Erie may be sold or offered for sale at a dock or docks along Lake Erie. Any such pike-perch (yellow pickerel) of a length less than 15-1/2 inches shall not be otherwise offered for sale, bartered, or sold within the limits of the state.

(i) Blue pike, of a length less than 11 inches.

(j) White bass, of a length less than 9 inches.

(k) Sturgeon, of a length less than 42 inches.

(*l*) Black crappie, of a length less than 7 inches.

(2) Imported commercial fish species and game fish if of a size or weight or species not prohibited by the laws of the state or country where caught may be possessed, transported, offered for sale, and marketed in this state, if either of the following conditions are met:

(a) The fish are processed outside the state and sold to consumers in the same package as imported, and each package is labeled as a product of the state or country where the fish were caught.

(b) A chain of satisfactory evidence of importation is maintained through to the retailer who sells to the consumer, in a manner prescribed by the department.

(3) The measurement of the length of a fish within the meaning of this part shall be taken in a straight line from the tip of the snout to the utmost end of the tail fin. For the purpose of this part, a "fish in the round" is a fish that is entirely intact as it was taken out of the water with no part removed by dressing. A "dressed fish" is a fish with the head attached but with the gills and the entire gut or viscera (stomach, liver, intestine, gonads) removed. A "filleted fish" is a fish with the entire head, gut or viscera, gills, bones, scales, and all fins removed. The measurements of length and weight as prescribed in this part apply without any allowance made for the shrinkage of the fish. A person shall not possess on any boat, or on any other conveyance used to reach the nets from shore, any meat grinders or similar devices by the use of which the identification of the species or measurement of the individual fish is impossible. A person shall not bring ashore any fish that is so mutilated that identification and measurement is impossible. A person shall not market, possess, or offer for sale any fish illegally taken from the waters defined by this part.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47320 Undersized fish; return to waters; definition.

Sec. 47320. A person engaged in lifting pound nets, trap nets, or seines in the waters of this state shall not take from the waters of this state any undersized fish, and all undersized fish found in the nets fished in those waters shall be returned to the waters with as little injury as possible by the person or persons lifting the net or nets. For the purpose of this part, undersized fish are fish of a smaller size than established by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47321 Taking of certain fish by commercial fishing devices prohibited; return to waters.

Sec. 47321. A person shall not take or catch with any kind of a net or other device used in commercial fishing in any of the waters mentioned in this part, any of the following:

(a) Largemouth black bass, Huro salmoides.

(b) Smallmouth black bass, Micropterus dolomieu.

(c) White crappie, also known as strawberry bass, Pomoxis annularis.

(d) Bluegill, Lepomis macrochirus.

(e) Common sunfish, Lepomis gibbosus.

(f) Brook or speckled trout, Salvelinus fontinalis.

(g) Rainbow and steelhead trout, Salmo gairdnerii.

(h) Brown and Loch Leven trout, Salmo trutta.

(i) Muskellunge, Esox masquinongy.

(2) In addition to the prohibition in subsection (1), a person shall not sell or offer for sale or possess at any time any of the fish listed in subsection (1) unless otherwise provided by law. Any such fish, whether dead or alive, shall at once be returned to the waters from which taken by the person or persons taking the fish.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.47322 Marking of location of nets and devices.

Sec. 47322. A person shall not set or use nets, set hook lines, or any other continuous device in any of the waters mentioned in this part without marking its location by buoys and identifying the nets or other devices by showing the license number in plain figures upon the bowls of the buoys of the person using the nets, set lines, or other devices; the license number to be attached to all gill net buoys; to the stakes at the heart or pot of pound nets; to the lifting buoy of trap nets, where the heart and pot are set below the surface of the water; to a buoy at the point of heart or pot of fyke nets where the cover of the hearts or pots comes to the surface of the water. However, when any of the nets, set hook lines, or other devices are set under the ice, their location shall be marked by a stake extending not less than 4 feet above the ice at each end of the net or nets, set hook lines, or other continuous device and the license number, in legible figures, shall be attached to each stake or to the ends of the net or nets, set hook line, or other device.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47323 Inspection before shipment.

Sec. 47323. Every person taking fish for market in any of the waters mentioned in this part shall bring them to some port or place in this state where they may be inspected before shipping. However, the department may grant permission to take fish to ports or places in other states when the commercial fishing laws of the other states substantially conform to the commercial fishing laws of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47324 Power of department to take fish for cultural purposes; price; basis.

Sec. 47324. The department may take, for fish cultural purposes only, fish taken by any person fishing in

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the waters of this state, and when so taken the fish shall be weighed and shall be paid for. The price shall be based on the Chicago, Detroit, and New York markets, or at such other price as may be agreed upon by the person or persons taking the fish and the department, plus the cost of transportation, if any.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47325 Daily report of catch; failure to file; penalty; suspension or denial of license.

Sec. 47325. (1) A person taking fish for the market in any of the waters mentioned in this part shall keep an accurate report of each day's catch in a format determined by the department. The department may issue orders requiring catch activity reports to be submitted twice monthly and specifying the information required, consistent with any consent decree, decree, federal court order, memorandum of understanding, or other legally binding agreement. Catch activity reports must be submitted twice monthly to the department, except that all commercial fishers must report more frequently if a consent decree, decree, federal court order, memorandum of understanding, or other legally binding agreement establishes more frequent reporting.

(2) A person who fails to submit a report required under this section is responsible for a state civil infraction and shall be ordered to pay a civil fine as follows:

(a) For the first violation during a calendar year, $100.00.

(b) For a second or subsequent violation during a calendar year, $200.00.

(3) The license of any person who fails to submit reports for 2 or more reporting periods, and who has been cited by the department for each violation, may be suspended by the department until the delinquent reports are submitted to the department. The boat and nets for which a license is suspended shall not be used for commercial fishing by any person until the suspension has been lifted and the license restored. A person shall not sell or transfer ownership of a license suspended by the department until the suspension has been lifted and the license restored. A person who fails to make the report or reports as described in this section must be denied a new license or a renewal of that person's license until this part has been complied with.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2023, Act 239, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

324.47326 Report of fish in possession by commercial fishermen; contents; inspection; prohibited possession.

Sec. 47326. Every person licensed to take fish under this part, at the close of the 24-hour period immediately following the close of the respective open seasons provided for by this part, shall report to the department, on forms provided by the department, the kinds of fish and number or weight of fish possessed at the close of the 24-hour period. Any subsequent shipment or sale, or both, of such fish shall be reported immediately to the department, on forms furnished by the department, showing the amount and kinds of fish shipped or sold, the date of the shipment or sale, and the name and address of the person or persons to whom the fish were shipped or sold. All fish in possession upon which the season is closed shall be made available for inspection at any reasonable time upon the demand of the department. A person shall not possess or ship, transport, or sell any fish upon which the season is closed and which have not been reported as provided in this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47327 Violation of MCL 324.47301 to 324.47324; penalty.

Sec. 47327. A person who violates sections 47301 to 47324, for the first offense, is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not less than $25.00 or more than $100.00, or both, and the costs of prosecution. A person who violates sections 47301 to 47324 a second or a subsequent time, if charged as a second or subsequent offense in the complaint, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $100.00, or both, and the costs of prosecution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2020, Act 385, Eff. Mar. 24, 2021;—Am. 2023, Act 239, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

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324.47328 License to use fishing devices; sport trolling; licensing boats for hire; license not required under certain conditions in lake St. Clair.

Sec. 47328. A person shall not use any kind of a boat, tug, or launch, except when used in hook and line fishing, or any kind of net or nets, set hook lines, or commercial trolling rigs for the purpose of taking, catching, killing, or transporting fish in any of the waters bordering on this state, regardless of whether for commercial purposes or for personal use, without first having applied for and been issued a license for that activity, in accordance with this part. A license, except as otherwise provided by law, is not required of persons engaged in sport trolling in these waters, except that the owners of boats operated with either an inboard or outboard motor and offered for hire in sport trolling for lake trout shall obtain a license for each boat. A license, except as otherwise provided by law, is not required of persons engaged in taking fish with set lines in lake St. Clair as provided in section 47302.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47329 Commercial fishing licenses; application; contents; "overall length" defined; fee.

Sec. 47329. (1) A person desiring a license under this part shall submit an application for that license to the department on oath when required on a form provided for that purpose by the department, accompanied by the fee required under this part. The application shall state the name and residence of the applicant, the manner in which he or she proposes to fish, the name or number of the tug, launch, boat, scow, or skiff, the overall length and the gross tonnage of the boat, the value of the boat, the name of the port from which the boat will operate, the number and kind of net or nets and hooks or other gear which he or she intends to use, the value of the buildings and grounds, and such other information as may be required for statistical purposes.

(2) As used in this section, "overall length" means the minimum distance between the extreme outside end of the bow and the stern considering the nearest whole number of feet. The amount of the license fee to be paid shall be based on the overall length of the boat or boats, if a boat is used.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47330 License to use fishing devices; issuance fees.

Sec. 47330. (1) The department, when application is made by any person in accordance with section 47329, shall issue the license provided for in this part upon payment by the applicant, if a resident of this state, of the following fees:

(a) For fishing with set hook lines or nets, with or without a boat not exceeding 16 feet in overall length, or a boat used in sport trolling for lake trout for hire, $16.00 per year. Any person using more than a single crew consisting of not more than 4 people in fishing nets or hooks under the ice shall secure a license for each crew member. The department, upon proper application, shall issue with each license to fish nets or set hook lines under the ice 4 identification cards bearing the number of the license and the year for which issued. Each member of a single crew engaged in the setting, lifting, or pulling of nets, set hook lines, or other devices, set under the ice under authority of the license, shall carry the card on his or her person at all times while so engaged and upon demand of any conservation officer shall exhibit the card. Minnow seines and dip nets are exempt from this section.

(b) For each rowboat, sailboat, powerboat, motorboat, steamboat, or scow used in catching, killing, taking, or transporting fish caught with nets, set hook lines, or trolling rigs, $3.00 per foot overall length, and $1.00 per ton additional for each ton over 10 gross tons. A license is not required for a scow used only in transporting nets. Each license for a boat propelled by sail, steam, gas, or other mechanical power entitles the licensee to operate a rowboat not exceeding 16 feet in overall length. Each rowboat shall bear the same identification as the boat for which the license is issued and shall be used only while attending the boat. A resident person shall not pay less than $50.00 or more than $200.00 on any 1 boat in any 1 license year.

(2) For a nonresident of this state, the fee shall be 5 times the fee required of a resident in accordance with the schedule prescribed in this section. A license under section 47329 shall not be issued to a nonresident for fishing in Lake Erie and Lake Huron except at the discretion of the department.

(3) For the purpose of this part, a nonresident is any person who has not actually resided in this state for 3 years immediately prior to the date of application for a license, any person applying for a license for use of nets or a boat registered or of record at a port outside of the state, or any firm, company, copartnership, partnership, association, or corporation in which any of their stock, boats, nets, and fishing equipment has

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been owned by nonresident persons at any time during the 3 years immediately prior to the date of application for a license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47331 Commercial fishing licenses; form; tag attached to boat; fee; transfer procedure.

Sec. 47331. (1) Upon the payment of the fee provided for in section 47330, the department shall have prepared and shall issue to a person entitled to the same, a printed or written license signed by the department setting forth the date of issuing the license, to whom issued, the date on which it will expire, the name or number, and the kind of boat, tug, or launch, including the number of and kind of net or nets for which the license was issued. The department shall also issue, with the license, a suitable tag bearing the license number and the year for which issued which must be attached to the boat to facilitate identification. The department, upon application and the payment of a fee of $1.00, may do 1 or more of the following:

(a) Permit the transfer of a license to a larger or a smaller boat or to any boat, tug, or launch during a period of time that the licensed boat, tug, or launch is disabled and undergoing repairs.

(b) In case of the sale or the transfer of the title of any licensed boat, transfer the license to the new owner or owners. However, if the sale or transfer is to a nonresident as determined by the preceding sections, then the difference between the fee for a resident license and a nonresident license shall also be paid.

(c) In case of the loss of a vessel by fire, collision, or otherwise, for which a license has been issued, transfer the license to any similar boat to which the licensee may acquire title.

(2) Whenever a license is transferred to a larger boat, the difference between the fee paid for the license and the fee required by this part for that boat shall also be paid. A refund shall not be made when a license is transferred to a smaller boat. However, any boat to which a license has been transferred as provided in this section shall be used in the taking, catching, or killing of fish or in the setting or pulling of nets, set hook lines, or other commercial fishing devices, only within a radius of 50 miles of the port designated in the license as originally issued, and not more than 1 license shall be issued for any 1 boat in any 1 calendar year. The owner of any licensed boat acquired from the estate of a deceased licensee or as a result of bankruptcy proceedings may, in addition to having the license transferred in his or her name, have a port of his or her choice designated in the license.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47332 Licenses; expiration date; record of applications and licenses; disposition of fees.

Sec. 47332. All licenses expire on December 31 in the calendar year for which they were issued. The department shall keep a record of all applications and licenses. On the first day of each month, the department shall pay over to the state treasurer all money received by the department under this part, and the money shall be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010 and shall be disbursed by the state treasurer for services of the department and the department's expenses in enforcing the commercial fishing laws, for the protection and propagation of fish, and for the purchase of patrol boats and other apparatus to be used for that purpose, and as otherwise provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.47333 Wholesale fish market or house; license; fee; label on containers; record; purchase reports; failure to submit reports or records; civil infraction; suspension or denial of license.

Sec. 47333. (1) A person who deals in fish by operating a wholesale fish market or fish house, or who solicits the purchase of or buys fish for wholesale distribution, shall secure a license from the department. Each license expires on December 31, and the fee for the license is $5.00.

(2) A person holding a license under this section shall not transport or cause to be transported, or deliver or receive for transportation, any package or parcel containing any fish or carcass or part of any fish or carcass

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unless the package or parcel is labeled in plain English on the address side of the package or parcel so as to disclose the name and address of the consignor, the name and address of the consignee, and the number of pounds of each kind of fish contained in the package or parcel.

(3) A person licensed under this section may, at any time, sell, purchase, or barter, or have in the person's possession or under the person's control for the purpose of sale or barter, any commercial fish. However, the person shall comply with section 47319 at all times. A person licensed under this section shall keep a separate record of the purchase of fish in a form as required by the department.

(4) A person licensed under this section shall submit reports of all purchases of fish to the department in a format determined by the department. The department may issue orders requiring purchase reports to be submitted twice monthly and specifying the information required, consistent with any consent decree, decree, federal court order, memorandum of understanding, or other legally binding agreement. Purchase reports must be submitted twice monthly to the department, except that all commercial fish wholesalers must report more frequently if a consent decree, decree, federal court order, memorandum of understanding, or other legally binding agreement establishes more frequent reporting.

(5) A wholesale fish dealer that fails to submit a complete record as required under this section is responsible for a state civil infraction and subject to the following fines:

(a) For the first violation during a license year, $100.00.

(b) For a second or subsequent violation during a license year, $200.00.

(6) If a wholesale fish dealer fails to submit 2 or more records required under this section and has been cited by the department for each violation, the department may suspend the person's wholesale fish dealer license until the delinquent reports are submitted to the department. The department shall send notification of the suspension to the wholesale fish dealer.

(7) The department shall deny a new wholesale fish dealer license or renewal of a wholesale fish dealer license to a person that fails to submit a record required under this section until the record is submitted.

(8) A person shall not falsify any information contained in a record required under this section.

(9) The department shall not issue a wholesale fish dealer license to a person that would occupy the same business location as a wholesale fish dealer whose license is suspended.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2023, Act 239, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

324.47334 Violation of sections; penalties.

Sec. 47334. Any person who violates sections 47328 to 47333 is guilty of a misdemeanor and upon conviction for the first offense shall be punished by imprisonment for not more than 60 days, or a fine of not less than $25.00 or more than $100.00 and the costs of prosecution, or both. Each violation is a separate and distinct offense. In addition to the penalties provided in this section, the license of any person convicted of violating section 47333 may be revoked by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47335 Nets and seines; prohibited use in certain waters of Lake Superior.

Sec. 47335. A person shall not take or catch fish of any kind with gill nets, pound nets, trap nets, seines, or other device of any kind except with hook and line and spear in the waters of Lake Superior within a radius of 1/2 mile from the mouth of the Two Hearted river located in T 50 N, R 9 W, Luce county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47336 Grand Traverse bay.

Sec. 47336. A person shall not take or attempt to take fish with seines or nets of any kind in that part of Grand Traverse bay lying southerly of a line drawn due east and west through Mission Point light, Grand Traverse county, said waters being further described as the east arm and the west arm of Grand Traverse bay. A person may take chubs with gill nets in any part of Grand Traverse bay where the depth of water exceeds 300 feet.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.47337 Charlevoix bay.

Sec. 47337. A person shall not take or catch, or attempt to take or catch, any species of fish with gill nets, pound nets, trap nets, seines, set hook lines, or any other device whatsoever, except a hook and line and spear as permitted by law, or set any such nets, seines, set hook lines, or devices, in the waters of Lake Michigan within a radius or distance of 2 miles from Charlevoix south pierhead light, located at the mouth of the Pine river in Charlevoix county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47338 Setting or using nets near public docks or piers prohibited; exceptions.

Sec. 47338. A person shall not set or use any kind of a net mentioned in this part, except seines in the taking of noxious fish, within a radius of 1/2 mile of any public dock or pier from which the public is not excluded from fishing with hook and line. However, a person may set nets under the ice for the purpose of taking all fish, except perch, within the 1/2 mile radius of any such dock or pier. Public docks for the purpose of this part include all docks except docks owned by individuals and used exclusively for their own boats. This section does not apply to St. James Harbor, Beaver Island, and Charlevoix county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47339 Saginaw bay.

Sec. 47339. As used in this part, "Saginaw bay" means those waters lying inside of a line drawn from Tawas point lighthouse in Iosco county to a monument which shall be erected by the department on Oak point in Huron county, including the waters of Tawas bay, in which area nets may be set and used as provided by law. However, nets shall not be set or used in any of the following locations:

(a) Within that area between the shoreline and a line drawn from a monument which shall be erected by the department on Fish point in Tuscola county to a monument which shall be erected by the department on the westerly point of Stony island, thence to a monument which shall be erected by the department on the westerly point of North island, thence to a monument which shall be erected by the department on the westerly end of Sand point in Huron county. However, nets may be used in that part of this area lying southerly of the south line of section 21, town 16 north of range 9 east, extending due west. Seines not exceeding 5 feet in depth and 100 rods in length may be used in that part of this area lying northerly of the south line of section 21, town 16 north, range 9 east, extending due west, for the taking of noxious fish.

(b) Within that area enclosed within and bounded by the following lines: beginning at the monument on Sand point described in subdivision (a), thence for a distance of 1 mile along a line drawn from that monument to a monument to be erected by the department on the easterly point of Little Charity island, thence 218 degrees along a line to a point where it would intersect a line drawn from the Gravelly point shoal lighthouse to the monument on North island described in subdivision (a), thence southeasterly along the latter line to the monument on North island, thence northeasterly to the point of beginning; the object being to provide a channel approximately 1 mile in width for the free passage of fish.

(c) Within that area of Tawas bay bounded on the south by a line extending from the U.S. fog signal building on Tawas point due west to the mainland.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47340 Marquette Bay.

Sec. 47340. A person shall not drive stakes for fishing purposes, or set, place, or extend any pound, trap, stake, or set net of any kind, or any other device, except hook and line and spear as permitted by law, to take or catch fish in the waters of Marquette Bay, beginning with a line from the Presque Isle breakwater on the S.S.E. period line to east side of section 8 opposite the mouth of the Chocolay river.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.47341 Grand Marais harbor.

Sec. 47341. Commencing June 15, 1962, a person shall not place or set any kind of net or set hook lines or take or attempt to take any kind of fish with a net or set hook line in the waters of east bay and west bay, Grand Marais harbor, and in the waters of Lake Superior within 2 miles on either side of the range lights at the entrance to Grand Marais harbor, extending out to 30 fathoms of water, all in Alger county, Michigan.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47342 False Presque Isle bay.

Sec. 47342. A person shall not set nets or seines of any kind or description west of a certain line commencing at the 1/4 post between sections 13 and 24 in town 33 north, range 8 east; thence north across the bay of False Presque Isle to 1/4 post between sections 12 and 13 in said town 33 north, range 8 east, in Presque Isle county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47343 Presque Isle harbor.

Sec. 47343. A person shall not take or attempt to take fish with seines, set hook lines, or nets of any kind in the waters of Presque Isle harbor and that portion of Lake Huron within a line drawn between Presque Isle light in section 8, town 34 north, range 8 east, and South Albany Point in section 22, town 34 north, range 8 east, Presque Isle county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47344 Thunder Bay.

Sec. 47344. A person shall not catch or take fish of any kind with a net or other device of any kind, except hook and line and spear as permitted by law, from that part of Thunder Bay in Lake Huron, lying inside, or south and west of a straight line extending from the mouth of Thunder Bay river to the center of Surplur Island; thence south and east to the north and south line between sections 20 and 21 in township 29 north, of range 9 east, in the state of Michigan, where said line intersects the waters of the said lake, excepting therefrom that part of said Thunder Bay in front of sections 2, 11 and 12 in township 29 north, of range 8 east, and sections 34 and 35 in township 30 north, of range 8 east. However, no net or other device of any kind, except hook and line and spear as permitted by law, shall be used by any person to take or catch fish in that part of the waters of said Thunder Bay within 1/2 mile of the mouth in any direction of any stream that discharges its waters into that portion of said Thunder Bay.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47345 Whitney bay.

Sec. 47345. A person shall not fish with, use, or set any seines, gill nets, or any form of pound, trap, sweep, or set nets, or any similar device for taking fish in Whitney bay or any waters tributary to that bay in the township of Drummond, county of Chippewa.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47346 Pike Bay and Island Harbor.

Sec. 47346. A person shall not take or catch fish of any kind with gill nets, trap nets, pound nets, seines, or other device of any kind, except hook and line, in that part of upper Lake Huron known as Pike Bay and Island Harbor within a line drawn from the most southerly point of section 17, town 41 north, range 5 east, on Drummond Island to the most westerly point of Espanore Island; thence southerly and easterly along the shore to the most southerly point of said Espanore Island; thence due east to the mainland of Drummond Island. However, a person may use spears through the ice of those waters during the months of January and February for taking carp, suckers, mullet, redhorse, sheepshead, lake trout, smelt, northern pike, muskellunge,

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sturgeon, whitefish, ciscoes, pilot fish or menominee whitefish, catfish, bullheads, herring, perch, pike-perch, shad, dogfish, and garpike.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47347 Straits of Mackinac.

Sec. 47347. A person shall not take or catch fish of any kind with gill nets, trap nets, seines, or other device of any kind, except hook and line and spear as permitted by law, in that part of the Straits of Mackinac, within 1 mile from the shoreline, from a point where the section line between sections 22 and 23, town 40 north, of range 4 west intersects the Straits of Mackinac, and running from there easterly to where the west line of the city limits of the city of St. Ignace intersects the Straits of Mackinac, and within 1/2 mile from there easterly and northerly to where the north line of the city of St. Ignace intersects Lake Huron or the Straits of Mackinac.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47348 Les Cheneaux channels.

Sec. 47348. (1) A person shall not fish with seines, gill nets, or any form of trap nets, or in any manner except by hook and line, the channels known as the Les Cheneaux channels, in Mackinac county, or in the entrances to the channels or in the waters adjacent to the channels, within a line drawn as follows: Beginning at the southerly extremity of the point of land on the easterly side of Dudley bay; running thence southwesterly in a straight line to the southeasterly extremity of Beaver Tail Point; thence westerly in a straight line to the southeasterly point of Crow island; thence southwesterly in a straight line to the extreme southeasterly point of Boot island; thence southwesterly in a straight line to Point Fuyards; thence northwesterly in a straight line to the extreme southerly part of St. Martin's Point. However, pound nets of legal mesh and size, for the taking of whitefish and lake trout, may be set and used in any place in the protected waters, except in that portion of Prentice bay lying north of a line drawn from the south end of Scotty's Point to the south end of Whitefish Point and in the channels known as the Les Cheneaux channels, in Mackinac county, or in the entrances to the channels, lying west of the east line of section 34, in town 42 north, range 1 east, said line running north and south. Gill nets of not more than 150 feet in length and of the size mesh established in section 47309 for taking herring and menominees may be legally used and set in the protected waters, at any place or places where nets for the taking of whitefish and lake trout are permitted by this part, during the months of January, February, and March of each year, for the purpose of taking herring and menominees for commercial purposes. A person may use spears through the ice of such waters during the months of January and February for taking carp, suckers, mullet, redhorse, sheepshead, lake trout, smelt, northern pike, muskellunge, whitefish, ciscoes, pilot fish or menominee whitefish, catfish, bullheads, herring, perch, pike-perch, shad, dogfish, and garpike. If perch, black bass, northern pike, or pike-perch are taken in any of the nets described in this section used for the taking of whitefish and lake trout, menominee, or herring, as permitted by this part, they shall be immediately released and placed back in the water.

(2) A person shall not take more than 50 perch by hook and line and spear from waters described in this section, in any 1 day, and the sale of any perch, black bass, northern pike, or pike-perch caught or taken from those protected waters by hook and line and spear, is unlawful.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47349 Fishing in certain water of upper Lake Huron with fishing devices; prohibition; exceptions; spearing through ice for certain fish; open season.

Sec. 47349. A person shall not take or catch fish of any kind with gill nets, pound nets, trap nets, seines, or other device of any kind, except a hook and line, in those waters of upper Lake Huron within the following boundaries: Beginning at a point where the north line of town 41 north intersects the shore of the mainland south of the village of Detour, in Chippewa county; thence due east to Drummond Island; thence northerly and easterly along the shore of Drummond Island to a point where the section line between sections 23 and 24, town 43 north, range 6 east, on Poe Point, meets the waters edge; thence northwesterly to a point on the international boundary line where it intersects a line drawn due north from the most westerly end of Chippewa Point; thence due north to the international boundary line; thence westerly along said international boundary

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line to a point where it intersects a line drawn due east through the most southerly point of Little Lime Island; thence due west from said point to the mainland; thence following the shore of the mainland southeasterly to the point of beginning. However, nets with meshes not less than 4-1/2 inches and set hook lines may be used from December 15 to April 1 of each year in these waters except in that portion of Potagannissing Bay lying southerly of a line drawn from the most northerly part of Dix Point on section 19, town 42 north, range 5 east, to Chippewa Point on section 30, town 43 north, range 6 east, on Drummond Island, Chippewa county, where no device for taking fish other than a hook and line shall be used at any time. A person shall not take or catch fish of any kind with gill nets, pound nets, trap nets, seines, or other device of any kind, except a hook and line, in the waters on the south side of Drummond Island lying north of a line beginning at the most southerly part of Cream City Point on section 22, town 41 north, range 5 east, thence easterly to Traverse Point, thence easterly to Scammon Point, thence southeasterly to the most southerly part of Long Point on section 29, town 41 north, range 7 east. A person may use spears through the ice of such waters during the months of January and February for taking carp, suckers, mullet, redhorse, sheepshead, lake trout, smelt, northern pike, muskellunge, sturgeon, whitefish, ciscoes, pilot fish or menominee whitefish, catfish, bullheads, herring, perch, pike-perch, shad, dogfish, and garpike.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47350 Little Traverse bay.

Sec. 47350. A person shall not take or catch fish of any kind with gill nets, trap nets, seines, or other device of any kind, except hook and line and spear as permitted by law, and except the dipping of minnows, as defined in section 48728, by hand net and the taking of minnows by glass trap, in that part of Little Traverse bay on Lake Michigan, lying east of the line common to sections 9 and 10, township 34 north, of range 6 west, extended northerly across the bay to meet the line common to sections 9 and 10, township 35 north, of range 6 west, all in Emmet county. Minnows may be taken or caught from the waters above-described by use of a seine, hand net, or glass trap except seines may not be used within 100 feet of any public dock from which the public is not excluded from fishing with hook and line.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47351 Little Bay de Noquette.

Sec. 47351. A person shall not fish with, use, or set any seines, gill nets, or any form of pound, trap, sweep, or set nets, or any like device, or use any spear, night line, or set line for taking fish in any of the waters of this state known as Little Bay de Noquette, which means those waters of Little Bay de Noquette and tributaries north from a line drawn from the extreme end of Saunders' Point on the west shore to the extreme end of Squaw Point on the east shore. However, a person may from December 15 to April 1 of each year take suckers in any of the waters described in this section by means of pound nets, if the pound nets are lifted only under the supervision of representatives of the department. A person may use spears through the ice of such waters during the months of January and February for taking carp, suckers, mullet, redhorse, sheepshead, lake trout, smelt, northern pike, muskellunge, sturgeon, whitefish, ciscoes, pilot fish or menominee whitefish, catfish, bullheads, herring, perch, pike-perch, shad, dogfish, and garpike.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47352 Garden bay.

Sec. 47352. A person shall not take or catch fish of any kind with gill nets, pound nets, trap nets, seines, or other device of any kind, except hook and line and spear as permitted by law, in the waters of Garden Bay on Lake Michigan within a radius of 1-1/4 miles from the mouth of Garden Creek, Delta county. However, nets as used in Big Bay De Noc for taking smelt may be used also in Garden Bay to take smelt if they do not take or injure any other species of fish.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47353 Little Bay de Noquette, Big Bay de Noquette, and Green Bay.

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Sec. 47353. A person shall not in the waters of this state known as Little Bay de Noquette and Big Bay de Noquette, and that part of Green Bay lying north of a line drawn from the point where the south boundary of Delta county (being the south line of township 37 north) meets the west shore of Green Bay, thence easterly to the most southerly point of St. Martin Island, thence northeasterly through the most southeasterly point of Poverty Island to the most southeasterly point of Summer Island (also called Big Summer Island), thence northerly along the shore of Summer Island to the most easterly point thereof, thence northerly to the navigation buoy off the south end of Point Detour:

(a) Fish, set, use, or maintain in the water any pound net designed for the impounding of fish, unless the pound net is held in place solely by 10 or more stakes driven firmly into the ground beneath the water.

(b) Fish, set, use, or maintain any pound net in water having a depth greater than 50 feet.

(c) Fish, set, or have in the water any trap net, hoop net, fyke net, drop net, or gobbler net at any time from April 15 to May 20.

(d) Fish, set, use, maintain, or permit to remain in the water any net of any description, except minnow seines, between July 1 and September 10, in whole or in part within any of the areas described as follows:

(*i*) In Big Bay de Noquette north of a line from the southernmost tip of Porcupine Point to the westernmost tip of Valentine Point.

(*ii*) In Little Bay de Noquette between the westerly shore and a line drawn from the extreme end of Saunders Point to the extreme end of Squaw Point and thence to the mouth of the channel into the Gladstone yacht harbor.

(*iii*) In Little Bay de Noquette and Green Bay between the westerly shore and a line drawn from the most easterly point on Portage Point 1 and 1/2 miles south, thence in a general southerly direction parallel to the westerly shoreline and 1 and 1/2 miles out from shore to a point where the township line between town 37 n and 38 n, r 23 w intersect, thence west to the shore.

(e) Subdivisions (a) and (b) do not apply to or restrict the fishing, setting, use, or maintenance of pound nets otherwise lawfully used for the taking of smelt or herring during the winter months under the ice.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47354 Keweenaw bay.

Sec. 47354. A person shall not take, catch, or attempt to take or catch any fish with seines, gill nets, or any form of pound or trap nets or in any manner except by the use of hook and line and spear as permitted by law in the waters of L'Anse bay, which are defined as follows: South of an east and west line beginning at the meander corner between sections 25 and 36, township 51 north, range 33 west, and extending west to the meander corner between section 27 and section 34, township 51 north, range 33 west. In the remaining waters of Lake Superior inside of a line extending from Manitou light on Manitou island, Keweenaw county, to the Huron island light on west Huron island and thence to the mouth of the Huron river in township 52 north, range 29 west, Marquette county, excluding Huron bay as defined in section 47356, from January 1 to October 31 in each year a person shall not set or use in waters between 120 feet in depth and 300 feet in depth any gill net with meshes less than 4-1/2 inches, except for taking herring when the net is floated so that the lower line of the net is not more than 42 feet below the surface of the water, and for the taking of bait for set hook lines in accordance with section 47309.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47355 Portage Lake ship canal.

Sec. 47355. A person shall not take, catch, or attempt to take or catch any fish with seines, gill nets, or any form of pound nets or trap nets or in any manner except by the use of hook and line in those waters of Houghton county, commencing at the northerly entrance to Portage Lake and extending through Portage Lake ship canal and within 1/2 mile in all directions from the canal entrance inside of the breakwaters. However, a person may use spears through the ice of such waters during the months of January and February for taking carp, suckers, mullet, redhorse, sheepshead, lake trout, smelt, nothern pike, muskellunge, sturgeon, whitefish, ciscoes, pilot fish or menominee whitefish, catfish, bullheads, herring, perch, pike-perch, shad, dogfish, and garpike.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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324.47356 Huron bay.

Sec. 47356. A person shall not take, catch, or attempt to take or catch any fish with seines, gill nets, or any form of pound or trap nets or in any manner except by the use of hook and line in the waters of Huron bay, which within this part mean: South of an east and west line beginning at the meander corner between sections 14 and 23, township 52 north, range 31 west, and running west to the meander corner between sections 15 and 22, township 52 north, range 31 west, Baraga county. A person may use spears through the ice of those waters during the months of January, February, and March for taking carp, suckers, mullet, redhorse, sheepshead, lake trout, smelt, northern pike, muskellunge, sturgeon, whitefish, ciscoes, pilot fish or menominee whitefish, catfish, bullheads, herring, perch, pike-perch, shad, dogfish, and garpike.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47357 Duncan Bay.

Sec. 47357. A person shall not use any kind of a net, set hook line, or other device for the purpose of taking or catching fish in the waters of Duncan Bay, Lake Huron, which as used in this part mean all those waters of Duncan Bay, Lake Huron, lying south of a line drawn west from Cheboygan Point lighthouse on Lighthouse Point to a point where the easterly boundary line of Beaugrand township meets the westerly boundary line of the corporate limits of the city of Cheboygan extended due north would intersect the waters of Lake Huron. However, a person may take or catch fish in these closed waters with hook and line or spears in accordance with the laws of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47358 Munising and Murray bays.

Sec. 47358. A person shall not take or catch fish of any kind in any manner except with hook and line and spear as permitted by law in any of the waters of Munising and Murray bays of Lake Superior which as used in this part mean those waters of Munising and Murray bays of Lake Superior lying westerly of a line drawn from Sand Point in section number 19, town 47 north, range 18 west, to the eastern end of the eighth line dividing lots 1 and 2 in the northeast quarter of section number 24, town 47 north, range 19 west, and easterly of a line drawn from the southern end of the quarter line between lots 2 and 3 of section number 22, town 47 north, range 19 west, to the northern end of the quarter line between lots number 2 and 3 in section number 27, town 47 north, range 19 west, and fish so taken shall not be bought or sold.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47359 Bait; taking with nets.

Sec. 47359. The taking of minnows as defined in section 48728 and other small fish for bait with nets not otherwise prohibited by law is not a violation of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47360 Construction of part.

Sec. 47360. Nothing contained in this part authorizes the taking, selling, or transporting of fish, the use of illegal nets, or the setting of nets at a place or places or at times otherwise forbidden by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47361 Violation of MCL 324.47335 to 324.47360; penalty; suspension or revocation of permit or license; issuance or reinstatement.

Sec. 47361. (1) A person who violates sections 47335 to 47360 is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not less than $10.00 or more than $100.00 and costs of

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prosecution, or both. The license of any person convicted of 3 violations of this part or other acts or parts regulating commercial fishing in any 1 license year shall be automatically revoked and canceled for the balance of the license year for which issued, and such a revocation prohibits the use of boats, nets, or other gear by any person during the balance of the year for which the license was issued.

(2) Subject to subsection (3), if any permit or license under this part is ordered to be suspended or revoked under section 41309 and if the department maintains a database of suspensions or revocations of permits or licenses under this part, the department shall not issue a permit or license under this part to the person for the period provided in the order.

(3) If a permit or license under this part is ordered to be suspended under section 41309, the suspension remains in effect until all of the following occur:

(a) The suspension period set forth in the court order has elapsed.

(b) The person pays the department a reinstatement fee of $125.00.

(4) Unless a person's permit or license is otherwise suspended, revoked, or denied, the permit or license is immediately reinstated on satisfaction of the requirements of subsection (3).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2014, Act 541, Eff. Apr. 15, 2015.

Popular name: Act 451

Popular name: NREPA

324.47362 Part 479 not repealed.

Sec. 47362. This part shall not be construed to repeal part 479.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 475
FISH HATCHERIES FOR RESTOCKING THE GREAT LAKES

324.47501 Fish hatcheries to restock Great Lakes; establishment; plan.

Sec. 47501. The department may plan the establishment of fish hatcheries for the propagation and cultivation of pickerel, trout, and whitefish for restocking the Great Lakes that border this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 477
FISH RESTORATION AND MANAGEMENT PROJECTS

324.47701 Fish restoration; cooperation with federal government; funds accruing from license fees; use.

Sec. 47701. The department may perform acts as may be necessary to the establishment and management of fish restoration, management, and research projects and areas in cooperation with the federal government as defined in chapter 658, 64 Stat. 430, 16 U.S.C. 777 to 777e, 777f to 777i, and 777k to 777 *l*, commonly known as the federal aid in fish restoration act, and with rules and regulations promulgated by the United States secretary of the interior under that act; and in compliance with that act, funds accruing to the state from license fees paid by anglers shall not be used for any purpose other than fish and game activities under the administration of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 479
FISHERIES CONTAMINATION

324.47901 Refuse from fish catch; disposal.

Sec. 47901. All fish, offal, or filth accruing from the catching and curing of fish shall be burned or buried at least 10 rods away from the beach or shore of any stream, pond, or lake.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.47902 Nonresident fishing license; fee; forfeiture; disposition of money accrued.

Sec. 47902. The county board of commissioners of each county, or a majority of the county board of commissioners, shall grant, on the application of a nonresident person, a written 1-year license, for each pound or trap net used, upon payment of $50.00. A person who violates this part shall forfeit the sum of $100.00, and all costs of suit. The county board of commissioners, or a majority of the county board of commissioners, shall enforce this part, and all money accruing from fishing licenses and forfeitures shall be paid to the county treasurer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47903 Dumping into waters prohibited; molesting of nets.

Sec. 47903. A person shall not put into any stream, pond, or lake any sand, coal, cinders, ashes, log slabs, decayed wood, bark, sawdust, or filth. A boat owner, a captain of any boat or vessel, or any other person shall not run into or molest any pond net, trap net, or other stationary net or fixture set in any lake for fishing purposes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47904 Violation of part; penalty.

Sec. 47904. A person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both, and the person shall be liable civilly for damages done in an action in any court having jurisdiction.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.47905 Prohibited acts; penalty; civil liability.

Sec. 47905. A person shall not willfully cut, tear, untie, remove, or in any manner injure, damage, molest, or destroy any net, rope, line, stake, anchor, or other property belonging to, in use, or to be used in any pond net or trap net or other net or nets and fixtures thereto belonging, lawfully set and used for the purpose of taking fish from any of the lakes or streams in this state or in any of the lakes or waters bordering upon this state. A person who violates this section is guilty of a misdemeanor, punishable by a fine of not more than $500.00, or imprisonment for not more than 6 months, or both, and the person is liable civilly for all damages done willfully to the property to the legal owners or occupants of the property, to be recovered in an action of trespass in any court having jurisdiction in the county where the property is located.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 483
PASSAGE OF FISH OVER DAMS

324.48301 Free passage of fish; rules; fish ladders.

Sec. 48301. The department shall prescribe rules and regulations to provide for the free passage and uninterrupted passage of fish over or through dams now in existence or that are or may be erected over rivers, streams, or creeks. The department may abrogate the provisions of this part that require the erection of fish ladders if the department determines that the height of the dam or the condition of the river or stream makes the installation of the ladders impracticable or unnecessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48302 Inspector of dams; duties; plan; contents; copies.

Sec. 48302. The department is the inspector of dams across rivers, streams, and creeks of this state and

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shall prepare a draft of a general plan that the department determines will best permit the free passage of large and small fish up and down a stream at the dam. Each plan shall set forth details and specifications for material and construction and connection with the dam that will enable the owner of the dam to properly construct and place the means designated. The department shall furnish a copy of the plans and specifications to each owner or occupant of a dam, on request.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48303 Order to provide free passage of fish; compliance; kind and manner.

Sec. 48303. Any person owning or using any dam that exists or may be constructed across any river, stream, or creek in this state, if ordered by the department, shall, within 90 days after the issuance of the order, erect and maintain in good repair sufficient and permanent means to admit the free and uninterrupted passage of fish over or through the dam. The means providing for the free passage of fish shall be of a kind and shall be placed in a manner prescribed by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48304 Prosecutions; mandamus.

Sec. 48304. The department shall prosecute in the name of the people of the state in all cases where this part is violated, and the prosecuting attorney of the county in which a prosecution is commenced under this part shall aid in the prosecution when requested to do so by the department. The attorney general may institute mandamus proceedings in the circuit court for Ingham county to compel any person to comply with this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48305 Violations of part; separate offenses.

Sec. 48305. If any person owning, using, or employing the use of any dam across any of the rivers, streams, or creeks of this state refuses or fails to erect and maintain in proper repair the means or equipment ordered by the department, that person is guilty of a violation of this part, and every period of 30 days during which any person owning or using a dam fails to erect or maintain in proper repair the means or equipment for the free passage of fish renders that person guilty of a distinct and separate offense of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48306 Construction of passageways for fish by department; expenses; payment; tax assessment.

Sec. 48306. If the owner or user of any dam refuses or fails to construct and maintain the means or equipment for the free passage of fish when ordered by the department, the department may cause the same to be constructed over or through the dam at the place in the dam that will cause the least injury to the water power, and the expense of the construction of the means for the free passage of fish shall be certified by the department to the county board of commissioners of the county in which the dam is located, and the expense shall be audited by the county board of commissioners and shall be paid from the general fund of the county. The county board of commissioners of any county, upon auditing and allowing the expense, shall order, by resolution, the supervisor of the township or ward in which the dam is situated to spread the expense upon the assessment roll of the township or ward as a tax against the property to which the dam is appurtenant and against the owners of the property to be collected in the same manner as other township taxes and paid over to the county treasurer or returned as delinquent in accordance with law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48307 Passage of fish through and over dams; apparatus obstructing rivers, streams, or creeks prohibited; violation; authority of department.

Sec. 48307. Except as authorized by law, a person shall not obstruct the channel or course of any river,

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stream, or creek in this state by placing or causing to be placed in that river, stream, or creek any net, wire, screen, or any other apparatus or material of any kind that will prevent the free passage of fish up and down the river, stream, or creek. A person who violates this section is guilty of a violation of this part. The department may in the public interest authorize the placing of screens in any river, stream, creek, or in the inlet or outlet of any lake.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 485
SPEARING OF FISH IN HOUGHTON LAKE PROHIBITED

324.48501 Repealed. 2012, Act 301, Imd. Eff. Sept. 25, 2012.

Compiler's note: The repealed section pertained to prohibition against spear fishing in Houghton lake, Roscommon county.

PART 487
SPORT FISHING

SUBPART I
DEFINITIONS

324.48701 Definitions.

Sec. 48701. As used in this part:

(a) "Amphibian" means any frog, toad, or salamander of the class amphibia.

(b) "Crustacea" means any freshwater crayfish, shrimp, or prawn of the order decapoda.

(c) "Dip net" means a square net that is constructed from a piece of webbing of heavy twine, hung on heavy cord or frame so as to be without sides or walls, and suspended from the corners and attached in such a manner that when the net is lifted no part is more than 4 feet below the plane formed by the imaginary lines connecting the corners from which the net is suspended. As used in fishing, it shall be lowered and raised vertically as nearly as possible.

(d) "Game fish" includes all of the following:

(*i*) Lake trout (Salvelinus namaycush).

(*ii*) Brook trout (Salvelinus fontinalis).

(*iii*) Brown trout (Salmo trutta).

(*iv*) Rainbow or steelhead trout (Oncorhynchus mykiss).

(*v*) Atlantic landlocked salmon (Salmo salar sebago).

(*vi*) Grayling (Thymallus arcticus).

(*vii*) Largemouth bass (Micropterus salmoides).

(*viii*) Smallmouth bass (Micropterus dolomieu).

(*ix*) Bluegill (Lepomis macrochirus).

(*x*) Pumpkinseed or common sunfish (Lepomis gibbosus).

(*xi*) Black crappie and white crappie, also known as calico bass and strawberry bass (Pomoxis nigromaculatus and Pomoxis annularis).

(*xii*) Yellow perch (Perca flavescens).

(*xiii*) Walleye (Sander vitreous).

(*xiv*) Northern pike (Esox lucius).

(*xv*) Muskellunge (Esox masquinongy).

(*xvi*) Lake sturgeon (Acipenser fulvescens).

(*xvii*) Splake (Salvelinus namaycush x Salvelinus fontinalis).

(*xviii*) Coho salmon (Oncorhynchus kisutch).

(*xix*) Chinook (King) salmon (Oncorhynchus tshawytscha).

(*xx*) Pink salmon (Oncorhynchus gorbuscha).

(e) "Genetically engineered" refers to a fish whose genome, chromosomal or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques.

(f) "Hand net" means a mesh bag of webbing or wire suspended from a circular, oval, or rectangular frame attached to a handle.

(g) "Inland waters of this state" means the waters within the jurisdiction of the state except Saginaw river, Lakes Michigan, Superior, Huron, and Erie, and the bays and the connecting waters. The connecting waters

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between Lake Superior and Lake Huron are that part of the Straits of St. Mary in this state extending from a line drawn from Birch Point Range front light to the most westerly point of Round Island, thence following the shore of Round Island to the most northerly point thereof, thence from the most northerly point of Round Island to Point Aux Pins light, Ontario, to a line drawn due east and west from the most southerly point of Little Lime Island. The connecting waters of Lake Huron and Lake Erie are all of the St. Clair river, all of Lake St. Clair, and all of the Detroit river extending from Fort Gratiot light in Lake Huron to a line extending due east and west of the most southerly point of Celeron Island in the Detroit river.

(h) "Mollusks" means any mollusk of the classes bivalvia and gastropoda.

(i) "Nongame fish" includes all kinds of fish except game fish.

(j) "Nonresident" means a person who is not a resident.

(k) "Nontrout streams" means all streams or portions of streams other than trout streams.

(*l*) "Open season" means the time during which fish may be legally taken or killed and includes both the first and last day of the season or period designated by this part.

(m) "Recombinant nucleic acid techniques" means laboratory techniques through which genetic material is isolated and manipulated in vitro and then inserted into an organism.

(n) "Reptiles" means any turtle, snake, or lizard of the class reptilia.

(o) "Resident" means either of the following:

(*i*) A person who resides in a settled or permanent home or domicile with the intention of remaining in this state.

(*ii*) A student who is enrolled in a full-time course at a college or university within this state.

(p) "Trout lake" means a lake designated by the department in which brook trout, brown trout, or rainbow trout are the predominating species of game fish. The department may designate certain trout lakes in which certain species of fish are not desired and in which it is unlawful to use live fish of any kind for bait.

(q) "Trout stream" means any stream or portion of a stream that contains a significant population of any species of trout or salmon as determined by the department. The department shall designate not more than 212 miles of trout streams in which only lures or baits as the department prescribes may be used in fishing, and the department may prescribe the size and number of fish that may be taken from those trout streams. The department shall not restrict children under 12 years old from taking a minimum of 1 fish, except for lake sturgeon (Acipenser fulvescens), in any trout stream. Any trout stream in a county that includes a city with a population of 750,000 or more shall be so designated. In addition, the department shall issue an order adopting criteria for determining which trout streams should be so designated. Before the department issues the order, the department shall submit the proposed order to the commission. The commission shall receive public comment on the proposed order. The department shall consider any guidance provided by the commission on the proposed order and may make changes to the proposed order based on that guidance.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2002, Act 434, Imd. Eff. June 10, 2002;—Am. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2008, Act 291, Imd. Eff. Oct. 6, 2008.

Popular name: Act 451

Popular name: NREPA

324.48702 Fish, reptiles, amphibians, mollusks, and crustaceans as property of state; exception; registration under Michigan aquaculture development act.

Sec. 48702. (1) Except as otherwise provided in subsection (2), all fish, reptiles, amphibians, mollusks, and crustaceans found in this state are the property of the state and may only be taken at times and in a manner as provided in this part.

(2) Fish, reptiles, amphibians, mollusks, crustaceans, and any other aquaculture species propagated, reared, produced, or possessed pursuant to a registration or permit issued under the Michigan aquaculture development act are not the property of the state and may be taken, produced, purchased, acquired, lawfully exported or imported, or possessed only in compliance with that act.

(3) The department shall consider a registration under the Michigan aquaculture development act as equivalent to a game fish breeders license for purposes of obtaining a planting permit under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 200, Imd. Eff. May 17, 1996.

Popular name: Act 451

Popular name: NREPA

324.48702a Definitions; obstruction or interference in lawful taking of aquatic species; prohibited conduct.

Sec. 48702a. (1) As used in this section and section 48702b:

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(a) "Aquatic species" means fish, reptiles, mollusks, crustacea, minnows, wigglers, and amphibians of the class amphibia.

(b) "Take" and "taking" mean to fish for by any lawful method, catch, kill, capture, trap, or shoot any species of fish, reptiles, amphibians, mollusks, wigglers, or crustacea, regulated by this part, or to attempt to engage in any such activity.

(c) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

(2) A person shall not obstruct or interfere in the lawful taking of aquatic species by another person.

(3) A person violates this section when the person intentionally or knowingly does any of the following:

(a) Operates a vessel or a device designed to be used on the water which does not meet the definition of a vessel in a manner likely to significantly alter the behavior of aquatic species in order to hinder or prevent the lawful taking of an aquatic species.

(b) Wades or swims in a manner or at a location likely to cause a significant alteration in the behavior of aquatic species in order to hinder or prevent the lawful taking of an aquatic species.

(c) Tosses, drops, or throws any stone, rock, or other inert material in order to hinder or prevent the lawful taking of an aquatic species.

(d) Drives, herds, or disturbs any aquatic species in order to hinder or prevent the lawful taking of an aquatic species.

(e) Blocks, impedes, or harasses another person who is engaged in the process of lawfully taking an aquatic species.

(f) Uses a natural or artificial visual, aural, olfactory, gustatory, or physical stimulus to affect aquatic species behavior in order to hinder or prevent the lawful taking of an aquatic species.

(g) Erects barriers to deny ingress or egress to areas where the lawful taking of aquatic species may occur. This subdivision does not apply to a person who erects barriers to prevent trespassing on his or her property.

(h) Interjects himself or herself into the area where nets, fishing lines, or traps may be placed by a person lawfully taking aquatic species.

(i) Affects the condition or placement of personal or public property intended for use in the lawful taking of an aquatic species in order to impair the usefulness of the property or prevent the use of the property.

(j) Enters or remains upon private lands without the permission of the owner or the owner's agent, for the purpose of violating this section.

(k) Engages in any other act or behavior for the purpose of violating this section.

History: Add. 1996, Act 315, Eff. July 1, 1996.

Compiler's note: Enacting Section 3 of Act 315 of 1996 , which provided:
"Section 3. This amendatory act shall not take effect unless Senate Bill No. 964 of the 88th Legislature is enacted into law."

Popular name: Act 451

Popular name: NREPA

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324.48702b Violation of MCL 324.48702a.

Sec. 48702b. (1) Upon petition of an aggrieved person or a person who reasonably may be aggrieved by a violation of section 48702a , a court of competent jurisdiction, upon a showing that a person was engaged in and threatens to continue to engage in illegal conduct under section 48702a, may enjoin that conduct.

(2) A person who violates section 48702a is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than $500.00 or more than $1,000.00, or both, and the costs of prosecution. A person who violates section 48702a a second or subsequent time is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not less than $1,000.00 or more than $2,500.00, or both, and the costs of prosecution. In addition to the penalties provided for in this subsection, any permit or license issued by the department authorizing the person to take aqunatic species shall be revoked. A prosecution under this subsection does not preclude prosecution or other action under any other criminal or civil statute.

(3) Section 48702a does not apply to a peace officer while the peace officer performs his or her lawful duties.

History: Add. 1996, Act 318, Eff. July 1, 1996.

Popular name: Act 451

Popular name: NREPA

SUBPART II
FISHING DEVICES

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324.48703 Fishing means or device; lines; hooks; tip-up or similar device; spear, bow and arrow, or crossbow; order to regulate nets.

Sec. 48703. (1) An individual shall not take, catch, or kill or attempt to take, catch, or kill a fish in the waters of this state with a grab hook, snag hook, or gaff hook, by the use of a set or night line or a net or firearm or an explosive substance or combination of substances that have a tendency to kill or stupefy fish, or by any other means or device other than a single line or a single rod and line while held in the hand or under immediate control, and with a hook or hooks attached, baited with a natural or artificial bait while being used for still fishing, ice fishing, casting, or trolling for fish, which is a means of the fish taking the bait or hook in the mouth. An individual shall not use more than 3 single lines or 3 single rods and lines, or a single line and a single rod and line, and shall not attach more than 6 hooks on all lines. The commission may decrease the number of rods per angler. However, the commission shall not reduce the number of rods per angler to less than 2. For the purposes of this part, a hook is a single, double, or treble pointed hook. A hook, single, double, or treble pointed, attached to a manufactured artificial bait is counted as 1 hook. The commission may designate waters where a treble hook and an artificial bait or lure having more than 1 single pointed hook must not be used during the periods the commission designates.

(2) An individual shall not set or use a tip-up or other similar device for the purpose of taking fish through the ice unless the name and address of the individual owning the tip-up or other similar device is marked in legible English on the tip-up or other similar device or securely fastened to it by a plate or tag.

(3) The commission may issue an order to regulate the taking of fish with a spear, bow and arrow, or crossbow in the waters of this state.

(4) The commission may issue an order to regulate the taking of fish with nets in the waters of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2008, Act 291, Imd. Eff. Oct. 6, 2008;—Am. 2012, Act 245, Imd. Eff. July 2, 2012;—Am. 2012, Act 471, Imd. Eff. Dec. 27, 2012;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48703a Sport fishing; regulation by commission; issuance of orders; providing copy of order to legislature; appropriation.

Sec. 48703a. (1) The legislature finds and declares that aquatic invasive species, including Asian carp, represent a significant threat to the state's fisheries, aquatic resources, outdoor recreation and tourism economies, and public safety.

(2) The commission has the exclusive authority to regulate sport fishing under this part. The commission shall, to the greatest extent practicable, utilize principles of sound scientific management in making decisions regarding the regulation of sport fishing under this part. The commission may take testimony from department personnel, independent experts, and others, and review scientific literature and data, among other sources, in support of the commission's duty to use principles of sound scientific management. The commission shall issue orders regarding the regulation of sport fishing under this part following a public meeting and an opportunity for public input. Not less than 30 days before issuing an order, the commission shall provide a copy of the order to each of the following:

(a) Each member of each standing committee of the senate or house of representatives that considers legislation pertaining to conservation, the environment, natural resources, recreation, tourism, or agriculture.

(b) The chairperson of the senate appropriations committee and the chairperson of the house of representatives appropriations committee.

(c) The members of the subcommittee of the senate appropriations committee and the subcommittee of the house of representatives appropriations committee that consider the budget of the department of natural resources.

(3) For the fiscal year ending September 30, 2017, there is appropriated for the department the sum of $1,000,000.00 to implement management practices necessary for rapid response, prevention, control, or elimination of aquatic invasive species, including Asian carp. Any portion of the amount under this section that is not expended in the fiscal year ending September 30, 2017 shall not lapse to the general fund but shall be carried forward in a work project account that is in compliance with section 451a of the management and budget act, 1984 PA 431, MCL 18.1451a.

History: Add. 2013, Act 21, Imd. Eff. May 8, 2013;—Am. 2014, Act 281, Eff. Mar. 31, 2015;—Am. 2015, Act 12, Eff. July 13, 2015;—Am. 2016, Act 382, Imd. Eff. Dec. 22, 2016.

Compiler's note: Enacting section 1 of Act 281 of 2014 provides:

"Enacting section 1. This act reenacts all or portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108. If any portions of 2012 PA 520 or 2013 PA 21 or 2013 PA 22 or 2013 PA 108 not amended by this act are invalidated pursuant to referendum or any other

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reason, then any such invalidated portions of 2012 PA 520, 2013 PA 21, 2013 PA 22 and 2013 PA 108 which are otherwise included in this act, shall be deemed to be reenacted pursuant to this act."

Enacting section 2 of Act 281 of 2014 provides:

"Enacting section 2. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."

Public Act 281 of 2014 was proposed by initiative petition pursuant to Const 1963, art II, § 9. The initiative petition was approved by an affirmative vote of the majority of the Senate on August 13, 2014 and by the House of Representatives on August 27, 2014. The initiative petition was filed with the Secretary of State on August 27, 2014.

In Keep Michigan Wolves Protected v State of Michigan, an unpublished opinion issued November 22, 2016, (Docket No. 328604), the Michigan Court of Appeals held that 2014 PA 281, which amended sections of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, is unconstitutional as it violates the title-object clause of section 24 of article IV of the state constitution of 1963.

Popular name: Act 451

Popular name: NREPA

324.48704 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: The repealed section pertained to restrictions on taking cisco with a gill net.

Popular name: Act 451

Popular name: NREPA

324.48705 Reptiles, amphibians, mollusks, and crustaceans; manner and times of taking; fishing license; taking for commercial purposes prohibited; taking for scientific or educational purposes; permit required.

Sec. 48705. (1) Reptiles, amphibians, mollusks, and crustaceans may only be taken in a manner and during those times prescribed by the commission. An individual taking, trapping, catching, or fishing for reptiles, amphibians, mollusks, or crustaceans for his or her personal use shall have a valid fishing license issued under part 435.

(2) An individual shall not take, trap, catch, or fish for reptiles or amphibians for commercial purposes.

(3) The department may issue permits under part 13 to take amphibians and reptiles at any season of the year for scientific or educational purposes. The department may revoke a permit issued under this subsection.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 36, Imd. Eff. Feb. 21, 2018;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48706 Seines or nets; prohibited use near dams; definition.

Sec. 48706. Except as otherwise provided by law, a person shall not fish with any kind of seines or nets within a radius of 100 feet of or from any dam, frighten or hinder fish from the free passage up or down a fish chute or ladder, or place any obstruction or device in or across any race, stream, or river in this state in a manner that obstructs the free passage of fish up and down the race, stream, or river. For the purpose of this part, a dam is an artificial barrier or obstruction placed in a river or stream in this state which changes the natural elevation of the water level more than 2 feet.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48707 Lamprey control weir; prohibited waters for fishing.

Sec. 48707. A person shall not fish within a distance of 100 feet upstream or downstream from a lamprey control weir installed by the department or the United States fish and wildlife service and designated by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48708 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: The repealed section pertained to restrictions on smelt nets.

Popular name: Act 451

Popular name: NREPA

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324.48709 Dam or barrier; destruction or interference prohibited.

Sec. 48709. A person shall not destroy or attempt to destroy, or interfere with in any manner, any artificial dam or barrier placed in a trout stream under the direction of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48710 Applicability of part to gaff, landing net, person propagating fish, or fish caught by device.

Sec. 48710. This part does not prohibit the use of a gaff, except on or along trout streams, or a landing net to assist in landing fish already caught by a lawful device. This part does not apply to an individual engaged in the business of propagating fish under part 459 or to fish caught by a device for which a lawful permit or license is obtained from the department under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 36, Imd. Eff. Feb. 21, 2018;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48711 Possession of fishing devices; prohibition; confiscation; exceptions; evidence; certain controls not affected.

Sec. 48711. An individual shall not have in his or her possession any net, set lines, jack or other artificial light of any kind, dynamite, giant powder, or other explosive substance or combination of substances, hook and line, or any other contrivance or device to be used for the purpose of taking fish in violation of this part or any other act or part. Any such property, contrivance, or device found in the possession of an individual or found in a boat, boathouse, or any other place on any of the waters of this state or along the shores of the waters of this state must be confiscated and disposed of in the manner provided by law. An individual shall not have a gaff in his or her possession on or along any trout stream in this state or use, except from June 1 to Labor Day, on any trout stream a single hook of any kind that is more than 3/8 inches between the point of the hook and the shank. This section does not prohibit the use or possession of minnow seines, minnow traps, or dip nets as provided in section 48730 or the use and possession of seines, nets, spears, or artificial lights for the use of which a lawful permit or license has been issued by the department. Commercial anglers who have licenses to take fish in the Great Lakes may have in their possession nets or hook lines for that purpose only. In prosecutions for the violations of this section, and in proceedings for the confiscation of the property described in this section, the possession of any such property, contrivance, or device or, when not found in possession of any individual, the presence of any such property in a boat, boathouse, or any other place on the waters of this state or along the shores of the waters of this state is prima facie evidence that the property is owned, possessed, or used for the purpose of violating this part. The possession of any such property, contrivance, or device on the waters of this state that are closed to all fishing during the closed season on or along those waters is prima facie evidence that the property is owned, possessed, or used for the purpose of violating this part. This act or any other act does not apply to the department in its program in fisheries management or in the control of aquatic vegetation by individuals under permit issued by the department when, in the opinion of the department, that control is not inimical to the public interest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48712 Fishing in propagating beds prohibited; exception.

Sec. 48712. An individual shall not catch any fish or attempt to catch any fish in any manner in any lake, stream, or pond or portion of any lake, stream, or pond that is used by the state or federal government for the propagation of fish, except in the portion or portions of the lake, stream, or pond designated by the commission as open to fishing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48713 Fishing to remove eggs prohibited.

Sec. 48713. A person shall not catch any game or nongame fish in any manner in any lake, stream, or pond

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or in the Great Lakes for the purpose of removing its eggs.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48714 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: The repealed section pertained to a commercial fishing guide.

Popular name: Act 451

Popular name: NREPA

324.48714a Sport fishing guide; license requirements; commercial forestland prohibition; revocation; monthly reports; failure to file penalties; exhibition of license upon demand; violations; civil fines; definitions.

Sec. 48714a. (1) Beginning March 1, 2024, an individual shall not act as a sport fishing guide on an inland lake or stream, as that term is defined in section 30101, unless that individual possesses both of the following:

(a) A valid license issued under subsection (2).

(b) A valid fishing license.

(2) To obtain a license to act as a sport fishing guide, an individual shall submit the application fee described in section 48714b and an application to the department. The application must be in a format determined by the department. The department shall grant a license to an individual only if the department determines all of the following:

(a) That the individual holds a valid certification in first aid and cardiopulmonary resuscitation issued by the American Red Cross, the American Heart Association, or a comparable organization as approved by the department, and that the individual can provide to the department, upon request, a copy of the certification.

(b) The individual has a valid, lawfully obtained Michigan driver license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, or a sportcard issued under section 43522.

(c) The individual has not been convicted of any of the following within the past 3 years:

(*i*) A violation of any of the following:

(A) Section 40112.

(B) Section 40118(2), (3), (4), (5), (6), (14), (15), (16), or (17).

(C) Section 41105.

(D) Section 44524.

(E) Section 48738(2) or (3).

(F) Section 48739(1), (2), or (3).

(*ii*) Any felony.

(*iii*) A violation of a law of a participating state substantially corresponding to a violation described in subparagraphs (*i*) to (*ii*).

(d) The individual is eligible to purchase a license for the fish species for which the individual is acting as a sport fishing guide.

(e) Unless the individual indicates in writing to the department that sport fishing guiding activities will occur without the use of a watercraft, the individual has either a valid state pilot's license issued by the department under section 44510 or a valid captain's license issued by the United States Coast Guard.

(3) An individual shall not act as a sport fishing guide unless that individual, when acting as a sport fishing guide, carries a basic first aid kit that includes, but is not limited to, all of the following:

(a) Tourniquet, chest seals, and compression gauze.

(b) CPR mask.

(c) Trauma shears.

(d) Sterile eyewash.

(e) Mylar emergency blanket.

(f) Bandages.

(g) Moleskin.

(h) Tweezers.

(4) An individual shall not act as a sport fishing guide on commercial forestland.

(5) A license issued under this section is valid for 3 years after the date it is issued. The department shall allow an individual to obtain a public boating access entry pass required under section 78105(3) with any sport fishing guide license issued under this section for each year that the sport fishing guide license is valid.

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The department may revoke a license under this section, after notice and opportunity for hearing in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for either of the following reasons:

(a) The department determines that an individual is not eligible to hold a license under this section.

(b) The individual provides false information under this section.

(6) A sport fishing guide shall file monthly reports to the department, in a format determined by the department, that contain information related to all of the following:

(a) The species of fish for which the individual acted as a sport fishing guide.

(b) The number of clients that the sport fishing guide had for each fishing trip and the number of hours fished for each fishing trip.

(c) The number of fish caught and released and the number of fish harvested by the clients of the sport fishing guide.

(d) The bodies of water where the individual acted as a sport fishing guide.

(e) Any additional information the department requires regarding the fishing activity or biological characteristics of the fish caught and released or harvested.

(f) For any month that the guide did not act as a sport fishing guide, a report stating that the individual did not act as a sport fishing guide during that month.

(7) If an individual fails to file a monthly report under subsection (6) and that report remains unfiled for more than 90 days after the date it is due, the individual is subject to the following:

(a) For a first violation, a $100.00 civil fine.

(b) For a second violation, a $200.00 civil fine.

(c) For a third violation, a $500.00 civil fine.

(d) For a fourth violation, after notice and an opportunity for hearing in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, a revocation of the individual's license under this section.

(8) Information submitted in reports under subsection (6) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) The department shall annually post on its website all of the following:

(a) The number of applications submitted under subsection (2) in the previous year.

(b) The number of licenses issued under this section in the previous year.

(c) A list of individuals who have valid licenses under this section.

(10) An individual shall carry that individual's sport fishing guide license and shall exhibit the license upon the demand of a conservation officer, a peace officer, a tribal conservation officer, a park and recreation officer if sport fishing guiding takes place on property regulated under part 741 or 781, or the owner or occupant of any land where the individual is acting as a sport fishing guide.

(11) An individual who acts as a sport fishing guide without a valid license issued under this section or who acts as a sport fishing guide on commercial forestland is subject to a civil fine of not more than $500.00. An individual who acts as a sport fishing guide without a valid license issued under this section or who acts as a sport fishing guide on commercial forestland a second or subsequent time is subject to a civil fine of not more than $1,000.00. A civil fine collected under this subsection or subsection (7) must be deposited in the game and fish protection account established in section 2010.

(12) An individual who provides false information to the department under this section is subject to a civil fine of not more than $500.00 and the costs of prosecution.

(13) As used in this section:

(a) "Consideration" means an economic benefit, inducement, right, or profit, including monetary payment accruing to an individual or person. Consideration does not include a voluntary sharing of the actual expenses of the guiding activity, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(b) "Participating state" means that term as defined in section 1615.

(c) "Sport fishing guide" means an individual who, for a fee or other consideration, provides assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take fish. Sport fishing guide does not include any of the following:

(*i*) An employee or member of an organization conducting a not-for-profit activity to recruit, retain, or promote fishing, while providing assistance to another individual in taking fish during that activity.

(*ii*) The owner of private land while providing assistance to another individual in pursuing, capturing, catching, killing, taking, or attempting to take fish on that private land.

(*iii*) An individual who complies with subsection (2)(c) and who is working under the direct supervision of a licensed sport fishing guide. As used in this subparagraph, "direct supervision" means that visual and vocal contact is constantly maintained between the individual and the licensed sport fishing guide.

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History: Add. 2023, Act 220, Eff. Feb. 20, 2024.

Popular name: Act 451

Popular name: NREPA

324.48714b Application fee for sport fishing guide license; public boating access entry pass fee.

Sec. 48714b. (1) Except as otherwise provided in this section, the department shall charge a resident applying for a sport fishing guide license under section 48714a an application fee of $150.00. The department shall charge a nonresident applying for a sport fishing guide license under section 48714a an application fee of $300.00. The operator of a charter boat licensed under part 445 is not required to pay an application fee under this section. Money collected under this section must be deposited in the game and fish protection account established in section 2010.

(2) If an individual elects to obtain a public boating access entry pass with the sport fishing guide license under section 48714a, the department shall charge that individual a $300.00 fee. Money collected for a public boating access entry pass under this section must be deposited in the waterways account established in section 2035.

History: Add. 2023, Act 220, Eff. Feb. 20, 2024.

Popular name: Act 451

Popular name: NREPA

SUBPART III

OPEN SEASONS

324.48715-324.48720 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: The repealed sections pertained to and open and closed seasons based on location and fish species.

Popular name: Act 451

Popular name: NREPA

324.48721 Possession limits of fish.

Sec. 48721. (1) The commission shall issue an order under part 411 establishing possession limits of fish consistent with this section. An individual shall not possess more than the daily possession limit or aggregate daily possession limit, as applicable, of fish at the place where the fish were taken or in route from that place to either of the following:

(a) His or her automobile or other principal means of land transportation.

(b) His or her residence or temporary place of lodging.

(2) In addition to 1 day's possession limit of fish, an individual may possess an additional 2 days' possession limit of fish that are processed by any of the following methods:

(a) Canning in a sealed container.

(b) Curing by smoking or drying.

(c) Freezing in a solid state.

(3) An individual's processed fish aboard a vessel, on the water or at dockside, are considered to be in the individual's possession for the purposes of subsection (2).

(4) An individual shall not possess a fish illegally taken.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2010, Act 30, Eff. Apr. 1, 2011;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48722 Game fish; carried as open hand baggage; transportation.

Sec. 48722. A resident or nonresident who holds an unexpired fishing license issued in his or her name may carry as open hand baggage not more than 1 day's legal catch of fish. However, any person holding an unexpired fishing license may obtain only 1 permit from the department authorizing that person to ship 1 day's legal catch of any species of game fish or combination of species. The catch of 2 or more licensed anglers may be combined in a single package. However, the permit of each angler whose catch is combined in the package shall be attached to the package.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.48723 Purchase, sale, transportation or possession of certain fish prohibited; exceptions.

Sec. 48723. A person shall not purchase, buy, or sell, attempt to purchase, buy, or sell, transport to any point outside of this state at any time, or possess during the periods in which the taking or catching of the fish is prohibited, any species of fish taken on a sport fishing license or any species of fish taken without a commercial fishing license. Any lawfully taken fish may be possessed for 60 days after the close of the respective open seasons. A person possessing a nonresident fishing license may take from this state a day's legal catch of fish in accordance with his or her license. This section does not apply to or conflict with the possession, sale, or transportation of fish taken legally under the commercial fishing laws and regulations of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48724 "Fish cleaning station" defined; license to purchase, sell, or exchange anything of value for raw or unprocessed salmon eggs; prohibited conduct; compliance with requirements; selling or buying chemically treated salmon eggs; violation; order; injunctive relief.

Sec. 48724. (1) As used in this section, "fish cleaning station" means an operation or location used to clean salmon for sport fishers.

(2) Except as provided in subsection (3)(c), a person shall not purchase, sell, or otherwise exchange anything of value for raw or unprocessed salmon eggs unless the person is licensed pursuant to section 47333 and the sale, purchase, or exchange of the raw or unprocessed salmon eggs is made with another person who is also licensed pursuant to section 47333.

(3) A person who operates or is the agent of an operator of a fish cleaning station shall not do any of the following:

(a) Accept raw or unprocessed salmon eggs except from whole salmon, known as salmon in the round, or eggs salvaged from salmon cleaned at the station.

(b) Operate a fish cleaning station that sells raw or unprocessed salmon eggs without a current and valid permit issued by the department.

(c) Buy, barter, or otherwise exchange anything of value for raw or unprocessed salmon eggs. This subdivision does not prohibit the operator of a fish cleaning station or his or her agents from exchanging the service of cleaning salmon in exchange for the eggs in the salmons' carcasses or from charging a fee for cleaning salmon.

(d) Buy or sell salmon carcasses taken by a person licensed under part 435.

(4) A person issued a permit to operate a fish cleaning station shall comply with all of the following requirements:

(a) Raw or unprocessed salmon eggs may only be collected and stored at the location of the fish cleaning station specified in the permit.

(b) The fish cleaning station shall be licensed in accordance with the food processing act of 1977, Act No. 328 of the Public Acts of 1978, being sections 289.801 to 289.810 of the Michigan Compiled Laws, and operated in compliance with the Michigan food law of 1968, Act No. 39 of the Public Acts of 1968, being sections 289.701 to 289.727 of the Michigan Compiled Laws, only when the salmon eggs or salmon, or both, are sold or given to another person for human consumption.

(c) Disposal of offal and unwanted salmon carcasses shall be in a manner approved by the local health department.

(d) A permit holder shall accept from sport fishers all salmon carcasses that are brought to the station and shall hold and dispose of them and their offal only in a manner approved by the local health department.

(e) As a condition of his or her permit, a permit holder whose fish cleaning station is located on state owned land shall provide free access to the fish cleaning station facilities to anglers who wish to use the facilities to clean their own salmon catch.

(5) This section shall not be construed to prohibit the selling or buying of chemically treated salmon eggs in the form of spawn sacks or spawn bags.

(6) If the department finds that a person is in violation of this section or a permit issued under this section, the department may issue an order requiring the person to comply with the permit. In addition to the penalties provided for in this part, the department or its agent, the attorney general, or a person may seek injunctive relief for a violation of this section or a permit issued under this section.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48725 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48726 Repealed. 2008, Act 291, Imd. Eff. Oct. 6, 2008.

Compiler's note: The repealed section pertained to adoption of orders relating to harvesting of salmon and trout.

Popular name: Act 451

Popular name: NREPA

324.48727 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: The repealed section pertained to snagging fish and management of fisheries on Pere Marquette river.

Popular name: Act 451

Popular name: NREPA

SUBPART IV
MINNOWS

324.48728 Definitions.

Sec. 48728. As used in this part:

(a) "Commercial purposes" means offering for sale, selling, giving, or furnishing to others.

(b) "Crayfish" means any arthropod of the decapoda family.

(c) "Minnows" means chubs, shiners, suckers, when of a size ordinarily used for bait in hook and line fishing, dace, stonerollers, muddlers, and mudminnows.

(d) "Wigglers" means Mayfly nymphs or any other aquatic insect nymphs or larvae.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48729 Prohibited conduct; exception for charter fishing guide.

Sec. 48729. (1) Except as otherwise provided in subsection (2), a person shall not do any of the following:

(a) Take or possess minnows, wigglers, or crayfish for commercial purposes from any of the waters over which this state has jurisdiction; import minnows, wigglers, or crayfish for commercial purposes from outside of this state; or transport minnows, wigglers, or crayfish without having first procured a license as provided in section 48732. A license, except a license to fish in the waters of this state as provided in part 435, is not required of persons taking minnows, wigglers, or crayfish for their individual use for bait. A person shall not set or use minnow traps for the taking of minnows, wigglers, or crayfish for any purpose unless the name and address of the user is on the trap.

(b) Export out of this state any minnows, wigglers, or crayfish, dead or alive, taken either in or outside of this state unless that person holds a permit issued under this subdivision. The department, upon receipt of a payment of $500.00, may issue a permit, revocable by the department with reason, under any regulations the department prescribes, to any person licensed as provided for in section 48732, enabling that person to transport outside of this state minnows, wigglers, or crayfish. A person holding a permit as provided in this subdivision shall provide a monthly report in a manner and format determined by the department that includes, but is not limited to, the quantity of exported minnows, wigglers, or crayfish by species that were taken from waters over which this state has jurisdiction. Imported wholesale minnows, wigglers, and crayfish must be held separately from any minnows, wigglers, or crayfish taken from waters over which this state has jurisdiction. A person holding a permit as provided in this subdivision and transporting wholesale minnows, wigglers, or crayfish shall produce documentation that contains the origin of the shipment, registration or permit copies, documentation demonstrating the shipment's destination, and any other proof required by the department, upon demand of the director or a law enforcement officer. The department may revoke a permit issued under this subdivision upon good cause. A permit issued under this subdivision expires on December 31 following the date the license is issued unless the license is revoked before that date.

(c) Use or attempt to use live goldfish or carp for bait in fishing.

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(d) Offer for sale or use lamprey for bait in fishing.

(e) Take, possess, or transport minnows, wigglers, or crayfish for commercial purposes from any of the waters over which this state has jurisdiction unless the taker is a resident of this state and holds a permit or license as required by law.

(2) A person who operates as a charter fishing guide on either the Great Lakes or the inland waters of this state may transport and possess minnows, wigglers, and crayfish for exclusive use by their clients as bait while on a fishing trip without an additional permit or license if that person has purchased the minnows, wigglers, or crayfish from a wholesale or retail outlet that holds a permit or license as provided in section 48732 to take, possess, or transport minnows, wigglers, or crayfish for commercial purposes. A person who operates as a charter fishing guide that purchases and provides live minnows, wigglers, or crayfish to their clients, must retain a receipt showing the quantity purchased and the wholesale or retail establishment the minnows, wigglers, or crayfish were purchased from and must possess and present that receipt upon request of a peace officer until the minnows, wigglers, or crayfish are no longer in possession of that person. A person who operates as a charter fishing guide may not sell or furnish minnows, wigglers, or crayfish for any other purpose outside the context described in this subsection without having first procured a license as provided in section 48732.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 337, Imd. Eff. Oct. 16, 2012;—Am. 2018, Act 643, Eff. Mar. 28, 2019;—Am. 2022, Act 30, Imd. Eff. Mar. 15, 2022.

Popular name: Act 451

Popular name: NREPA

324.48730 Powers of department.

Sec. 48730. (1) The department may designate the lakes and streams and parts of lakes and streams from which minnows, wigglers, and crayfish may be taken for commercial purposes and make rules, regulations, and restrictions for taking, possessing, and transporting minnows, wigglers, and crayfish.

(2) A person shall not take or attempt to take minnows, wigglers, or crayfish for commercial purposes from any waters of the state not designated by the department or violate any of the rules, regulations, or restrictions established pursuant to this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48731 Minnow seines; glass or wire traps; hand nets; hook and line; dip nets.

Sec. 48731. (1) Except as otherwise provided in this subsection, minnow seines of not more than 125 feet in length and 16 feet in width may be used in the Great Lakes and their connecting waterways and in the inland lakes, streams, and rivers of this state. Minnows may only be taken from trout streams during open season with glass or wire traps. Minnow seines shall not be used in trout streams at any time.

(2) Hand nets not exceeding 8 feet square without sides or walls, minnow traps not exceeding 2 feet in length, minnow seines not exceeding 12 feet in length and 4 feet in width, and hook and line may be used for taking minnows for personal use in any of the waters designated by the department, as provided in section 48730. However, a person shall not take minnows in trout streams with hand or dip nets.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART V
LICENSES AND PERMITS

324.48732 "Place of business" defined; limited retail minnow dealer's license; wholesale minnow dealer's license; minnow catcher's license; fees; prohibited imports; separate licenses; size of crew; identification cards; license application forms; display of placard and license number; display of license or identification card on demand; inspection of records and equipment; revocation or expiration of license.

Sec. 48732. (1) As used in this section, "place of business" means a single location designated in a license application.

(2) The department, upon receipt of a fee of $25.00, may issue a limited retail minnow dealer's license to entitle the licensee to operate 1 place of business and 1 motor vehicle and to buy, transport, and retail minnows, wigglers, and crayfish.

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(3) The department, upon receipt of a fee of $100.00, may issue to a resident a wholesale minnow dealer's license to entitle the licensee to operate 1 place of business, to transport, using up to 3 motor vehicles, and to sell at wholesale to licensed minnow dealers minnows, wigglers, and crayfish.

(4) The department, upon receipt of a fee of $50.00, may issue to the holder of a limited retail minnow dealer's license or a wholesale minnow dealer's license a minnow catcher's license to permit the taking, collecting, transporting, and possessing of live or fresh minnows, wigglers, or crayfish to be used for commercial purposes in accordance with this part. Each minnow catcher's license entitles the licensee to operate up to 3 crews consisting of not more than 4 persons and 4 motor vehicles for the purpose of taking, collecting, and transporting live or fresh minnows, wigglers, or crayfish.

(5) The department, upon receipt of a fee of $500.00, may issue to a nonresident of the state a wholesale minnow dealer's license to entitle the licensee to operate 1 place of business, to transport, using up to 3 motor vehicles, and to sell at wholesale to licensed minnow dealers minnows, wigglers, and crayfish.

(6) Crayfish shall not be imported for commercial purposes from outside of this state without a special permit from the department. Minnows and wigglers not native to the waters of this state shall not be imported from outside of this state.

(7) The holder of a license issued pursuant to this section who possesses minnows, wigglers, or crayfish for commercial purposes at more than 1 place of business shall obtain a separate license for each place of business. The holder of a license issued pursuant to this section may use more than 3 crews not to exceed 4 crew members in taking, collecting, and transporting minnows, wigglers, and crayfish, or use additional motor vehicles in collecting and transporting minnows, wigglers, or crayfish, for a fee of $15.00 for each additional crew of not more than 4 persons and for each additional motor vehicle.

(8) With each minnow catcher's license issued under this section, the department shall issue 12 identification cards bearing the number of the license and the year for which the license is issued. Each member of a crew engaged in taking, collecting, and transporting minnows, wigglers, or crayfish for commercial purposes shall carry an identification card at all times while taking, collecting, or transporting minnows, wigglers, or crayfish. The department shall supply license application forms which shall state the name and address of the licensee and the lakes and streams and parts of lakes and streams from which minnows, wigglers, or crayfish may be taken. A person to whom a limited retail or wholesale minnow dealer's license has been issued under this part shall prominently display at the place of business designated in that license a placard to be furnished by the department which will contain the words "Licensed Minnow Dealer" and the license number and the year for which the license was issued. Any person to whom such a license has been issued under this section shall permanently display the license number in 4-inch block letters on each side of the tanks on the motor vehicle or on the front doors of the motor vehicle and on the back of the motor vehicle.

(9) Upon demand of a conservation officer or any other peace officer, a person found taking, collecting, possessing, or transporting any live or fresh minnows, wigglers, or crayfish for commercial purposes shall display a license or identification card provided for in this section. The records, seines, nets, minnow traps, transporting equipment, and other equipment of every kind utilized in the handling of minnows, wigglers, and crayfish and the tanks and ponds where minnows, wigglers, and crayfish are held shall be open to inspection at any reasonable time by a conservation officer or any other peace officer.

(10) All licenses issued pursuant to this section are revocable upon just cause and, if not revoked, expire on December 31 following the date of issuance. Any person whose license has been revoked shall not be issued a commercial minnow, wiggler, and crayfish license within a period of 1 year from the date of revocation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48733 Repealed. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Compiler's note: The repealed section pertained to the designation of certain waters for spear fishing.

Popular name: Act 451

Popular name: NREPA

324.48734 Permit to remove fish from waters or donate fish taken during fishing tournament; exception for game fish; issuance.

Sec. 48734. (1) The department may issue permits for the removal of fish, except for game fish, from all the waters over which this state has jurisdiction to manage fish and sell or authorize the sale of those fish to pay the expense of the removal on terms that are in the best advantage of this state.

(2) The department may issue a permit to a person that has registered with the department as a fishing

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tournament or event authorizing that any fish taken under a sport fishing license, except for game fish, during a registered tournament may be donated, not for pecuniary profit, to a person. Fish donated under this subsection are not subject to section 48723 and the person accepting the donated fish may process, utilize, and sell any fish or fish product resulting from the donation.

(3) The person taking the fish or accepting the donated fish must retain a copy of the permit with the fish for transport and final disposition. The department shall incorporate regulations and restrictions in the permits as the department considers advisable, including the authorized method of take. Any person taking fish under a permit issued under this section shall conform to all the regulations and restrictions specified in the permit and any reporting standards established by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 529, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: NREPA

324.48735 Permit to take fish for fish culture or scientific investigation; exception; permit to possess live game fish in ponds, pools, and aquariums; taking fish to obtain spawn or for protection from ecological damage or imbalance; taking fish not required to maintain fishery resources; supervision; sale or transfer of fish; importing or bringing fish or eggs from outside state; permit to plant spawn, fry, or fish in public waters; exhibiting permits.

Sec. 48735. (1) Subject to subsection (2), a person shall not take from any of the inland waters of this state any fish in any manner for the purpose of fish culture or scientific investigation without first obtaining a permit from the department, except that a person who is operating a private fish pond may take fish from his or her own pond for the purpose of propagation, scientific investigation, or sale under part 459.

(2) The department may issue permits to possess live game fish in public or private ponds, pools, or aquariums under rules and regulations as the department prescribes. This subsection is subject to subsection (5).

(3) The department may cause to be taken from the inland waters of this state any species of fish for the purpose of obtaining spawn for fish culture or scientific investigation or for the protection of the inland waters from ecological damage or imbalance. In addition, the department may cause to be taken from the inland waters of this state species of fish that are not required to maintain the fishery resources of the inland waters. All fish taken under this subsection shall be taken under the supervision of a deputy of the department appointed for that purpose and in a manner consistent with the regulations of the department of agriculture and rural development, and the fish may be sold or transferred by the department.

(4) A person shall not import or bring any live game fish, including viable eggs of any game fish, from outside of this state except under a permit from the department or under part 459 and the rules promulgated under that part. A person shall not plant any spawn, fry, or fish of any kind in any of the public waters of this state or any other waters under the jurisdiction of this state without first obtaining a permit from the department that states the species, number, and approximate size or age of the spawn, fry, or fish to be planted and the name and location of the waters where the spawn, fry, or fish shall be planted. A permit is not required to plant spawn, fry, or fish furnished by the federal or state government. This subsection is subject to subsection (5).

(5) A permit under subsection (2) or (4) does not include a genetically engineered variant of a fish species identified in the permit unless the genetically engineered variant is specifically identified in the permit. A permit under subsection (2) or (4) may be limited to a genetically engineered fish.

(6) A permittee under this section shall exhibit the permit upon the request of any law enforcement officer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.48736 Removal of caddis fly larvae or other insect larvae from trout streams; prohibition; exception.

Sec. 48736. Except as provided in this section, a person shall not take or remove or attempt to take or remove any caddis fly larvae or other insect larvae or insects of any kind from any trout stream of this state. The department may designate trout streams or portions of trout streams from which caddis fly larvae or other insect larvae or insects may be taken for commercial purposes by persons licensed in accordance with section 48732. This section does not prohibit the taking of any caddis fly larvae or other insect larvae or insects from any trout stream of the state for personal use in fishing the stream from which taken.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48737 Sale of licenses and stamps; disposition of proceeds.

Sec. 48737. All money collected from the sale of licenses and stamps as provided in this part shall be paid over to the state treasurer by the department and held to the credit of the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010, and shall be used for the purposes necessary to the protection, propagation, and distribution of fish and game and as otherwise provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.48738 Violations as misdemeanors; violation as felony; violation as civil infraction; penalties; suspension or revocation of permit or license; issuance or reinstatement.

Sec. 48738. (1) An individual who violates this part or rules or orders issued to implement this part, if a penalty is not otherwise provided for that violation in this section, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(2) An individual who uses dynamite, nitroglycerin, any other explosive substance, lime, electricity, or poison for the purpose of taking or killing fish, who uses nets not authorized by law for taking game fish, or who buys or sells game fish or any part of game fish is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $250.00 or more than $1,000.00, or both.

(3) An individual who takes or possesses sturgeon in violation of this part or rules or orders issued to implement this part is guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not less than $500.00 or more than $2,000.00, or both, and the costs of prosecution.

(4) An individual who knowingly violates section 48735(2) or (4), or a rule or permit issued under section 48735(2) or (4), with respect to a genetically engineered variant of a fish species is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $250,000.00, or both. In addition, the individual is liable for any damages to the natural resources resulting from the violation, including, but not limited to, costs incurred to prevent or minimize the damages.

(5) An individual who does either of the following is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00:

(a) Fails to attach the individual's name and address to tip-ups in violation of section 48703(2).

(b) Fishes with more than the authorized number of lines in violation of section 48703(1).

(6) If an individual is convicted of a violation of this part or a rule promulgated or order issued under this part and it is alleged in the complaint and proved or admitted at trial or ascertained by the court at the time of sentencing that the individual has been previously convicted 3 or more times of a violation of this part within the 5 years immediately preceding the last violation of this part, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both, and the costs of prosecution. This subsection does not apply to the following violations:

(a) Failing to possess or display a valid fishing license issued under part 435.

(b) Taking or possessing an overlimit of bluegill, sunfish, crappie, perch, or nongame fish.

(c) Taking or possessing not more than 5 undersized fish.

(d) Fishing with more than the authorized number of lines.

(e) Failing to attach the individual's name and address to tip-ups or minnow traps.

(f) Fishing with lines not under immediate control.

(7) In addition to the penalties provided in this section, a fishing license issued to an individual sentenced under subsection (2), (3), (4), or (6) must be revoked, and the individual must not be issued a license during the remainder of the year in which convicted or during the next 3 succeeding license years.

(8) Subject to subsection (9), if any permit or license under this part is ordered to be suspended or revoked under section 41309 and if the department maintains a database of suspensions or revocations of permits or licenses under this part, the department shall not issue a permit or license under this part to the individual for the period provided in the order.

(9) If a permit or license under this part is ordered to be suspended under section 41309, the suspension

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remains in effect until both of the following occur:

(a) The suspension period set forth in the court order has elapsed.

(b) The individual pays the department a reinstatement fee of $125.00.

(10) Unless an individual's permit or license is otherwise suspended, revoked, or denied, the permit or license is immediately reinstated on satisfaction of the requirements of subsection (9).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2003, Act 270, Eff. Mar. 30, 2004;—Am. 2014, Act 541, Eff. Apr. 15, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021;—Am. 2022, Act 14, Imd. Eff. Feb. 23, 2022.

Popular name: Act 451

Popular name: NREPA

324.48739 Violation of part as misdemeanor; possession or sale of multipointed hook with weight permanently attached as misdemeanor; penalties.

Sec. 48739. (1) A person who snags fish in violation of this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $250.00 or more than $500.00, or both, and costs of prosecution.

(2) A person who is convicted of a second violation of snagging fish in violation of this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $500.00 or more than $1,000.00, or both, and costs of prosecution. In addition, the court shall suspend a sports fishing license issued to a person sentenced under this subsection for not less than 2 years and order that the person shall not secure a fishing license during that 2-year period.

(3) A person who is convicted of a third or subsequent violation of snagging fish in violation of this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $1,000.00 or more than $2,000.00, or both, and costs of prosecution. In addition, the court shall suspend a sports fishing license issued to a person sentenced under this subsection for not less than 3 years and order that the person shall not secure a fishing license during that 3-year period.

(4) A person who possesses or sells in this state any multipointed hook with a weight permanently attached is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $100.00 or more than $300.00, or both, and costs of prosecution.

(5) A person who is convicted of a second violation of subsection (4) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $300.00 or more than $500.00, or both, and costs of prosecution.

(6) A person who is convicted of a third or subsequent violation of subsection (4) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than $500.00 or more than $1,000.00, or both, and costs of prosecution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.48740 Additional penalties; forfeitures; probation; default; disposition of forfeitures.

Sec. 48740. (1) In addition to the penalties provided in this part, a person convicted of taking game fish during a closed season; taking or possessing game fish in excess of lawful limits; taking game fish or nongame fish by use of an unlawful device; or buying or selling game fish, nongame fish, or any parts of game or nongame fish taken by use of an unlawful device shall forfeit to the state for the fish unlawfully taken or possessed as follows:

(a) For each game fish other than sturgeon, of an individual weight of 1 pound or more, $10.00 for each pound or fraction of a pound of fish illegally taken or possessed.

(b) For each game fish other than sturgeon, of an individual weight of less than 1 pound, $10.00 for each fish illegally taken or possessed.

(c) For sturgeon, $1,500.00 for each fish illegally taken or possessed.

(d) For each nongame fish, $5.00 for each pound or fraction of a pound of fish illegally taken or possessed.

(2) In every conviction for a violation described in subsection (1), the court before which the conviction is obtained shall order the defendant to forfeit to the state the sums provided in subsection (1). If 2 or more defendants are convicted of the illegal taking or possession of the fish, the forfeiture shall be declared against them jointly and severally.

(3) If a defendant fails to pay the sums forfeited for a violation of subsection (1), upon conviction, the court shall either impose a sentence of probation, and as a condition of sentence require the defendant to satisfy the forfeiture in the amount prescribed and fix the manner and time of payment, or make a written

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order permitting the defendant to pay the forfeited sums in installments at the times and in the amounts as the court determines the defendant is able to pay.

(4) A default in the payment of forfeiture or an installment of the forfeiture may be collected by any means authorized for the enforcement of a judgment under chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6001 to 600.6098.

(5) All courts collecting forfeitures as provided in this section shall promptly remit the forfeiture to the county treasurer, who shall transmit it to the state treasurer to be credited to the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

PART 489
WHAISKA BAY

324.48901 Whaiska Bay; fishing devices prohibited.

Sec. 48901. A person shall not place or set any kind of net or set hook lines or take or attempt to take any kind of fish with a net or set hook lines, except minnow seines, as provided in section 47309, in the connecting waters between Lake Superior and Lake Huron, said waters known as the Whaiska Bay, and also including all waters lying southerly to a line drawn from the most southeasterly point of lot 1, section 32, township 47 north, range 2 west, state of Michigan, and extending easterly to the most westerly point of Round Island.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 491
RECIPROCAL AGREEMENTS WITH ADJOINING STATES

324.49101 Reciprocal agreements with adjoining states to cover taking of fish.

Sec. 49101. In order to provide uniform fishing regulations in any river or any of the Great Lakes forming a common boundary with an adjoining state and any inland lake or lakes bisected by a common boundary with an adjoining state, the department may enter into a reciprocal agreement with the authorized representatives of any adjoining state to establish the minimum size of fish that may be taken, the number that may be taken in any 1 day, the seasons when fish may be taken, and the methods by which fish may be taken from waters described in this section. Any such agreement shall clearly set forth the waters to be included and the period during which the agreement shall be in effect.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.49102 Fishing; reciprocal agreements; publication.

Sec. 49102. Any order issued under this part supersedes all other laws and regulations governing fishing in the waters that in any way conflict. The regulations contained in any such order shall be included in the annual digest of fishing laws, rules, and regulations published and distributed annually by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.49103 Violation of regulations as misdemeanor; penalty.

Sec. 49103. A person who violates any regulation made under a reciprocal agreement entered into under this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00 and costs of prosecution, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

SUBCHAPTER 4
FORESTS

THE TIMBER INDUSTRY

PART 501
FOREST IMPROVEMENTS

SUBPART 1
GENERAL PROVISIONS

324.50101 Meanings of words and phrases.

Sec. 50101. As used in this part, the words and phrases defined in sections 50102 to 50105 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50102 Definitions; A to D.

Sec. 50102. (1) "Agency of this state" means a board, bureau, commission, department, or other division of the executive branch of government of this state.

(2) "Board" means the board of directors of the forest improvement district.

(3) "Bond" means a bond, note, or any other instrument issued to evidence indebtedness.

(4) "Cost-share payment" means a payment made by a forest improvement district pursuant to section 50145 to a member who owns or occupies forest land.

(5) "County with high unemployment" means a county with an annual unemployment rate, as reported by the Michigan employment security commission, higher than the mean annual unemployment rate of this state.

(6) "District" or "forest improvement district" means a governmental subdivision of the state established under section 50123.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50103 Definitions; F to P.

Sec. 50103. (1) "Fish and wildlife habitat improvements" means measures designed to protect, maintain, or enhance fish and wildlife habitats.

(2) "Follow-up work" means forest practices to promote the survival of seeds or seedlings planted or the protection or enhancement of other work previously undertaken under this part.

(3) "Forest improvement project" or "project" means each of the following:

(a) Production, processing, handling, storage, marketing, or transportation of forest resources, conducted in carrying out the purposes of this part, including sawmills, hardboard mills, power stations, warehouses, air and water pollution control equipment, and solid waste disposal facilities.

(b) Forest practice or follow-up work.

(c) Study, planning, or other work intended to improve forest lands or forest resources or to demonstrate means of improving forest lands or forest resources.

(4) "Forest land" means a tract of land or the timber rights in that land owned or occupied by a member, which land is at least 10% occupied by forest tree species with a growth potential of 50 cubic feet per acre per year and consists of 40 acres or more. Forest land includes land from which forest tree species have been removed and have not been restocked, but does not include land converted to uses other than the growing of forest tree species or land currently zoned for uses incompatible with forest practices.

(5) "Forest management plan" means a forest and land management plan submitted to a district pursuant to subpart 5.

(6) "Forest practice" includes, but is not limited to, the following:

(a) The preparation of management plans for forest land.

(b) The improvement of forest tree species.

(c) Reforestation.

(d) The harvesting of forest tree species.

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(e) Road construction associated with the improvement or harvesting of forest tree species or reforestation.

(f) Use of chemicals or fertilizers for the purpose of growing or managing forest tree species.

(g) The management of slashings resulting from other forest practices.

(h) Any other actions intended to improve forest land or forest resources.

(7) "Forest resources" means those products, uses, and values associated with forest land, including recreation and aesthetics, fish, forage, soil, timber, watershed, wilderness, and wildlife.

(8) "Gross territorial boundary" means the jurisdictional limit of the area of the district within which landowners are eligible for membership in the district.

(9) "Proposed gross territorial boundary" means the proposed jurisdictional limit of the area of the district within which owners or occupiers of land are eligible for membership in the district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50104 Definitions; H to P.

Sec. 50104. (1) "Harvest" means the point at which timber that has been cut, severed, or removed for purposes of sale or use is first measured in the ordinary course of business as determined by reference to common practice in the timber industry.

(2) "Land occupier" or "occupier of land" means a person who is in possession of forest land whether as a lessee or tenant, or otherwise.

(3) "Landowner" or "owner of land" means a person who holds an ownership interest in forest land and is a voluntary member in the district.

(4) "Member" means a person who is a voluntary participant in a district and who owns or occupies forest land within the gross territorial boundaries of a district.

(5) "Notice of a hearing" means notice as required by the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(6) "Project costs" means the sum total of all reasonable or necessary costs incurred for carrying out the acquisition, construction, or undertaking of a forest improvement project under this part. Project costs include the following costs: studies and surveys; plans, specifications, and architectural and engineering services; legal, marketing, or other special services; financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; rehabilitation, reconstruction, repair, or remodeling of existing buildings; interest and carrying charges during construction and before full earnings are achieved, and operating expenses before full earnings are achieved or for a period of 1 year after the completion of construction, whichever occurs first; and a reasonable reserve for payment of principal and interest on bonds of a district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50105 Definitions; R to U.

Sec. 50105. (1) "Reforestation" means planting of tree seedlings, cuttings, or seed.

(2) "Small business entity" means a business enterprise with $500,000.00 or less average annual gross revenue during its last 3 tax years.

(3) "Stumpage value" of timber means values determined from log grade value tables adopted or used by the department.

(4) "Timber" means wood growth, mature or immature, growing or dead, standing or down. Timber does not include any of the following:

(a) Christmas trees and associated greens.

(b) Material harvested from an individual's own land and used on that land for the construction of fences or buildings or for other personal use.

(c) Fuel wood harvested for use in individual homes.

(5) "Timber owner" means a person who holds an ownership interest in forest tree species on forest land. An ownership interest includes a license or other right to timber on state lands.

(6) "Timber volume agreement" means that portion of the difference between the allowable cut volume and a projected future need volume which can be committed to a person.

(7) "Unit of proper measurement" means a unit of measurement commonly used in the timber industry for measuring timber and harvested timber products.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.50106 Purpose.

Sec. 50106. (1) The purpose of this part is to stimulate improved management and utilization of forest land and forest resources within this state as recommended by Jaakko Poyry and company, Helsinki, Finland, in Michigan's timber resource development project. Economic and community development opportunities based on the forest resource will be enhanced by ensuring adequate future high-quality timber supplies, increased employment opportunities, a diversified economy, and other economic benefits and the protection, maintenance, and enhancement of a productive and stable forest resource system for the public benefit of present and future generations.

(2) The primary purpose of this part is to demonstrate and improve the timber productivity of forest land within this state. Consistent with this purpose, the objective is to effect a utilization of waste material and determine the commercial feasibility of that waste material, as well as to improve all forest resources, such as fish and wildlife habitat and soil resources, so that the overall effect is to improve the total forest resource system.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50107 Liberal construction.

Sec. 50107. This part, being necessary to secure the public health, safety, welfare, and convenience of the citizens of the state, shall be liberally construed to effect the public policy and purposes declared in this subpart.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBPART 2

FOREST RESTORATION PILOT PROJECT

324.50108 Forest restoration pilot project; purpose; sources of funding; allocation of funds.

Sec. 50108. (1) The department may fund a forest restoration pilot project or any other district created under this part to implement this part. The forest restoration pilot project may consist of the establishment and funding of the forest improvement district formed under this part.

(2) The department may fund the pilot project or any other district created pursuant to this part from funds appropriated annually by the legislature and from the following sources:

(a) General fund of the state.

(b) Grants from the federal government.

(c) Grants or gifts from private persons.

(d) Any other permissible source.

(3) When allocating available funds among proposed pilot projects, the department shall consider those projects that in its judgment will produce the greatest public benefit, giving consideration to all of the following factors:

(a) The need to demonstrate the potential commercial benefits of forest practices that can be recognized by the establishment of a forest improvement district.

(b) The need to demonstrate the potential benefits to long-term production, maintenance, and enhancement of the total forest resource system.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50109 Expenses.

Sec. 50109. A district board of directors shall determine the annual expenses of the district and shall submit an itemized list of the expenses to the department. The department shall include those expenses in its annual budget request to the legislature.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.50110 Repealed. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: The repealed section pertained to definitions.

Popular name: Act 451

Popular name: NREPA

324.50111 Western Upper Peninsula forest improvement district; establishment; petition; selection of lands by committee; employment of forester; activation of working forests; factors in determining and allocating funds.

Sec. 50111. (1) A forest restoration pilot project organized as a forest improvement district with a gross territorial boundary encompassing the western 6 counties of the Upper Peninsula of this state with its headquarters and industrial site in or near the village of Baraga shall be established as a governmental subdivision of the state when a petition signed by 25 or more landowners of a total combined acreage of more than 55,000 acres within the gross territorial boundary is filed with the department. The name of the district shall be the "western Upper Peninsula forest improvement district". The petition shall set forth those requirements prescribed by section 50124(1)(a), (b), and (e). The district forester of the department may sign the petition and include in the petition forest lands under the jurisdiction of the department to establish 1 working forest within each district. In the western Upper Peninsula pilot project district, at least 25% of the lands shall be composed of nonindustrial private timber owners of at least 40-acre tracts and not more than 640-acre tracts. Not more than 15,000 acres in each district may be owned by 1 timber owner. One timber owner shall not have a majority ownership in more than 1 working forest in a district. One timber owner of more than 7,500 acres shall not vote for a director from more than 1 working forest.

(2) The pilot project district shall give preference to land well stocked predominantly with hardwood trees and may include other broadleaf trees having approximately 6 inches or more diameter breast height and having above average future market values to expedite marketability from the restructuring of the land.

(3) The selection of land composing each working forest in the pilot project district shall be made from the written applications received from the timber owners on application forms prescribed by a committee composed of 7 members, 3 of whom shall be the 3 directors of forest restoration, inc., and 4 of whom shall be members of the public appointed by these 3 directors. Not less than 4 members of the committee shall be graduate foresters who have had at least 5 years' experience supervising logging operations. The committee shall select the land and may employ a full-time forester.

(4) When the selection of land is made and the working forests identified, the committee shall establish a sequence for the activation of the working forests in the pilot project district when, and as, a substantial use for or marketing of waste wood becomes available, if more than 4 working forests are identified. When the working forests are to be activated, the forest management plans of the members shall be approved, and the members of each activated working forest then shall elect a director of the district.

(5) The department or any other state agency shall remit to the western Upper Peninsula forest improvement district funds appropriated for such purposes by the legislature.

(6) The funds otherwise appropriated for the western Upper Peninsula forest improvement district shall be determined and allocated to produce the greatest public benefit based on the following factors:

(a) The potential economic benefits of forest practices which can be recognized by the establishment of the western Upper Peninsula forest improvement district.

(b) The potential benefits to long-term production, maintenance, and enhancement of the total forest resource system.

(c) The potential benefits from a large-volume use of waste wood as a primary fuel for electric generating plants or as raw material for processing and manufacturing plants.

(d) The potential increased employment produced by the adoption of forest practices.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50112 Repealed. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: The repealed section pertained to the board of directors of western Upper Peninsula forest improvement district.

Popular name: Act 451

Popular name: NREPA

324.50113 Report.

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Sec. 50113. During the years of operation of the western Upper Peninsula forest improvement district, a detailed report of the operation and impact of the district shall be submitted by the board of the district to the departments and the legislature for an analysis and evaluation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50114 Notices; contents; certification.

Sec. 50114. Within 30 days after receipt of the certificate from the secretary of state pursuant to section 50127, the western Upper Peninsula forest improvement district board shall record a notice pursuant to this part setting forth the names and addresses of the member landowners and the legal description of each member's forest lands in the office of the register of deeds for each county in which the land is situated. When forest lands are added or withdrawn, a like notice shall be recorded within 30 days thereafter, and copies of all notices shall be served upon the appropriate local taxing authorities. The notices shall be certified under oath.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50115 Mandate for public benefit; standards for conduct of forest practices.

Sec. 50115. For the public benefit, the board shall mandate the continuous growing, improvement, and harvesting of forest trees to protect and maintain the forest soil, air, water resources, wildlife, and aquatic habitat within the district. The board of the western Upper Peninsula forest improvement district shall establish minimum standards for the conduct of forest practices on forest land within the district. These standards shall do all of the following:

(a) Provide for the improvement and harvesting of forest trees in a manner that will increase the productivity of the forest land, reduce soil and debris entering streams, and protect wildlife and fish habitat.

(b) Provide for road construction that will ensure the maintenance of forest productivity and water quality during construction and maintenance.

(c) Provide for reforestation that will maintain the growing and harvesting of desirable forest tree species by describing the conditions under which reforestation will be required, specifying the minimum and maximum number of trees per acre and the maximum period of time allowed after harvesting for reforestation, and requiring stabilization of soils that have become exposed as a result of harvesting. An acreage exemption from reforestation may be established, except that, on the land exempted, within 1 year after harvesting, some form of vegetative cover shall be required sufficient to provide continuing soil productivity and stabilization.

(d) Provide for management of slashings resulting from the harvesting, management, or improvement of forest tree species so as to protect reproduction and residual stands, to reduce the risk from fire, insects, and disease, to optimize the conditions for future regeneration of forest trees, and to maintain water quality and fish and wildlife habitat.

(e) Coordinate the notification requirement of this subpart and all other submission requirements imposed upon members so as to minimize the requirements for submission of information.

(f) Require having specific forest fire fighting equipment readily available.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50116 Changes in forest management plan; approval; appeal; determination; service of changes on members; effective date of changes.

Sec. 50116. (1) A member who has submitted and obtained approval of the member's forest management plan and desires to effect a change in the plan shall set forth the proposed change in writing and obtain the written approval of the supervisory forester of the working forest in which the member's lands are located.

(2) If the supervisory forester does not grant the approval, the member may appeal the denial to the forestry director, if any, or to the board, and the forestry director's and the board's determination shall be final.

(3) Changes in forestry management plans determined by the board shall be set forth in writing and served upon the members and shall take effect 30 days after the service is made.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.50117 Security for repayment of bonds.

Sec. 50117. The security for the repayment of bonds issued by the district may be a pledge or mortgage on all lands owned by the district and all of the district's installations, buildings, and equipment, tools, furniture, fixtures, or other personal property owned by the district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50118 Approved reserve fund; establishment; purpose; payments into fund; resolution as to use of money; limitations.

Sec. 50118. (1) The western Upper Peninsula forest improvement district shall establish 1 or more special debt service reserve funds to secure its bonds, referred to in this part as approved reserve funds. The district shall pay into an approved reserve fund the money appropriated and made available by the state for the purpose of the fund. The money held in an approved reserve fund and the income on that money shall be used as required by the resolution authorizing the issuance of bonds and creating the fund for their repayment.

(2) An approved reserve fund requirement in the resolution of the board authorizing the bonds with respect to which the fund is established shall not exceed the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds secured in whole or in part by the fund. The district shall not issue bonds secured in whole or in part by an approved reserve fund if, upon the issuance of the bonds, the amount in the fund would be less than the requirement for the fund, unless the district at the time of issuance of the bonds deposits in the fund from the proceeds of the bonds to be issued, or from other sources, an amount which, together with the amount then in the fund, is not less than the approved reserve fund requirement for the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50119 Applicability of part.

Sec. 50119. Except where expressly modified by this subpart, this part applies to the western Upper Peninsula forest restoration pilot project.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBPART 3
DEPARTMENT POWERS

324.50120 Duties of department generally; applicability of provisions to western Upper Peninsula forest improvement district.

Sec. 50120. (1) The department shall do all of the following:

(a) Provide the technical assistance of the department to the board of directors of a forest improvement district and to agencies of the state and persons with respect to the development of forest practices guidelines, the development and implementation of forest management plans, and other matters as to which the department has special expertise.

(b) Secure the cooperation and assistance of the United States or an agency of the United States, and an agency of this state, or any combination of federal and state agencies, in the work of a district, and formulate policies and procedures as necessary to facilitate the extension of aid from an agency of the United States or an agency of this state to the district.

(c) Keep the board of each forest improvement district informed of the activities and experience of all other districts organized under this part and facilitate an interchange of advice, experience, and cooperation between them.

(d) Pay all the expenses for the serving of notice, the conduct of hearings, and elections held during the district formation procedures pursuant to subpart 4. The department shall make all determinations as to eligibility of persons to vote. A determination made by the department is final without a right of appeal. A referendum or election shall be conducted by a district except for the first board of directors election. The department shall supervise the conduct of any referendum or election required by this part. A referendum or

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election shall be conducted in a manner so as to preserve the purity of the ballot and to prevent fraud and corruption.

(e) Oversee the issuance of bonds by a district under this part and, if the department determines that the forest improvement project to be funded from the proceeds of the bonds is economically feasible and desirable, that the terms and conditions of the bond issuance, including the required reserve fund level, as specified in the resolution authorizing the issuance of bonds, are appropriate and acceptable, and that the bond issuance promotes the policy and purposes declared in this part and should be approved and supported by the department, then the department shall officially approve the bond issuance and designate the reserve fund established in connection with the bond issuance as an approved reserve fund.

(f) Receive the certification submitted by a district pursuant to section 50158 concerning the amounts necessary to restore approved reserve funds to amounts equal to their reserve fund requirements, review that certification and the financial affairs of the district to determine the accuracy of the amounts required, and certify, before April 2 of each year, to the governor and the budget director the amount, if any, necessary to restore an approved reserve fund to an amount equal to the approved reserve fund requirement of the fund. The governor and the budget director shall include in the annual budget the amount certified by the department.

(g) Disseminate information throughout the state concerning the activities and programs of the forest improvement districts and encourage the formation of these districts in areas where their organization is desirable.

(h) Monitor financings by districts under this part and determine, for recommendation to the legislature, what additional steps, which may include a recommendation to the legislature for the issuance of faith and credit bonds for a vote of the people, may be necessary in order to accomplish the policies and purposes declared in this part.

(2) Subsection (1)(c), (d), (e), (g), and (h) do not apply to the western Upper Peninsula forest improvement district until 5 years after the district is established and activated.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50121 Rules, guidelines, and publications.

Sec. 50121. The department shall promulgate rules, adopt guidelines, and issue publications under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, as may be necessary to implement and administer this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50122 Primary consideration in promulgating rules and disposing of timber and other products; timber volume agreement; forest improvement program.

Sec. 50122. (1) The department, in promulgating its rules and in disposing of the timber and other products from state forest land, shall give primary consideration to the purposes for the creation of a forest improvement district.

(2) In order to accomplish the purposes of this part, the department may enter into a timber volume agreement with a district, or with a person specified by a district, which commits a portion of the timber from state land within a district to the use of that district or person.

(3) A forest improvement program is created. The program may be financed by annual appropriations made by the legislature. The program shall be used solely for the purpose of grants to districts for the purposes of this part and shall be administered by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 4
FOREST IMPROVEMENT DISTRICT

324.50123 Establishment authorized; powers generally.

Sec. 50123. A forest improvement district may be established pursuant to this part, and when established has the powers conferred by this part.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50124 Petitions.

Sec. 50124. (1) A district may be established by filing a petition, signed by 10 or more owners of forest land who control a total combined acreage of not less than 50,000 acres lying within the limits of the gross territorial boundary proposed to be organized into a district, with the department asking that a district be organized in the territory described in the petition. The petition shall state all of the following:

(a) The proposed name of the district.

(b) A legal description of the forest land proposed to be organized as the district, including the proposed gross territorial boundary of the district.

(c) A tentative implementation schedule for the forest practices functions and services the district will perform.

(d) An analysis that demonstrates the economic and administrative feasibility of a district within the defined boundaries.

(e) A request that the boundaries for the district be established.

(2) If more than 1 petition is filed covering parts of the same territory, the department shall determine which of the districts shall encompass that territory.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50125 Creation of district; hearing; notice; determination; defining boundaries of district; actual notice.

Sec. 50125. (1) Within 30 days after a petition has been filed, the department shall give notice of a proposed hearing upon the question of the desirability, necessity, and feasibility of the creation of the district, upon the question of the appropriate boundaries to be assigned to the district, and upon all other relevant issues.

(2) If it appears at the hearing that it may be desirable to include territory outside of the area within which notice of the hearing was given, the hearing shall be adjourned and notice of the further hearing shall be given to forest owners or occupiers of land throughout the entire area considered for inclusion in the district, and a further hearing held. The gross territorial boundary of a district shall not include an area included within the gross territorial boundary of another district.

(3) If the department concludes after a 30-day grace period following the hearing, upon the facts presented and upon other relevant information available, that need for a district exists, it shall make and record that determination, and shall define, by metes and bounds or by plat maps, the forest land of the district. The gross territorial boundary of the district shall be defined by metes and bounds or by plat maps.

(4) In making its determination and in defining the boundaries of a district, the department shall consider the forest tree species in the proposed district, the condition of the forest land, the prevailing forest practices, the benefits forests may receive from being included within the district, the relation of the proposed area to other districts already organized or proposed for organization, and other physical, geographical, and economic factors considered relevant.

(5) In making a determination as to district boundaries, if the department determines that the forest improvement projects will impact upon the property value of nonparticipating landowners, the department shall provide actual notice of hearings as provided for in this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50126 Operation of district; feasibility.

Sec. 50126. (1) If the department makes and records a determination that the need for a district exists and defines its boundaries, the department shall then consider the question of whether the operation of a district within those boundaries is administratively and economically feasible.

(2) If the department determines that the operation of a district is feasible, it shall record that determination and shall proceed with the organization of that district.

(3) If the department determines the operation of a district is not feasible, it shall record the reasons for its determination and deny the petition. After 6 months have expired from the date of the denial of a petition by

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the department, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing and determination made.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50127 Board of directors; appointment and qualifications of directors; presentation and contents of application; certification statement; examination and recordation of application and statement; issuance and contents of certification.

Sec. 50127. (1) If the operation of a district is determined to be feasible, the department shall appoint 2 directors who, with the 3 directors elected as provided in sections 50131 and 50132, constitute the first board of directors of the district. The directors appointed shall be persons who are by training and experience qualified to perform the functions which are required of them by this part.

(2) The board shall present the secretary of state with an application that states all of the following:

(a) That a petition for the creation of a district was filed with the department pursuant to this part; that the proceedings specified in this part were taken pursuant to the petition; and that the application is being filed in order to complete the organization of the district and that they are the directors.

(b) The name and official residence of each of the directors, together with a certification evidencing their right to office.

(c) The term of office of each of the directors.

(d) The proposed name of the district.

(e) The location of the principal office of the district.

(f) The date the district is to come into existence under this part. The application shall be subscribed and sworn to by each of the directors before an officer authorized by the laws of the state to take and certify oaths.

(3) The application shall be accompanied by a statement by the department that certifies all of the following:

(a) That a petition was filed, notice given, and a hearing held as required.

(b) That the department determined there is a need for a district to function in the proposed territory and defined its boundaries.

(c) That the department subsequently determined that the operation of the proposed district is administratively and economically feasible.

(4) The secretary of state shall examine the application and statement and shall receive and record them in an appropriate book of record and shall issue a certificate to the board specifying the date of creation and the gross territorial boundary of the district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50128 District as governmental subdivision and public body corporate and politic.

Sec. 50128. The district shall constitute a governmental subdivision of the state and a public body corporate and politic on the date specified in the directors' application or on the date the application and statement are filed and recorded, whichever is later.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50129 Petition for discontinuance; filing; form; notice.

Sec. 50129. A petition for discontinuance of membership in, for deletion of member forest land within, and for including additional territory within an existing district shall be filed with the board. The board shall prescribe the form for the petition. The board annually shall notify the department of any changes in membership or land ownership status changes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50130 Petitions for change of boundary line; filing; contents; hearing; determination; application for certificate evidencing change of boundary; statement; effect of filing;

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issuance and contents of certificate.

Sec. 50130. (1) Petitions signed by a majority of the members of each of the boards of adjoining districts may be filed with the department asking that the boundary line between the districts be changed. These petitions shall identify the existing boundary line between the districts and the proposed new gross territorial boundary.

(2) Within 30 days after a petition has been filed, the department shall hold a public hearing upon the question of the proposed boundary change. All members of the affected districts, and all other interested persons, may attend the hearing and be heard.

(3) After the hearing, the department shall determine, upon the facts presented at the hearing and upon other relevant information, whether the operation of the districts within the proposed new gross territorial boundaries would be administratively and economically feasible. If the department determines the operation of the districts within the proposed new boundaries will be feasible, it shall record that determination and notify the boards of the districts of its determination.

(4) The boards of the affected districts shall present an application to the secretary of state, signed by them, for a certificate evidencing the change of boundary. The application shall be accompanied by a statement of the department certifying that the boundary between the districts has been changed pursuant to the procedures prescribed and identifying the new gross territorial boundary lines. When the application and statement are filed, the change of boundary is effective and the date of filing shall be identified on the certificate which the secretary of state shall issue to the boards of the affected districts.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50131 Board of directors as governing body of district; officers; election and appointment of directors; terms; eligibility to vote; vacancy; annual meeting; fiscal year; quorum; concurrence of majority for determination; expenses; delegation of powers and duties; recall petition; notice; recall election; cessation of term; furnishing commission with documents and other information; surety bonds; records; audit; representatives of local legislative body.

Sec. 50131. (1) The governing body of a district shall be the board of directors which shall consist of 5 persons. The board may elect a chairperson and other officers which it considers necessary or convenient for implementing this part. The term of office of a director shall be 3 years except for the first board. The board of directors of the western Upper Peninsula forest improvement district shall be determined pursuant to subpart 2.

(2) The first board shall consist of 3 directors elected as provided in section 50132 and the 2 directors appointed by the department. The directors shall take office on the date specified by the secretary of state as the beginning of a district's existence or as soon as appointed, whichever is later. The term of office of the director first appointed shall be 1 year, the second director shall be appointed for 2 years, and the directors first elected at the time of the referendum shall serve as follows: the director receiving the highest number of votes shall serve for 3 years, the director receiving the next highest number of votes shall serve for 2 years, and the director receiving the next highest number of votes shall serve for 1 year. Thereafter, as the terms of the directors of the first board expire, the department shall appoint a director to the board if the state land encompassed by the district's gross territorial boundary is greater than 5% of the forest land which comprises the district and a timber volume agreement has been made. The other positions on the board shall be filled by elections at the annual meeting of the members of a district. If the state land encompassed by a district's gross territorial boundary is 5% or less of the forest land which comprises the district, all of the positions on the board shall be filled by those elections.

(3) All members who own forest land within a district, except for state lands, shall be eligible to vote for 1 or more candidates for the board, according to the amount of forest land owned within the district pursuant to the following schedule:

(a) An owner of less than 100 acres may cast 3 votes.

(b) An owner of at least 100 acres but less than 500 acres may cast 4 votes.

(c) An owner of at least 500 acres but less than 1,000 acres may cast 5 votes.

(d) An owner of at least 1,000 acres but less than 5,000 acres may cast 6 votes.

(e) An owner of at least 5,000 acres but less than 10,000 acres may cast 7 votes.

(f) An owner of at least 10,000 acres but less than 20,000 acres may cast 8 votes.

(g) An owner of at least 20,000 acres but less than 50,000 acres may cast 9 votes.

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(h) An owner of 50,000 acres or more may cast 10 votes.

(4) A vacancy shall be filled by appointment by the board and a director appointed shall serve until the next annual meeting when a director shall be elected to finish the unexpired term. The annual meeting shall be held within 30 days after the close of the fiscal year of a district. The fiscal year of a district shall be the same as the fiscal year of this state.

(5) A majority of the directors constitutes a quorum, and the concurrence of a majority of the directors in any matter within their power shall be required for the board's determination. A quorum shall consist of 3 members of the board at least 2 of whom shall be elected members. A director shall not receive compensation for services rendered, but is entitled to expenses, including traveling expenses, necessarily incurred in the discharge of duties performed as a director. The directors may delegate to their chairperson, to 1 or more directors, or to 1 or more agents or employees, power and duties as they consider proper.

(6) A petition may be filed with the department for an election to recall 1 or more directors if the petition is signed by members within a district whose forest land comprises 20% or more of the forest land within the district. Within 30 days after a petition has been filed, the board shall give notice in the manner provided by the Michigan election law, Act No. 116 of the Public Acts of 1954, being sections 168.1 to 168.992 of the Michigan Compiled Laws, of the holding of a recall election. The recall election shall be held within 45 days after the filing of a petition. All members who own forest land within the boundaries of a district, except for state land, are eligible to vote in the recall election pursuant to the schedule in subsection (3). A 2/3 majority of the votes cast is required to recall a director. The term of a director who is recalled shall cease on the date the results of the election are published by the department.

(7) A board shall furnish the department with copies of ordinances, rules, regulations, orders, contracts, forms, and other documents it adopts or employs, and with other information concerning its activities as the department requires in the performance of its duties under this part.

(8) A board shall require the execution of surety bonds for each employee or officer who is entrusted with funds or property; shall provide for the keeping of a full and accurate record of each proceeding and each resolution, regulation, or order issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(9) The board shall invite the legislative body of each local unit of government or county located within, partially within, or near the territory comprising a district to designate a representative to advise and consult with the board on all questions which may affect the property or other interests of that local unit of government or county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50132 Nominating petition; filing; signatures; notice; eligibility to vote.

Sec. 50132. (1) A candidate for the first board of directors shall file nominating petitions with the department at or before the hearing on the need for a district. A candidate shall be a member of the proposed district. A nominating petition shall not be accepted by the department unless it is subscribed by 6 or more members of a proposed district. A member may sign more than 1 nominating petition. The department shall give notice of the initial election of 3 directors. Notice shall be posted at the business office of each governmental unit in the proposed district, published in each newspaper of record distributed in the proposed district, mailed to each individual elected governmental official within the proposed district and mailed to any individual requesting written notification of the initial election. The 3 candidates who receive the largest number of the votes cast shall be the elected directors for a district.

(2) All members within a district are eligible to vote for 1 or more candidates for the first board of directors, according to the amount of forest land owned within a proposed district, pursuant to the schedule in section 50131(3).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50133 Consolidation into single district; petition; notice; hearing; determination; order; board of consolidated district; certificate of organization; powers and duties; property, agreements, and obligations of consolidated district.

Sec. 50133. (1) Two or more districts may petition the department for consolidation into a single district. The department shall not act on the petition unless it is signed by a majority of the board of each of the

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districts involved. Within 30 days after receipt of a petition, the department shall give notice of a hearing on the proposed consolidation. Notice shall be given to all members in the area proposed to be included in the consolidated district.

(2) Based on the facts presented at the hearing and other relevant facts, the department shall determine if consolidation is desirable. If the department determines that consolidation is desirable, it shall issue an order which states that the districts are to be consolidated on a date specified, the name of the consolidated district, and its gross territorial boundaries.

(3) The board of the consolidated district shall consist of the chairperson of the board of each of those districts consolidated, who shall serve for a term of 2 years, and 3 other members appointed by the department, who shall serve for a term of 1 year. Thereafter, directors shall be elected or appointed as provided in section 50131.

(4) Upon receipt of the order of consolidation, the secretary of state shall issue a certificate of proper organization to the directors of the consolidated district. The consolidated district shall have the same powers and duties as other districts organized under this part.

(5) The assets, liabilities, records, documents, writings, or other property of the districts consolidated shall become the property of the consolidated district. All agreements made by, and obligations of the districts consolidated shall be binding upon and enforceable by the consolidated district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.50134 Discontinuance of district; petition; public hearings; notice of referendum; eligibility to vote; publishing results of referendum; determination; certificate of determination; payment of debt and disposition of property; application for discontinuance; issuance and recordation of certificate of dissolution; contracts, bonds, or other obligations; limitation on petition for discontinuance.

Sec. 50134. (1) The members within a district, whose total lands compose 25% or more of the private forest land which comprise the district, may file a petition with the department requesting that the district be discontinued. The petition shall identify the provisions to be taken for the payment of outstanding debt and the disposition of district property.

(2) The department may conduct public hearings to assist it in its consideration of the petition. Within 60 days after a petition has been filed, the board shall give notice for the holding of a referendum upon the issue of the discontinuance of a district. All members of the district shall be eligible to vote in the referendum pursuant to the schedule in section 50131(3).

(3) The board shall publish the results of the referendum. If a majority of the votes cast are in favor of discontinuing a district, the department shall determine that the district will be discontinued. Even if a majority of the votes cast are not in favor of discontinuing a district, the department may determine that the district not continue in existence. If the department determines that the district shall continue, it shall record that determination and deny the petition. If the department determines that a district shall be discontinued, it shall record its determination and certify its decision to the board of the district. In making its determination, the department shall consider the economic and administrative feasibility of the continuation of a district, the extent of outstanding debt of the district, the attitudes of the members within the district, the number of members eligible to vote in the referendum who voted, the proportion of the votes cast in favor of the discontinuance of the district to the total number of votes cast, and other economic and social factors which may be relevant to the determination.

(4) Upon receipt from the department of a certification of a determination that a district shall be discontinued, the board shall proceed to terminate the affairs of the district. The board shall provide for the payment of all outstanding debt and for the disposition of district property to the state. The board shall thereafter file an application with the secretary of state for the discontinuance of the district. The application shall identify the action taken to provide for the payment of all outstanding debt and for the disposition of district property. The secretary of state shall issue a certificate of dissolution to the board of the district which specifies the effective date of discontinuance and shall record the certificate in the appropriate book of record.

(5) Each contract, bond, or other obligation to which a district is a party shall remain in force and effect for the period provided in the contract, bond, or other indebtedness. If a district is discontinued, the department shall be substituted for the district as a party to each contract entered into by the district, except the department is not responsible for any coupon or bond issued by a district under this part. The department is entitled to all benefits and subject to all responsibilities under each contract for which it is substituted as a

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party and has the same right to perform, to require performance, to sue and be sued, and to modify or terminate the contract by mutual consent or otherwise, as the board of a district would have had.

(6) The department shall not entertain a petition for the discontinuance of a district, or make determination pursuant to a petition under this section, more often than once every 2 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50135 Additional powers of district.

Sec. 50135. In addition to those powers granted elsewhere in this part, a district has all of the following powers, which are subject to federal and state environmental laws:

(a) To obtain real property for purposes of industrial site development within the gross territorial boundary of a district, a municipality located within the gross territorial boundary may take private property under the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws, for the purpose of transfer to the district and may transfer the property to the district for use in an industrial site. The taking, transfer, and use shall be considered necessary for public purposes and for the benefit of the public. For the purposes of this section, "industrial site development" means the location of industrial plant facilities for production, processing, handling, storage, marketing, manufacturing, or directly related transportation facilities of forest resources. Each district shall have only 1 industrial site not to exceed 150 acres.

(b) To act as the marketing agent for the members or an association of the members within a district after obtaining their consent, in order to facilitate cooperation among the members to increase their bargaining power, including the power to make commitments of private timber in a manner, volume, and for periods prescribed by the board.

(c) To conduct business operations with the powers provided in section 261 of the business corporation act, Act No. 284 of the Public Acts of 1972, being section 450.1261 of the Michigan Compiled Laws.

(d) To conduct and publish the results of surveys, investigations, and support research by research institutions relating to the need and nature of forest practices within a district.

(e) To develop comprehensive management plans for forest practices within the district which specify the procedures, performances, and resources necessary or desirable for the effectuation of the plans. If the state land encompassed by a district's gross territorial boundary is greater than 5% of the total forest land area, the department and the district administrators shall cooperate in the development of comprehensive management plans. The plans shall be published so as to bring them to the attention of the members within a district.

(f) To conduct projects to demonstrate the means and methods of forest practices within a district on forest land owned or controlled by the state or an agency of the state, with the cooperation of the agency administering and having jurisdiction, and on any other forest land within a district upon obtaining the consent of the owner or the necessary rights or interest in the land.

(g) To carry out and to assist members in carrying out forest practices within a district.

(h) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, property, real or personal, or rights or interests in real or personal property; to maintain, administer, and improve property acquired; to receive income from the property and to expend that income in implementing this part; and to sell, lease, or otherwise dispose of its property or interests.

(i) To make available to members within a district, on terms the board shall prescribe, foresters, forest managers, forest practice and harvesting machinery and equipment, seeds, and seedlings and other material, equipment, or personnel, as will be of assistance in carrying out forest practices.

(j) To construct, improve, operate, and maintain sawmills, hardboard mills, and other structures or facilities as may be necessary or convenient to carry out this part, and to cooperate with owners of existing structures and facilities.

(k) To assume by purchase, lease, or otherwise, and to administer, a forest improvement project undertaken within the boundaries of a district by the United States or an agency of the United States, or an agency of the state; to manage, as agent of the United States or an agency of the United States, or an agency of the state, a forest improvement project within its boundaries; to act as agent for the United States, or an agency of the United States, or for an agency of the state, in connection with the acquisition of real or personal property for, or in the construction, operation, or administration of, a forest improvement project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or an agency of the United States, from an agency of the state, or from any other source, and to use or expend that money or those services, materials, or other contributions in carrying on its operations subject to policies and procedures as adopted by the department; and to accept money, gifts, and donations from any source.

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(*l*) To cooperate with industrial and trade development agencies in efforts to promote the expansion of industrial and manufacturing activities utilizing wood products.

(m) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless discontinued as provided in this part; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; and to promulgate rules consistent with this part and the rules of the department in order to carry into effect the policy and purposes of this part.

(n) To extend benefits to members as considered desirable by the board and to require contributions in money, services, materials, or otherwise of members of forest land as a condition of extending benefits under this part.

(o) To defray all or part of the project costs of a forest improvement project, borrow money, and issue bonds as provided in this part. A bond or coupon issued under this part shall not be a general obligation of, or constitute a debt of the state or a political subdivision of the state, other than the issuing district.

(p) To enter into lease, lease-purchase, installment sale, loan, or other agreements with a person to provide for the acquisition, construction, equipping, improving, or financing of a forest improvement project.

(q) To mortgage any of the following in favor of the holders of the bonds issued in conjunction with a project:

(*i*) The project.

(*ii*) The industrial site of the district.

(*iii*) Any building, equipment, or other personal property situated on the site.

(*iv*) District owned forest land.

(*v*) Member owned forest land, with the member's consent.

(r) To sell and convey any district owned property, including without limitation the sale and conveyance of the industrial site and its facilities subject to a mortgage, for a price and at a time the board determines. A sale or conveyance shall not be made in a manner as to impair the rights or interests of the holders of bonds.

(s) To employ a district manager, foresters, architects, attorneys, accountants, construction and financial experts, and other employees and agents as are necessary to implement this part.

(t) To receive and accept from a public or private agency loans or grants for or in aid of a project or portion of a project undertaken, and receive and accept a loan, grant, aid, or contribution from any source of money, property, labor, or any other thing of value, to be held, used, and applied only for the purposes for which the loan, grant, aid, or contribution is made.

(u) To issue bonds for purposes of funding a forest improvement district or forest practices.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50136 Repealed. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: The repealed section pertained to cooperation between state agency and district board.

Popular name: Act 451

Popular name: NREPA

324.50137 Expenses of district; sources of payment; allocation of funds.

Sec. 50137. (1) The expenses of a district may be paid from 1 or more of the following:

(a) An appropriation by the legislature.

(b) The revenues of the district's facilities and operations.

(c) The proceeds of the service fees authorized by this part.

(d) The proceeds of sales of state timber within the district except for the redemption of the bonds in case of default.

(e) Federal grants or from gifts or grants from private persons.

(f) The proceeds from the sale of the bonds of the district.

(g) Any other funds available to the district.

(2) When allocating available funds among proposed districts, the department shall consider the proposed district or districts which in its judgment will produce the greatest public benefit, giving consideration to all of the following factors:

(a) The need for and potential commercial benefits of forest improvement if the district is formed within the proposed gross territorial boundaries.

(b) The need for and potential benefits to long-term production, maintenance, and enhancement of the total forest resource system.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.50138 Cooperative exercise of powers.

Sec. 50138. The boards of any 2 or more districts may cooperate in the exercise of powers conferred in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50139 Report.

Sec. 50139. During the years of operation of a district, a detailed report of the operation and impact of the district shall be submitted by the board of the district to the departments and the legislature for analysis and evaluation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 5
FOREST PRACTICES

324.50140 Conduct of forest practices; minimum standards.

Sec. 50140. For the public benefit, the board shall mandate the continuous growing, improvement, and harvesting of forest tree species so as to protect and maintain the forest soil, air, water resources, wildlife, and aquatic habitat within a district. The board of a district shall establish minimum standards for the conduct of forest practices on forest land within a district. These standards shall do all of the following:

(a) Provide for the improvement and harvesting of forest tree species in a manner that will increase the productivity of the forest land, reduce soil and debris entering streams, and protect wildlife and fish habitat.

(b) Provide for road construction that will ensure the maintenance of forest productivity, water quality, and fish and wildlife habitat during construction and maintenance.

(c) Provide for reforestation that will maintain the growing and harvesting of desirable forest tree species by describing the conditions under which reforestation will be required, specifying the minimum and maximum number of trees per acre and the maximum period of time allowed after harvesting for reforestation, and requiring stabilization of soils which have become exposed as a result of harvesting. An acreage exemption from reforestation may be established, except that on the land exempted, within 1 year after harvesting, some form of vegetative cover shall be required sufficient to provide continuing soil productivity and stabilization.

(d) Provide for management of slashings resulting from the harvesting, management, or improvement of forest tree species so as to protect reproduction and residual stands, to reduce the risk from fire, insects, and disease, to optimize the conditions for future regeneration of forest tree species, and to maintain air and water quality and fish and wildlife habitat.

(e) Coordinate the notification requirement of this subpart, the application requirement of section 50148, and all other submission requirements imposed upon members so as to minimize the requirements for submission of information.

(f) Provide for public uses of member forest land within the district, consistent with the purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50141 Notification of compliance with forest practice rules; forest management plan; forms; contents of notification; notice of change in information; validity of notification.

Sec. 50141. (1) A member shall notify the district of compliance with the forest practice rules by submitting a forest management plan on forms prescribed and provided by the board. The notification shall include the name and address of the member, the legal description of the area in which the forest management plan is to be implemented, the specific forest practices to be conducted during the plan, and other information the board considers necessary.

(2) The member shall notify the board of each subsequent change in the information provided in the

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notification within 30 days after the change.

(3) The notification shall be valid for not more than 5 years after the date of original notification.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50142 Violation of district forest practice rule; notice; order; hearing.

Sec. 50142. (1) If the board determines that a district forest practice rule was violated, it shall notify the member of the violation within 10 days after its determination. The notice shall specify the nature of the violation charged and identify the damage or unsatisfactory condition that has occurred as a result of the violation.

(2) When a notice of violation is served, the board:

(a) Shall issue and serve an order directing that further violations cease.

(b) May issue and serve an order directing the member to make reasonable efforts to repair the damage or correct the unsatisfactory condition.

(3) If the member requests a hearing within 10 days after the issuance of an order affecting the member's forest land, the board shall hold a hearing on its order within 30 days after the receipt of the request.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50143 Noncompliance with order directing repair of damage or correction of unsatisfactory condition; estimate of cost; notice of estimate; review; determination of expenditure; appearance of member; itemized certified statement of expenditures; expenditures as lien; certification and filing of notice of lien; legal action; error or mistake in notice of lien; termination of lien.

Sec. 50143. (1) If an order directs the repair of damage or correction of an unsatisfactory condition and if the member fails to comply, the board shall estimate the cost to repair the damage or the unsatisfactory condition and shall notify the member in writing of the amount of the estimate. Upon written agreement with the member to pay the cost, the district may have the damage repaired or the unsatisfactory condition corrected.

(2) If the member does not agree to pay the cost within 30 days after being notified, the board shall review the matter and determine whether the district shall repair the damage or correct the unsatisfactory condition, and shall approve the amount to be expended. The expenditure approved may include reasonable administrative costs directly associated with repairing the damage or correcting the unsatisfactory condition. The member shall be afforded the opportunity to appear before the board to present the facts pertaining to the alleged violation and the proposed expenditure.

(3) The board shall keep a complete account of expenditures incurred in repairing damage or correcting an unsatisfactory condition. Not more than 90 days after the completion of the work, the board shall prepare an itemized statement and deliver a copy to the member. An itemized certified statement of the expenditures incurred by the district shall be accepted as prima facie evidence of the expenditures in a proceeding authorized by this subpart.

(4) Upon the initiation of the forest practice work, the expenditures of a district shall become a lien upon a member's forest land located within the district. A written notice of the lien, containing a statement of the demand, an itemization of expenditures incurred, the date incurred and where incurred, and the names of the parties against whom the lien is attached, shall be certified under oath by the district and filed in the office of the register of deeds in each county where the real and personal property of the member is located, if considered necessary to recover the expenditures incurred by the district. This written notice shall be filed within 6 months but not sooner than 30 days after the date of delivery of the itemized statement referred to in subsection (3). The prosecuting attorney of a county in which a lien is filed shall bring legal action on behalf of a district to recover the debt. An error or mistake in the notice of lien of the description of real or personal property does not affect the validity of the lien, if the real or personal property can be identified by the description.

(5) A lien provided for in this section shall terminate 5 years after the date of filing of the notice of the lien unless legal action is instituted before that time.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.50144 Conversion of forest land to other use; procedures and criteria.

Sec. 50144. This subpart does not prevent forest land from being converted to any other use. A board shall establish the procedures and criteria for excluding land being converted or to be converted from the requirements of this subpart. The procedures and criteria shall conform with zoning ordinances and land use plans of any other political subdivision within which forest land of a district is located.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 6
COST-SHARING AND LOANS FOR FOREST PRACTICES

324.50145 Agreements to share cost of forest practices; schedule of cost share percentages.

Sec. 50145. (1) A district may enter into agreements to share the cost of implementing forest practices on member forest land within the district. A district may pay not more than 90% of the lesser of either of the following:

(a) The member's actual cost per acre to accomplish the work.

(b) The prevailing per acre cost for the forest practice as determined by the board.

(2) The board shall prepare a schedule of cost share percentages applicable to forest practices undertaken under this section. The schedule shall set forth the percentage amount which the member shall contribute for various categories of forest practices. The department shall provide technical assistance to a board in the preparation of a schedule. A member's cost share contributions may be made in the form of material, services, or equipment as well as funds.

(3) The scheduled percentage contribution for members owning less than 500 acres may be less than for members owning 500 acres or more. The schedule may also provide for a reduced percentage contribution by a member if 1 or more of the following apply:

(a) The forest practices would provide relatively more employment opportunities than other proposed practices.

(b) The forest practices would increase recreational opportunities for the public.

(c) Forest land conservation measures or fish or wildlife habitat improvements are included in the project.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50146 Loans to members; purpose; term; interest; security; recordation of mortgage or deed of trust; repayment before maturity date; damage as grounds for release of obligation.

Sec. 50146. (1) A district may make loans to a member for 1 or more of the following reasons:

(a) To cover all or part of the member's cost share contribution required under section 50145.

(b) To cover all or a part of the cost of forest practices, up to 100% of the lesser of either of the following:

(*i*) The actual cost per acre to accomplish the work.

(*ii*) The prevailing cost per acre.

(2) A loan made under this section may be made for a term of not more than 20 years and shall bear interest at the average annual rate being earned by the state on money deposited in the investment account of the general fund of this state. A loan shall be secured by a mortgage or deed of trust upon the parcel of land or the timber rights on the parcel of land upon which the forest practices were conducted. The board shall record the mortgage or deed of trust in the office of the register of deeds in each county in which the real property subject to the loan is located.

(3) An interest penalty shall not be charged to a member who repays a loan made under this section before its maturity date.

(4) The board may release a member's obligation to repay all or part of the principal and interest due under loans made under this section if the board finds that the parcel of land or the timber rights on the parcel of land securing the loan and upon which the forest practices were conducted have been substantially damaged by fire, flood, insects, disease, or other natural causes and the damage was not caused by the negligence or willful act of the member.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.50147 Annual incentive payments to members; purpose; application of income from sale of timber; term; interest; limitation; security; recordation of mortgage or deed of trust; effect of voluntary withdrawal of member; damage as grounds for release of obligation.

Sec. 50147. (1) A district may make annual incentive payments to members to cover forest practice costs only, but not to cover ad valorem property taxes or the member's share of commercial forest act taxes levied pursuant to part 511. This payment is made in anticipation of future timber receipts, and the total principal and interest obligation shall not exceed 90% of the future expected market value of the timber as estimated in the management plan. Income received from the sale of timber covered by this agreement between the district and a member shall be applied to the outstanding obligation.

(2) An annual incentive payment made under this section may be made for a term of not more than 40 years and shall bear interest at the average annual rate being earned by the state on money deposited in the investment account of the general fund of this state. An annual payment shall not exceed $50,000.00 to any 1 member. A payment shall be secured by a mortgage or deed of trust upon the parcel of land or timber, or both, upon which the payment was based. The board shall record the mortgage or deed of trust in the office of the register of deeds in each county in which the real property subject to the loan is located.

(3) A voluntary withdrawal of a member within a district will require full repayment of the obligation plus interest at the current commercial rate.

(4) The board may release a member's obligation to repay all or part of the principal and interest due under payments made under this section if the board finds that the parcel of land or the timber rights on the parcel of land securing the payment and upon which the forest practices were conducted have been substantially damaged by fire, flood, insects, disease, or other natural causes and the damage was not caused by the negligence or willful act of the member.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50148 Cost-share payments, loans, or annual incentive payments; eligibility; conditions; guidelines.

Sec. 50148. (1) The following conditions shall be met for a member to be eligible for cost-share payments, a loan, or an annual incentive payment:

(a) The member shall make application for financial assistance for forest practices to each federal program specified by the board. The board shall not make any determination as to whether and how much assistance a member will receive until the application is approved or disapproved by the governmental agency administering the federal program.

(b) The member shall submit an application for financial assistance in a form prescribed by the board.

(c) Before receiving assistance under this subpart, the member shall agree not to develop the land for a use incompatible with timber production within 10 years after the receipt of a cost-sharing payment agreement pursuant to section 50145, the making of a loan under section 50146, or the receipt of an annual incentive payment under section 50147. A district shall record the agreement in the office of the register of deeds in each county in which the forest land is located. Once recorded, the contract shall be binding upon each person to whom the parcel of land is sold, assigned, devised, or otherwise transferred by agreement or operation of law.

(d) The member shall submit a forest management plan for approval by the board. This plan shall also fulfill the notification requirements of subpart 5. If the proposed forest practices include preparation of a management plan, the plan need not be completed at the time of application. Assistance under this subpart for other forest practices on forest land within the same ownership shall not be made until the management plan has been approved.

(2) The board shall prepare guidelines specifying the factors to be considered and information which should be included in management plans submitted pursuant to this subpart and subpart 5.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50149 Applications for financial assistance; selection of programs; factors; preferences; criteria for evaluation and approval.

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Sec. 50149. (1) When allocating available funds among applicants for assistance pursuant to this subpart, the board shall select those programs of forest practices which in its judgment produce the greatest public benefit, giving consideration to the following factors:

(a) The need for and potential commercial benefits if the practices are undertaken.

(b) The financial resources of the applicant.

(c) The need for and potential benefits to long-term production, maintenance, and enhancement of the total forest resource system.

(2) The board shall give preference to applications covering forest land that has been substantially damaged by fire, flood, insects, disease, or other natural causes within 36 months before submission of an application under this subpart.

(3) The board shall also give preference to applications with respect to which 1 or more of the following factors is present:

(a) The forest management plan involves reforesting forest land with a more commercially valuable forest tree species than it previously produced.

(b) The forest management plan would provide relatively more employment opportunities than other proposed plans.

(c) The forest land is located in a county with high unemployment.

(d) A small business entity will carry out the proposed plan.

(e) The forest management plan or other actions of the member would increase recreational opportunities for the public.

(4) The board shall establish the criteria for evaluation and approval of applications for financial assistance.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50150 Cost-share payments, loans, or annual incentive payments; federal payments or other assistance; limitation.

Sec. 50150. Cost-share payments, loans, or annual incentive payments under this subpart may be made for forest practices that are also the subject of payments or other assistance provided under federal law. Payments or loans may be made to satisfy member cost shares or to repay loans received under federal programs. Combined state and federal payments and loans, and required member cost-share contributions, shall not together exceed the amount of the actual cost or the prevailing cost per acre of the forest practices as determined by the board, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50151 Cost-share payments, loans, or annual incentive payments; refund; interest; payments as lien on forest land; filing lien; legal action.

Sec. 50151. (1) All cost-share payments, loans, or annual incentive payments advanced to a member under this subpart shall be refunded to the district if either of the following applies:

(a) The member files an application for rezoning pursuant to local zoning laws permitting use of the land in a manner incompatible with timber production within 10 years after the date an agreement covering the land was signed under section 50148.

(b) The board finds that a member has not complied with the forest management plan required under section 50148.

(2) The refund shall bear interest from the date of occurrence of an activity described in subsection (1) until repayment, at the average annual rate being earned by the state on money deposited in the investment account of the general fund of this state.

(3) If the member fails to refund the payments or loans within 30 days after written demand by the district, the amount of the payments, together with interest due, shall become a lien upon the forest land upon which the forest practices were conducted as of the date of the event specified in subsection (1). The board shall file the lien in the office of the register of deeds in each county in which the forest land is located. The district may request the prosecuting attorney of a county in which a lien is filed to bring legal action on behalf of the district to recover the debt.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.50152 Severance and service fees generally.

Sec. 50152. In order to provide a source of funds for the cost-share payments, loans, annual incentive payments, and other services authorized to be offered to members within a district, a district may charge a severance fee pursuant to the procedure described in section 50153 and collect fees for services provided to those members. The fees shall be deposited in a district forest management fund to be established by the board.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50153 Schedule of fees for services; establishment; uniform severance fee.

Sec. 50153. (1) The board may establish a schedule of fees for the services provided directly to members within a district.

(2) After a referendum in which a majority of the members in a district approve the charging of a severance fee, the district may charge the fee, if a member harvests timber from forest land in the district. The issue of the charging of a severance fee may be placed before the members at the time of the formation of a district. The severance fee shall be uniform throughout a district and shall not exceed 10% of the stumpage value of the timber harvested.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50154 Severance and service fees; collection and disposition; responsibility for payment of severance fee; stumpage values and units of measurement; remittance; reports; records.

Sec. 50154. (1) The board shall develop the necessary administrative procedures to collect the fees and shall deposit the revenue collected in the district forest management fund.

(2) The person responsible for payment of the severance fee is the timber owner before harvest. The department shall provide technical assistance to a district to develop appropriate methods of establishing stumpage values and units of proper measurement.

(3) The fees shall be remitted to a district, by check or money order, with reports as may be required by the board.

(4) The timber owner, for a period of 3 years, shall maintain and make available to the board the records the board may require to verify proper reporting and payment of the severance fee and service fees due a district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50155 Collection of fees; enforcement.

Sec. 50155. The board shall enforce collection of the fees pursuant to the procedure contained in section 50143.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 7
BOND ISSUANCE PROVISIONS

324.50156 Resolution authorizing bonds; provisions.

Sec. 50156. A resolution authorizing bonds to be issued under the power granted in section 50135 may contain provisions, which shall be part of the contract with the holders of the bonds, as to:

(a) The use and disposition of the payments received under the agreement, including the creation and maintenance of reserves.

(b) The issuance of other or additional bonds of equal standing with bonds of a district already issued.

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(c) The insurance to be carried on the forest improvement project and the use and disposition of insurance money.

(d) The terms and conditions upon which the holder of the bonds, or a portion of the bonds, or a trustee of the bonds, shall be entitled to the appointment of a receiver by a court which has jurisdiction in those proceedings, who may enter and take possession of the forest improvement project and lease and maintain it, prescribe rentals, and collect, receive, and apply all income and revenues thereafter arising in the same manner and to the same extent as a district may do under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50157 Resolution authorizing bonds; principal, interest, payment, and security; full faith and credit; trustees.

Sec. 50157. (1) The bonds shall be payable and secured as set forth in the resolution authorizing the issuance. The resolution may provide that the principal of and interest on any bonds issued shall be payable and secured by 1 or more of the following:

(a) The net revenues derived from a forest improvement project.

(b) Amounts derived from the disposition of projects and other property mortgaged or otherwise pledged as security for payment of the bonds.

(c) Gifts or grants by any person.

(d) Federal funds.

(e) Loan repayments.

(f) An assignment of a percentage of gross revenues received by the district.

(g) Any other source approved by the board.

(2) District debt may also be secured by the full faith and credit of the district but shall not be general obligations of the state of Michigan. The resolution may also provide for the appointment of 1 or more trustees for bondholders. A trustee may be a person domiciled or located within or outside the state and may be given appropriate powers.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50158 Special debt service reserve fund; creation; purpose; sources and use of money; transfer of income or interest; limitation on approved reserve fund requirement; limitation on issuance of bonds.

Sec. 50158. (1) A district, with the approval of the department, may create and establish 1 or more special debt service reserve funds, to secure its bonds, referred to in this part as approved reserve funds. A district shall pay into an approved reserve fund the money appropriated and made available by the state for the purpose of the fund; proceeds of the sale of bonds, to the extent provided in the resolution of the district authorizing the issuance of bonds; and other money made available for the purpose of a fund from any other source. The money held in an approved reserve fund shall be used as required by the resolution authorizing the issuance of bonds and creating the fund. Income or interest earned by, or increment to an approved reserve fund due to the investment of money in the fund may be transferred by a district to other funds or accounts of the district to the extent the transfer does not reduce the amount of an approved reserve fund below the required level for a fund, as specified in the bond authorizing resolution.

(2) An approved reserve fund requirement in the resolution of the board authorizing the bonds with respect to which the fund is established, shall not exceed the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on the bonds secured in whole or part by the fund. A district shall not issue bonds secured in whole or in part by an approved reserve fund if, upon the issuance of the bonds, the amount in the fund would be less than the requirement for the fund, unless the district at the time of issuance of the bonds, deposits in the fund from the proceeds of the bonds to be issued, or from other sources, an amount which, together with the amount then in the fund, shall be not less than the approved reserve fund requirement for the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.50159 Statement of liability on face of bond.

Sec. 50159. The state shall not be liable on bonds of a district, and the bonds shall not be a debt of the state. The bonds shall contain on their face a statement to that effect.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50160 Applicability of part and resolution; enforcement of duties; recital in bond as evidence of validity; publication and effective date of resolution.

Sec. 50160. (1) This part, and the resolution authorizing the issuance of bonds under this part shall remain applicable until the principal and interest on bonds issued by a district have been fully paid or provided for. The duties of a district and its board under this part and the resolution authorizing the issuance of bonds under this part shall be enforceable by a bondholder by mandamus or other appropriate action in a court of competent jurisdiction.

(2) The resolution authorizing the issuance of bonds shall provide that the bonds shall contain a recital that they are issued under this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

(3) A resolution authorizing the issuance of bonds under this part is not effective until publication at least once in a newspaper of general circulation within the area comprised by a district or, if such a newspaper does not exist, within the nearest city or county having a newspaper of general circulation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50161 Refunding bonds.

Sec. 50161. A district may issue its bonds to refund in whole or part, at any time, bonds previously issued by the district under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50162 Adoption of bonds by resolution of majority of board; bonds subject to revised municipal finance act.

Sec. 50162. The bonds of a district shall be authorized by resolution adopted by a majority of the board. The bonds are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2002, Act 222, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.50163 Pledge and lien of pledge valid and binding; recordation not required.

Sec. 50163. A pledge made by a district shall be valid and binding from the time the pledge is made. The money or property pledged and thereafter received by a district is immediately subject to the lien of the pledge without physical delivery or a further act. The lien of a pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a district, irrespective of whether the parties have notice of the claim. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50164 Liability on bonds.

Sec. 50164. Neither the members of the board of a district nor a person executing the bonds is personally liable on the bonds or subject to personal liability or accountability by reason of the board's issuance or the person's execution of the bonds.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.50165 Pledge and agreement of state not to impair rights and remedies of bondholders; bonds as negotiable instruments; bonds as securities; investment in bonds.

Sec. 50165. (1) The state pledges and agrees with the holders of bonds issued under this part that the state will not limit or alter the rights vested in a district to fulfill the terms of agreements made with the holders of bonds or in any way impair the rights and remedies of the holders until the bonds, together with the interest on the bonds, with interest on any unpaid installments of interest and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. A district shall include this pledge and agreement of the state in each agreement with the holders of the bonds.

(2) The bonds authorized to be issued by this part are negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws, subject only to the provisions of the bonds for registration.

(3) The bonds of a district are securities in which each public officer or body of the state and each political subdivision of the state; each insurance company and association and any other person carrying on an insurance business; each bank, trust company, savings bank and savings association, savings and loan association, or investment company; each administrator, guardian, executor, trustee, or other fiduciary; and any other person who is authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, which are either owned or controlled by the person or other entity.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50166 Exemption from taxation.

Sec. 50166. The state covenants with the purchasers and all subsequent holders and transferees of bonds issued under this part, in consideration of the acceptance of and payment for the bonds, that the bonds issued under this part and the income from those bonds and all its fees, charges, gifts, grants, revenues, receipts, and other money received or to be received, pledged to pay or secure the payment of the bonds at all times are exempt from state or local income taxation provided by the laws of the state, except for estate, inheritance, and gift taxes and taxes on transfers.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 503
STATE FOREST PRODUCTS INDUSTRY DEVELOPMENT COUNCIL

324.50301 Duties of departments of agriculture and rural development and natural resources.

Sec. 50301. The departments of agriculture and rural development and natural resources shall jointly do all of the following:

(a) Advise the legislature and the governor on forest management and development and other matters relevant to the development of the forest products industry in this state.

(b) Develop a forestry development plan to improve the state's business climate for forestry, assure a stable timber supply, and coordinate public and private forestry activities.

(c) Identify the needs of the forest products industry.

(d) Promote and encourage the expansion of the forest products industry in this state.

(e) Promote and encourage the retention and expansion of existing forest products companies in this state and attract new forest products companies to locate in this state.

(f) Perform other functions the departments consider necessary for the development of the forest products industry in this state.

(g) Promote and encourage the use of this state's value-added forest products in Michigan, in other states, and internationally.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 47, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.50302 Annual report.

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Sec. 50302. The departments of agriculture and rural development and natural resources, jointly, shall annually report to the governor and the legislature on their activities to promote the development of the forest products industry in this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 47, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

PART 505
MICHIGAN FOREST FINANCE AUTHORITY

324.50501 Purpose of part.

Sec. 50501. The purpose of this part and of the authority created by this part is to preserve existing jobs, create new jobs, and alleviate and prevent unemployment through the retention, promotion, and development of forestry and forest industries and to protect the health and vigor of forest resources by doing all of the following:

(a) Funding practices prescribed and approved by the department that intensify management of certain highly productive portions of this state's forest system.

(b) Implementing a system of forest management that is investment-oriented, economically efficient, and environmentally sound.

(c) Implementing a system of forest management that is consistent with principles of sustainable forestry and with part 525.

(d) Promoting a stable and continuing supply of timber for future economic expansion.

(e) Providing dependable funding of scheduled forest management operations and practices.

(f) Promoting effective investment of revenues from timber sales for high future returns.

(g) Facilitating timely performance of forest management operations and practices.

(h) Earning additional revenues for forest management from timber sales.

(i) Establishing new stands of trees.

(j) Providing for reforestation, forest protection, and timber stand improvement.

(k) Providing an additional funding source for the purposes described in this section from indebtedness secured with revenues generated from future sale of timber harvested from state tax reverted lands, from lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and from other lands as provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 124, Imd. Eff. May 28, 2004;—Am. 2020, Act 287, Imd. Eff. Dec. 29, 2020.

Popular name: Act 451

Popular name: NREPA

324.50502 Definitions.

Sec. 50502. As used in this part:

(a) "Authority" means the Michigan forest finance authority created in section 50503.

(b) "Board" means the board of directors of the Michigan forest finance authority, except where the context clearly requires a different definition.

(c) "Bonds" means bonds of the authority issued as provided in this part.

(d) "Forest management operations and practices" means activities related to the harvesting, reforestation, and other forest management, including, but not limited to, road access for silviculture activity and forest thinning, pest control, disease control, fertilization, forest protection, and wildlife management, that are consistent with principles of sustainable forestry.

(e) "Notes" means notes of the authority issued as provided in this part, including commercial paper.

(f) "State forester" means an employee of the department who has a 4-year degree in forest management from an accredited college or university and experience in forest management and who is designated as the state forester by the director.

(g) "Sustainable forestry" means that term as defined in section 52501.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 124, Imd. Eff. May 28, 2004;—Am. 2020, Act 287, Imd. Eff. Dec. 29, 2020.

Popular name: Act 451

Popular name: NREPA

324.50503 Michigan forest finance authority; creation; exercise of powers, duties, and

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functions; handling of funds.

Sec. 50503. The Michigan forest finance authority is created as a body corporate within the department of natural resources and shall be administered under the supervision of the department but shall exercise its prescribed statutory power, duties, and functions independently of the department. The budgeting, procurement, and related functions of the authority shall be performed under the direction and supervision of the department. Funds of the authority shall be handled in the same manner and subject to the same provisions of law applicable to state funds or in a manner specified in a resolution of the authority authorizing the issuance of bonds and notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of powers and duties of Michigan forest finance authority from department of natural resources to department of natural resources and environment, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

For transfer of powers and duties of Michigan forest finance authority, and of its board of directors, relating to borrowing money and issuing bonds or notes, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

For transfer of certain other powers and duties of Michigan forest finance authority to department of natural resources, see E.R.O. No. 2010-2, compiled at MCL 12.194.

For transfer of Michigan forest finance authority from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.50504 Board of directors; appointment; terms; oath; vacancy; persons subject to MCL 15.321 to 15.330; discharge of duties; policies and procedures; conducting business at public meetings; notice; quorum; actions of board; representative as voting member; chairperson.

Sec. 50504. (1) The authority shall be governed by a board of directors consisting of the director, the state treasurer, the director of the department of labor and economic growth, and 6 residents of the state, appointed by the governor with the advice and consent of the senate as follows:

(a) One individual shall represent the forest products industry within the state.

(b) One individual shall be a commercial logging contractor.

(c) One individual shall be an owner of nonindustrial, private forestland.

(d) One individual shall be from the wood products manufacturing industry.

(e) One individual shall represent hunters, anglers, and other outdoor recreation interests.

(f) One individual from a college or university in the state with knowledge and expertise in forest management.

(2) The 6 resident directors appointed under subsection (1)(a) to (f) shall serve terms of 3 years. In appointing the initial 6 resident members of the board, the governor shall designate 2 to serve for 3 years, 2 to serve for 2 years, and 2 to serve for 1 year.

(3) Upon appointment to the board under subsection (1), and upon the taking and filing of the constitutional oath of office, a member of the board shall enter the office and exercise the duties of the office.

(4) Regardless of the cause of a vacancy on the board, the governor shall fill a vacancy in the office of a member of the board by appointment with the advice and consent of the senate. A vacancy shall be filled for the balance of the unexpired term of the office. A member of the board shall hold office until a successor has been appointed and has qualified.

(5) Members of the board and officers and employees of the authority are subject to 1968 PA 317, MCL 15.321 to 15.330. A member of the board or an officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, a member of the board or an officer, employee, or agent of the authority, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the board, officer, employee, or agent to be correct by the officer of the authority having charge of its books or account, or stated in a written report by the auditor general or a certified public accountant or the firm of the accountants fairly to reflect the financial condition of the authority.

(6) The board shall organize and make its own policies and procedures. The board shall conduct all business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of each meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Five members of the board constitute a quorum for the transaction of business. An action of the board requires a concurring vote by 5 members of the board. A state officer who is a member of the board may designate a representative from his or her department to serve

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instead of that state officer as a voting member of the board for 1 or more meetings. The state treasurer shall serve as chairperson of the board.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 124, Imd. Eff. May 28, 2004.

Compiler's note: For transfer of powers and duties of Michigan forest finance authority, and of its board of directors, relating to borrowing money and issuing bonds or notes, to Michigan finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

For transfer of certain other powers and duties of Michigan forest finance authority to department of natural resources, see E.R.O. No. 2010-2, compiled at MCL 12.194.

For transfer of position of director of department of natural resources and environment as member of board of directors of Michigan forest finance authority to director of department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.50505 Election of chairperson and vice-chairperson; state forester as executive director; qualifications, duties, and compensation of employees; delegation of powers or duties; rights and interests of authority; annual report; audits; records.

Sec. 50505. (1) The authority shall elect a chairperson and a vice-chairperson from among its members. The state forester shall serve as the executive director of the authority. The authority may employ legal and technical experts and other officers, agents, or employees, permanent or temporary, paid from the funds of the authority. The authority shall determine the qualifications, duties, and compensation of those it employs, but an employee shall not be paid a higher salary than the director. The authority may delegate to 1 or more members, officers, agents, or employees any powers or duties it considers proper.

(2) The authority shall contract with the department for the purpose of maintaining and improving the rights and interests of the authority.

(3) The authority shall annually file a written report on its activities of the last year with the legislature. This report shall be submitted not later than 270 days following the end of the fiscal year. This report shall specify the amount and source of revenues received, the status of investments made, and a description of the forest management practices undertaken by the department with proceeds of bonds sold under this part.

(4) The accounts of the authority shall be subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general. Records shall be maintained according to generally accepted auditing principles.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Compiler's note: For abolishment of position of executive director of Michigan forest finance authority, see E.R.O. No. 2010-2, compiled at MCL 12.194.

Popular name: Act 451

Popular name: NREPA

324.50506 Powers of board.

Sec. 50506. Except as otherwise provided in this part, the board may do all things necessary or convenient to implement the purposes, objectives, and provisions of this part, and the purposes, objectives, and powers delegated to the board by other laws or executive orders, including, but not limited to, all of the following:

(a) Adopt an official seal and bylaws for the regulation of its affairs and alter the seal or bylaws at its pleasure.

(b) Sue and be sued in its own name and plead and be impleaded.

(c) Borrow money and issue negotiable revenue bonds and notes pursuant to this part.

(d) Enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers.

(e) With the prior consent of the department, solicit and accept gifts, grants, loans, and other aid from any person, or the federal, state, or local government or any agency of the federal, state, or local government, or participate in any other way in a federal, state, or local government program.

(f) Acquire standing timber, timber cutting rights, and the state's interest in contracts granting cutting rights, on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law, to be used for any of the purposes provided in this part subject to the restrictions of section 50509. However, the state shall not convey to the authority fee title to any state forest lands.

(g) Procure insurance against loss in connection with the property, assets, or activities of the authority.

(h) Invest money of the authority, at the board's discretion, in instruments, obligations, securities, or property determined proper by the board, and name and use depositories for its money.

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(i) Contract for goods and services and engage personnel as necessary and engage the services of private consultants, managers, legal counsel, and auditors for rendering professional financial assistance and advice payable out of any money of the authority, subject to the restrictions of section 50507.

(j) Indemnify and procure insurance indemnifying members of the board from personal loss or accountability from liability asserted by a person on bonds or notes of the authority, or from any personal liability or accountability by reason of the issuance of the bonds or notes, or by reason of any other action taken or the failure to act by the authority.

(k) Do all other things necessary or convenient to achieve the objectives and purposes of the authority, this part, rules promulgated under this part, or other laws that relate to the purposes and responsibilities of the authority.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 124, Imd. Eff. May 28, 2004.

Popular name: Act 451

Popular name: NREPA

324.50507 Financing forest management operations and practices; application of funds; interim procedure; annual list of activities and practices; projection of probable default; contracts for cutting and sale of timber; forest development fund; audit.

Sec. 50507. (1) The authority shall finance only forest management operations and practices consistent with part 525 that follow the guidelines, rules, and objectives prescribed by the department.

(2) Funds managed by the authority shall be applied in a manner consistent with part 525 and the land management planning policies of the department on lands that have been identified for forest management practices. In the absence of an approved state forest management plan covering a candidate area, the department shall use an interim procedure to ensure that all forest values have been considered in selecting sites for investment with funds of the authority. The department shall annually submit a list of activities and practices funded from revenue generated under this part for the board's review and determination of consistency with this part.

(3) The executive director of the authority shall notify the department if the authority projects a probable default on any bonds or notes issued by the authority. Within 1 year after receipt of the notification, or less than 1 year if the notification indicates a shorter time period is necessary to avoid a default, the department shall identify and convey to the authority sufficient timber on tax reverted lands to enable the authority to avoid the projected default and to provide for timely payment of principal of and interest on the authority's bonds or notes. The authority may only issue contracts for the cutting and sale of timber that has been conveyed to the authority under this section to avoid a default on any bonds or notes issued by the authority. The determination of the board as to the need to cut and sell timber is conclusive. Contracts for the cutting and sale of timber shall be consistent with part 525 and with the guidelines, rules, and objectives prescribed by the department.

(4) The authority shall establish a fund designated as the "forest development fund". Revenue as provided under section 53519 and any money on hand or received in the future from bond proceeds and from contracts for the cutting and sale of timber on tax reverted lands shall be deposited in the forest development fund. In addition, this fund may receive revenues from any other source. The authority shall use money in the forest development fund only for 1 or more of the following, subject to subsection (5):

(a) To provide for the payment of principal of and interest on any bonds or notes issued by the authority.

(b) For forest management operations and practices.

(c) To obtain and maintain certification of sustainable forestry standards in the state forest under section 52505.

(d) For the administration and enforcement of part 535. Revenue deposited in the forest development fund as provided under section 53519 shall be used only as provided in this subdivision.

(e) For the administration of the forest development fund.

(5) Money in the forest development fund shall not be used for payments in lieu of taxes under section 2154.

(6) The auditor general shall audit the expenditures of the forest development fund at least once every 3 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 124, Imd. Eff. May 28, 2004;—Am. 2016, Act 248, Eff. Sept. 22, 2016;—Am. 2018, Act 116, Eff. July 25, 2018;—Am. 2020, Act 287, Imd. Eff. Dec. 29, 2020.

Popular name: Act 451

Popular name: NREPA

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324.50508 Department as agent for authority; conveyance of state's interest in contracts granting timber cutting rights; deposit of money received; conveyance of title to timber.

Sec. 50508. (1) Except as provided in section 50507(3), the department shall act as the agent for the authority in contracting for the cutting and sale of timber or other forest management operations and practices undertaken by the authority.

(2) The state's interest in all existing and future contracts granting timber cutting rights on state tax reverted lands are conveyed to the authority to be used for any of the purposes of this part subject to the restrictions of this part. The money received by the state from existing or future contracts for the cutting and sale of timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law shall be deposited in the forest development fund and utilized as provided in section 50507(4).

(3) In order to provide for additional security for indebtedness of the authority, the department may convey to the authority title to timber on all or any portion of tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law. The form of conveyance shall be approved by the attorney general and by resolution of the state administrative board. If the authority receives title to any timber, it may release and reconvey timber on state tax reverted lands, on lands in the state forest system from which revenues derived from the sale of timber were previously deposited in the forest management fund created in former 1945 PA 268, and on other lands as provided by law if requested by the department, and the reconveyance from the authority to the department will not cause the authority to default on any obligation or covenant contained in any resolution of the authority authorizing issuance of bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 124, Imd. Eff. May 28, 2004.

Popular name: Act 451

Popular name: NREPA

324.50509 Bonds and notes generally; expenses; expenditures.

Sec. 50509. (1) The authority may authorize and issue its bonds or notes payable solely from the revenues or funds available to the authority. Bonds and notes of the authority are not a debt or liability of the state and do not create or constitute any indebtedness, liability, or obligations of the state or constitute a pledge of the faith and credit of the state. All authority bonds and notes shall be payable solely from revenues or funds pledged or available for their payment as authorized in this part. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal of and the interest on the bond or note only from revenues or funds of the authority pledged for the payment of principal and interest and that the state is not obligated to pay that principal or interest and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the bond or note.

(2) All expenses incurred in carrying out this part shall be payable solely from revenues or funds provided or to be provided under this part. This part does not authorize the authority to incur any indebtedness or liability on behalf of or payable by the state.

(3) Any revenues or funds available to the authority that are not necessary to pay principal of or interest on any outstanding bonds or notes of the authority or which are not required to be deposited in a fund created to secure the bonds or notes of the authority or required to provide for the funding of any other matters required by a resolution authorizing the issuance of bonds or notes of the authority shall be expended to fund forest management programs in a manner prescribed by the department. Any money derived from the proceeds of bonds or notes shall be expended by the authority in the manner prescribed in the part and the resolution authorizing such indebtedness.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50510 Bonds or notes; purposes; payment; requirements; signature of board member or office of authority; sale of bonds or notes; applicability of other laws; interest rate agreement.

Sec. 50510. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

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(a) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(b) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.

(c) The payment of interest on the bonds or notes for a period as the authority determines.

(d) The payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the authority shall not be a general obligation of the authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the authority:

(a) Shall be authorized by resolution of the authority.

(b) Shall bear the date or dates of issuance.

(c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.

(d) Shall be serial bonds, term bonds, or term and serial bonds.

(e) Shall mature at such time or times not exceeding 30 years from the date of issuance.

(f) May provide for sinking fund payments.

(g) May provide for redemption at the option of the authority for any reason or reasons.

(h) May provide for redemption at the option of the bondholder for any reason or reasons.

(i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.

(j) Shall be registered bonds, coupon bonds, or both.

(k) May contain a conversion feature.

(*l*) May be transferable.

(m) Shall be in the form, denomination or denominations, and with the other provisions and terms as is determined necessary or beneficial by the authority.

(4) If a member of the board or any officer of the authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that note or bond, the signature shall continue to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. Bonds and notes of the authority are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the authority is not required to be filed under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703.

(6) The issuance of bonds and notes under this section is subject to the agency financing reporting act, 2002 PA 470, MCL 129.171 to 129.177.

(7) For the purpose of more effectively managing its debt service, the authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2002, Act 387, Imd. Eff. May 30, 2002;—Am. 2009, Act 98, Imd. Eff. Sept. 24, 2009.

Popular name: Act 451

Popular name: NREPA

324.50511 Refunding bonds or notes.

Sec. 50511. (1) The authority may provide for the issuance of bonds or notes in the amounts the authority considers necessary for the purpose of refunding bonds or notes of the authority then outstanding, including the payment of any redemption premium and interest accrued or to accrue to the earliest or subsequent date of redemption, purchase, or maturity of these bonds or notes. The proceeds of bonds or notes issued for the purpose of refunding outstanding bonds or notes may be applied by the authority to the purchase or retirement at maturity or redemption of outstanding bonds or notes either on the earliest or subsequent redemption date, and pending such applications, may be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date or dates determined by the authority. Pending such application and subject to agreements with noteholders or bondholders, the escrowed proceeds may be invested and reinvested in the manner the authority determines, maturing at the date or times as appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, on the outstanding bonds or notes to be refunded.

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After the terms of the escrow have been fully satisfied and carried out, the balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment of the proceeds shall be returned to the authority for use by the authority in any lawful manner.

(2) In the resolution authorizing bonds or notes to refund bonds or notes, the authority may provide that the bonds or notes to be refunded shall be considered paid when there has been deposited in escrow, money or investment obligations that would provide payments of principal and interest adequate to pay the principal and interest on the bonds to be refunded, as that principal and interest becomes due whether by maturity or prior redemption and that, upon the deposit of the money or investment obligations, the obligations of the authority to the holders of the bonds or notes to be refunded shall be terminated except as to the rights to the money or investment obligations deposited in trust.

(3) The authority shall not have outstanding at any time bonds or notes in an aggregate principal amount exceeding $20,000,000.00 excluding bonds or notes issued to refund outstanding bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50512 Security to assure timely payment of bond or note.

Sec. 50512. (1) The authority may authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, and any other transaction to provide security to assure timely payment of a bond or note.

(2) The authority may authorize payment from the proceeds of the notes or bonds, or other funds available, of the cost of issuance including, but not limited to, fees for placement, charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, or purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of notes or bonds.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50513 Bonds or notes; authority of board member, executive director, or other officer of authority.

Sec. 50513. Within limitations that shall be contained in the issuance or authorization resolution of the authority, the authority may authorize a member of the board, the executive director, or other officer of the authority to do 1 or more of the following:

(a) Sell and deliver, and receive payment for notes or bonds.

(b) Refund notes or bonds by the delivery of new notes or bonds whether or not the notes or bonds to be refunded have matured or are subject to redemption.

(c) Deliver notes or bonds, partly to refund notes or bonds and partly for any other authorized purpose.

(d) Buy notes or bonds so issued and resell those notes or bonds.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights at the option of the authority or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

(f) Direct the investment of any and all funds of the authority.

(g) Approve the terms of a contract, including, but not limited to, a contract for the sale or cutting of timber, and execute and deliver the contract subject to the restrictions of this part.

(h) Approve terms of any insurance contract, agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, an agreement to manage payment, revenue, or interest rate exposure, or any other transaction to provide security to assure timely payment of a bond or note.

(i) Perform any power, duty, function, or responsibility of the authority.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50514 Resolution authorizing bonds or notes; provisions.

Sec. 50514. A resolution authorizing bonds or notes may provide for all of the following that shall be part of the contract with the holders of the bonds or notes:

(a) A pledge to any payment or purpose all or any part of authority revenues or assets to which its right

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then exists or may later come to exist, and of money derived from the revenues or assets, and of the proceeds of bonds or notes or of an issue of bonds or notes, subject to any existing agreements with bondholders or noteholders. The authority shall not mortgage or grant a security interest in or otherwise pledge its ownership rights in standing timber. This subdivision does not prohibit the authority from pledging any revenues derived from the sale of timber or any contracts for the cutting of timber.

(b) A pledge of a loan, grant, or contribution from the federal or state government.

(c) The establishment and setting aside of reserves or sinking funds and the regulation and disposition of reserves or sinking funds subject to this part.

(d) Authority for and limitations on the issuance of additional bonds or notes for the purposes provided for in the resolution and the terms upon which additional notes or bonds may be issued and secured.

(e) The procedure, if any, by which the terms of a contract with noteholders or bondholders may be amended or abrogated, the number of noteholders or bondholders who are required to consent to the amendment or abrogation, and the manner in which the consent may be given.

(f) A contract with the bondholders as to the custody, collection, securing, investment, and payment of any money of the authority. Money of the authority and deposits of money may be secured in the manner determined by the authority. Banks and trust companies may give security for such deposits.

(g) Vest in a trustee, or a secured party, such property, income, revenues, receipts, rights, remedies, powers, and duties in trust or otherwise as the authority determines necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of the holders of bonds or notes of the authority to appoint a trustee under this part or to limit the rights, powers, and duties of the trustee.

(h) Provide to a trustee or the noteholders or bondholders remedies that may be exercised if the authority fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of bonds or notes, which may include any of the following:

(*i*) By mandamus or other suit, action, or proceeding at law or in equity, to enforce the rights of the bondholders or noteholders, and require the authority to carry out any other agreements with the holders of those notes or bonds and to perform the authority's duties under this part.

(*ii*) Bring suit upon the notes or bonds.

(*iii*) By action or suit, require the authority to account as if it were the trustee of an express trust for the holders of the notes or bonds.

(*iv*) By action or suit in equity, enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the notes or bonds.

(*v*) Declare the notes or bonds due and payable and, if all defaults shall be made good, then, as permitted by such resolution, annul that declaration and its consequences.

(i) Any other matters of like or different character that in any way affect the security of protection of the bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50515 Pledge.

Sec. 50515. A pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property pledged and then received by the authority immediately is subject to the lien of the pledge without a physical delivery or further act. The lien of a pledge is valid and binding as against parties having claims of any kind in tort, contract, or otherwise against the authority, and is valid and binding as against the transfers of the money or property pledged, irrespective of whether parties have notice. Neither the resolution, the trust agreement, nor any other instrument by which a pledge is created need be recorded in order to establish and perfect a lien or security interest in the property so pledged.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50516 Personal liability on bonds or notes.

Sec. 50516. Neither the members of the authority nor any person executing bonds or notes issued under this part or any person executing any agreement on behalf of the authority is liable personally on the bonds or notes by reason of their issuance.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.50517 Purchasing, holding, canceling, or reselling bonds or notes.

Sec. 50517. The authority may purchase bonds or notes of the authority out of funds or money of the authority available for that purpose. The authority may hold, cancel, or resell authority bonds or notes subject to or in accordance with an agreement with holders of authority bonds or notes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50518 Rights and remedies.

Sec. 50518. The state pledges to and agrees with the holders of bonds or notes issued under this part that the state shall not limit or restrict the rights vested in the authority by this part to fulfill the terms of an agreement made with the holders of authority bonds or notes, or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds and notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50519 Bonds or notes as legal investments; security.

Sec. 50519. Notwithstanding any restriction contained in any other law, the state and a public officer, local unit of government, or agency of the state or a local unit of government; a bank, trust company, savings bank and institution, savings and loan association, investment company, or other person carrying on a banking business; an insurance company, insurance association, or other person carrying on an insurance business; or an executor, administrator, guardian, trustee, or other fiduciary may legally invest funds belonging to them or within their control in bonds or notes issued under this part, and authority bonds or notes shall be authorized security for public deposits.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50520 Property and income of authority; exemption from taxes and special assessments; bonds or notes exempt from taxation.

Sec. 50520. Property of the authority is public property devoted to an essential public and governmental function and purpose. Income of the authority is considered to be for a public purpose. The property of the authority and its income and operation are exempt from all taxes and special assessments of the state or a political subdivision of the state. Bonds or notes issued by the authority, and the interest on and income from those bonds and notes, are exempt from all taxation of the state or a political subdivision of the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50521 Liberal construction; broad interpretation.

Sec. 50521. This part shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this part, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50522 Rules.

Sec. 50522. The authority may promulgate rules as necessary to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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PART 507
FOREST MANAGEMENT DEMONSTRATION PROGRAM

324.50701 Conveyance by department of leasehold interest in state-owned property to certain counties; designation of forest lands to be leased; maximum term of leasehold interest; renewal; recreational use of property during leasehold.

Sec. 50701. (1) In a county in which more than 50% of the land is owned by the state and in which the county annual average unemployment rate exceeds the state annual average unemployment rate, as determined by the Michigan employment security commission, due to reductions in staff at a state facility located in the county, the department is authorized to convey a leasehold interest, without monetary consideration, to the county in not more than 1% of the state owned property located in the county and under the control of the department. The county forestry committee created pursuant to section 50703, in cooperation with the department, shall designate the specific sections of property to be leased. The property designated pursuant to this subsection shall not include forest lands located in state parks or lands useful for forest preserves, game areas, and recreational purposes, including wilderness areas, quiet areas, or other special use areas. The property designated pursuant to this subsection shall consist of forest lands previously designated by the department for timber production and suitable for use in the forest management demonstration program established pursuant to this part.

(2) The term of a leasehold interest authorized by this part shall not exceed 15 years, but the leasehold interest shall be renewable for an additional 15 years if the primary objectives of the forest management demonstration program established pursuant to this part are met, as determined by the department.

(3) During the term of the leasehold interest authorized by this part, the leased property shall be open to the public for hunting, fishing, and other recreational uses as considered appropriate by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50702 Use of leased property; purposes; use and disposition of proceeds; implementation of forest management demonstration program.

Sec. 50702. (1) The property leased pursuant to this part shall be used by the county only for the following purposes:

(a) To establish a forest management demonstration program to produce forest products for the purpose of economic development in the county.

(b) To make forest land available to the local school districts for educational purposes.

(2) The proceeds from the forest management demonstration program shall be used exclusively for economic development in the county and, if the county has established an economic development corporation under the economic development corporations act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws, shall be deposited in the fund of the county established pursuant to section 27 of Act No. 338 of the Public Acts of 1974, being section 125.1627 of the Michigan Compiled Laws. If the county economic development corporation is dissolved, the proceeds from the forest management demonstration program shall be transferred to and deposited in the general fund of the county. If the county has not established an economic development corporation, the proceeds from the forest management demonstration project shall be deposited in the general fund of the county. The forest management demonstration program shall be implemented by the county forestry committee created pursuant to section 50703. In implementing the forest management demonstration program, the county forestry committee shall cooperate with the department in all matters pertaining to forest management.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50703 County forestry committee; creation; appointment, qualifications, and terms of members; approval of committee actions; vacancy.

Sec. 50703. A county forestry committee is created for purposes of this part and shall consist of 5 members who shall be appointed by the county board of commissioners. Two members of the county forestry committee shall be foresters registered under part 535, 1 member shall be a member of the county economic development corporation, 1 member shall be a member of the county board of commissioners, and 1 member

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shall be a resident of the county who is not a county official or employee. If the county has not established an economic development corporation under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, 2 members shall be residents of the county who are not county officials or employees. The members of the county forestry committee shall be appointed for a term of 4 years, except that of the first appointments, 2 shall be for a term of 4 years, 1 shall be for a term of 3 years, 1 shall be for a term of 2 years, and 1 shall be for a term of 1 year. All actions of the county forestry committee shall be approved by the county board of commissioners. A vacancy on the county forestry committee shall be filled by the county board of commissioners for the remainder of the unexpired term.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.50704 Instrument conveying leasehold interest; approval by attorney general.

Sec. 50704. An instrument conveying a leasehold interest in real property authorized by this part shall be approved by the attorney general.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50705 Conveyance to provide for use of property; termination of lease.

Sec. 50705. The conveyance authorized by this part shall provide that the property be used exclusively for the purposes set forth in section 50702(1), and that termination of either or both of those purposes or the use of the property for any other purpose constitutes grounds for termination of the lease.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.50706 Submission of forest management plan.

Sec. 50706. Within 30 days after the execution of a lease authorized by this part, the county forestry committee shall submit to the department for approval a forest management plan prepared by a forester registered under part 535.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.50707 Conveyance of leasehold.

Sec. 50707. A leasehold interest authorized by this part shall be conveyed by the department by October 8, 1982.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

TAX INCENTIVES

PART 511
COMMERCIAL FORESTS

324.51101 Definitions.

Sec. 51101. As used in this part:

(a) "Ad valorem general property tax" means taxes levied under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(b) "Commercial forest" or "commercial forestland" means forestland that is determined to be a commercial forest under section 51104.

(c) "Declassify" or "declassification" means the removal of the commercial forest designation pursuant to section 51116.

(d) "Forestland" means a tract of land that may include nonproductive land that is intermixed with productive land that is an integral part of a managed forest and that meets all the following:

(*i*) Does not have material natural resources other than those resources suitable for forest growth or the

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potential for forest growth.

(*ii*) Is not used for agricultural, mineral extraction except as provided in section 51113, grazing, industrial, developed recreational, residential, resort, commercial, or developmental purposes.

(*iii*) The owner agrees to develop, maintain, and actively manage the land as a commercial forest through planting, natural reproduction, or other silvicultural practices.

(e) "Forest management plan" means a written plan prepared and signed by a registered forester or a natural resources professional that prescribes measures to optimize production, utilization, and regeneration of forest resources. The forest management plan shall include schedules and timetables for the various silvicultural practices used on commercial forestlands, including, but not limited to, timber harvesting and regeneration.

(f) "Fund" means the commercial forest fund created under section 51112.

(g) "Natural resources professional" means a person who is acknowledged by the department as having the education, knowledge, experience, and skills to identify, schedule, and implement appropriate forest management practices needed to achieve the purposes of this part on land subject to or to be subject to this part.

(h) "Owner" means a person who holds title to the surface estate of forestland subject to this part. However, if land is purchased on a land contract, the owner includes the person who holds the land contract vendee's interest and does not include the person who holds the land contract vendor's interest.

(i) "Personal use" means use for any noncommercial purpose.

(j) "Registered forester" means a person registered under part 535.

(k) "Silvicultural practices" means the management and manipulation of forest vegetation for the protection, growth, and enhancement of forest products.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006;—Am. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.51102 Commercial forest; scope and authority of department; rules.

Sec. 51102. The department shall establish and maintain commercial forests and may promulgate and enforce rules as necessary to accomplish the purpose of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 48, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.51103 Commercial forest; application for classification; "contiguous" defined; requirements for eligibility; application form; postmark or delivery date; providing certain information and fee to department; brochure; notification; certification that forest management plan prepared and in effect; violation; exemption from disclosure.

Sec. 51103. (1) The owner of at least 40 contiguous acres or a survey unit consisting of 1/4 of 1/4 of a section of forestland located within this state may apply to the department to have that forestland classified as a commercial forest under this part. For purposes of this subsection, "contiguous" means land that touches at any point. Even if portions of commercial forestland are contiguous only at a point, the privilege of hunting and fishing as provided in section 51113 shall not be denied for any portion of the land. The existence of a public or private road, a railroad, or a utility right-of-way that separates any part of the land does not make the land noncontiguous.

(2) To be eligible for classification as a commercial forest, forestland shall be capable of all of the following:

(a) Producing not less than 20 cubic feet per acre per year of forest growth upon maturity.

(b) Producing tree species that have economic or commercial value.

(c) Producing a commercial stand of timber within a reasonable period of time.

(3) An application for classification as commercial forest shall be submitted on a form prescribed by the department. The application shall be postmarked or delivered not later than April 1 to be eligible for classification as commercial forest for the following tax year. In addition to any information that the department may reasonably require by rule, the applicant shall provide all of the following to the department:

(a) A nonrefundable application fee in the amount of $1.00 per acre or fraction of an acre, but not less than $200.00 and not more than $1,000.00. The department shall remit the application fee to the state treasurer for deposit into the fund.

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(b) A legal description and the amount of acreage considered for classification as a commercial forest.

(c) A statement certifying that a forest management plan covering the forestland has been prepared and is in effect.

(d) A statement certifying that the owner of the forestland owns the timber rights to the timber standing on the forestland.

(4) The department shall prepare and distribute to any person desiring to apply for classification of forestland as commercial forest under this part a brochure that lists and explains, in simple, nontechnical terms, all of the following:

(a) The application, hearing, determination, declassification, and prosecution process.

(b) The requirements of the forest management plan.

(5) Not later than 3 months after the effective date of the 2013 amendatory act that amended this section, the department shall notify each county and township and all owners of forestland that is classified as commercial forest under this part, who are on record with the department, of the amendments to this part that were enacted in 2013.

(6) After an owner certifies to the department that a forest management plan has been prepared and is in effect, a violation of that forest management plan is a violation of this part.

(7) A forest management plan that has been submitted to the department or the local tax collecting unit is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006;—Am. 2013, Act 48, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.51104 Forestland; evaluation; hearing; notice; conduct; approval; record.

Sec. 51104. (1) Upon receipt of the application, the forest management plan certification, the timber rights certification, and the application fee described in section 51103, the department shall evaluate the forestland offered and fix a date for a public hearing upon the eligibility of the forestland for determination as a commercial forest. The hearing shall be held in the county where the land is located not later than November 1 following receipt of the application. Applications offering lands in the same county may be heard on the same day and at the same place. The department shall publish a notice of hearing and a list of the legal descriptions of lands being considered for determination as commercial forests in a newspaper of general circulation in the county in which the land is located. The notice of hearing shall be published at least 20 days before the date of the hearing. At the time of publication, the department shall provide a copy of the notice of hearing and a list of descriptions of land in each township to be considered for determination as a commercial forest to each township supervisor in whose township the lands are located. Any person who wishes may testify as to eligibility for determination as a commercial forest of any of the described lands. The hearing shall be conducted by the department.

(2) After the hearing, if the department determines that the applicant and forestland meet the requirements of this part and determines that all valid taxes assessed against that forestland have been paid, the department shall approve the application. Upon approval of the application, the department shall immediately record a listing certificate in the register of deeds office in the county in which the land is located with the department approval endorsed on the listing certificate and forward a copy of the listing certificate to the applicant and to the township supervisor of the township in which the land is located.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51105 Commercial forests not subject to ad valorem general property tax; specific tax; removal from land descriptions list; separate roll; collection; return and sale for nonpayment of taxes; valuation prohibited; lands not considered in connection with equalization distribution of sums collected; distribution; commercial forestland located in renaissance zone.

Sec. 51105. (1) Commercial forests are not subject to the ad valorem general property tax after the date the township supervisor is notified by the department that the land is a commercial forest, except taxes as previously levied. Except as otherwise provided in part 512 and as provided in subsection (5), commercial forests are subject to an annual specific tax as follows:

(a) Until December 31, 2006, $1.10 per acre.

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(b) Beginning January 1, 2007 through December 31, 2011, $1.20 per acre.

(c) Beginning January 1, 2012 and every 5 years after that date, the amount of the annual specific tax under this section shall be increased by 5 cents per acre.

(2) The supervisor of the township shall remove from the list of land descriptions assessed and taxed under the ad valorem general property tax the land descriptions certified to him or her by the department as being commercial forests and shall enter those land descriptions on a roll separate from lands assessed and taxed by the ad valorem general property tax and shall spread against these commercial forests the specific tax provided by this section.

(3) The township treasurer shall collect the specific tax at the same time and in the same manner as ad valorem general property taxes are collected and this tax is subject to the same collection charges levied for the collection of ad valorem property taxes. Commercial forests are subject to return and sale for nonpayment of taxes in the same manner, at the same time, and under the same penalties as lands returned and sold for nonpayment of taxes levied under the ad valorem general property tax laws. A valuation shall not be determined for descriptions listed as commercial forests and these lands shall not be considered by the county board of commissioners or by the state board of equalization in connection with county or state equalization for ad valorem property taxation purposes.

(4) Except as provided in section 51109(2), all sums collected pursuant to this section shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

(5) Commercial forestland located in a renaissance zone under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, is exempt from the annual specific tax levied under this section to the extent and for the duration provided pursuant to that act.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 451, Imd. Eff. Dec. 19, 1996;—Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006.

Popular name: Act 451

Popular name: NREPA

324.51106 Acreage as commercial forestlands; certifying to state treasurer; payment to county treasurer; distribution of remaining funds; payment in full required.

Sec. 51106. (1) By November 1 of each year, the department shall certify to the state treasurer the number of acres that are commercial forestlands in each county. By December 1 of each year, the state treasurer shall transmit to the treasurer of each county in which these commercial forests are located a warrant on the state treasurer for an amount equal to $1.30 per acre of commercial forest in the county. Beginning January 1, 2022 and every 5 years after that date, the amount of the annual payment under this section shall be increased by 5 cents per acre.

(2) From the payments received under subsection (1), the county treasurer of each county shall distribute an amount equal to 25 cents per acre for each acre of commercial forest in the county in the same proportions between the various funds as the ad valorem general property tax is distributed by the township treasurers in each township. Except as provided by section 51109(2), the county treasurer of each county shall distribute the remainder of the funds received under this section in the same manner and in the same proportion as the ad valorem general property tax is distributed.

(3) This state shall make payment in full to each county under this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006;—Am. 2012, Act 604, Imd. Eff. Jan. 9, 2013;—Am. 2018, Act 239, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.51107 Repealed. 2006, Act 383, Imd. Eff. Sept. 27, 2006

Compiler's note: The repealed section pertained to adjustment of annual specific tax and state payment computed by using state equalized value per acre of timber cutover lands.

Popular name: Act 451

Popular name: NREPA

324.51108 Withdrawal of forestland as commercial forest; application; fee; penalty; calculation; publication on website; withdrawal not subject to penalty; granting application without payment of fee or penalty; forestland acquired by federally recognized Indian tribe; disposition; distribution; notice to applicant, township assessor, and register of deeds; filing list of withdrawn lands; interdepartmental cooperation; definitions.

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Sec. 51108. (1) An owner of a commercial forest may withdraw his or her forestland, in whole or in part, from the classification as commercial forest under this part upon application to the department and payment of the withdrawal application fee and penalty, as provided in this section.

(2) Except as otherwise provided by this section, upon application to the department to withdraw forestland from the classification as commercial forest under this part, the applicant shall forward to the department a withdrawal application fee in the amount of $1.00 per acre with a minimum withdrawal application fee of $200.00 per application and a maximum withdrawal application fee of $1,000.00 per application.

(3) Except as otherwise provided in this section, an application to withdraw forestland from the classification as commercial forest under this part shall be granted upon the payment of a penalty to the treasurer of the township in which the forestland is located. The withdrawal penalty shall be calculated in the following manner:

(a) Multiply the number of acres of forestland withdrawn from the classification as commercial forest under this part by 1 of the following:

(*i*) For 2007, 1/2 of the valuation per acre for the county in which the forestland is located.

(*ii*) Beginning in 2008, and for each subsequent year, the number described in subparagraph (*i*) adjusted annually by the inflation rate for each year after 2007.

(b) Multiply the product of the calculation in subdivision (a) by the average millage rate levied by all townships, excluding villages, in the county in which the forestland is located.

(c) Multiply the product of the calculation in subdivision (b) by the number of years, to a maximum of 7 years, in which the forestland withdrawn from the classification as commercial forest under this part has been classified as commercial forest under this part.

(d) Multiply the product of the calculation in subdivision (c) by the following:

(*i*) 0.2, if the forestland is located in Luce County.

(*ii*) 0.3, if the forestland is located in Grand Traverse, Manistee, Ottawa, or Wexford County.

(*iii*) 0.4, if the forestland is located in Charlevoix, Chippewa, Emmet, Gladwin, Leelanau, Midland, Oscoda, or Tuscola County.

(*iv*) 0.5, if the forestland is located in Cheboygan, Delta, Mackinac, Oceana, Otsego, or Schoolcraft County.

(*v*) 0.6, if the forestland is located in Alcona, Alger, Allegan, Alpena, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Clare, Clinton, Crawford, Dickinson, Eaton, Genesee, Gogebic, Gratiot, Hillsdale, Houghton, Huron, Ingham, Ionia, Iosco, Iron, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lapeer, Lenawee, Livingston, Macomb, Marquette, Mecosta, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Ogemaw, Osceola, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Shiawassee, Van Buren, Washtenaw, or Wayne County.

(*vi*) 0.7, if the forestland is located in Antrim, Baraga, Mason, or Menominee County.

(*vii*) 0.8, if the forestland is located in Keweenaw, Lake, Missaukee, or Ontonagon County.

(4) The department shall publish all of the following on its website:

(a) The calculation described in subsection (3)(a)(*i*) for each county.

(b) The adjusted value and the inflation rate described in subsection (3)(a)(*ii*) for each county.

(c) The average millage rate described in subsection (3)(b) for each county.

(5) Until September 1, 2021, the owner of forestland located within a township and classified as commercial forest under this part not later than September 1, 2016 may withdraw not more than 160 acres of that forestland without a withdrawal penalty, subject to the following:

(a) The owner of the former commercial forestland must have continuously owned that former commercial forestland since not later than September 1, 2016.

(b) The former commercial forestland shall be made subject to the transitional qualified forest property specific tax act, as transitional qualified forest property under that act, as a result of all of the following:

(*i*) The owner of the forestland withdraws his or her forestland from the classification as commercial forest under this part as provided in this section.

(*ii*) The former commercial forestland is exempt from the collection of general ad valorem property taxes under section 7vv of the general property tax act, 1893 PA 206, MCL 211.7vv.

(*iii*) The owner of the former commercial forestland submits, and obtains approval of, an application for a determination that the forestland is transitional qualified forest property under the transitional qualified forest property specific tax act. The owner shall submit to the department a copy of the executed transitional qualified forest property affidavit by November 1 of the year in which the land is withdrawn from this part.

(c) Any of the owner's remaining forestland within that township that previously qualified as commercial forest under this part must continue to qualify as commercial forest under this part or, subject to the penalty provided under subsection (3), must be withdrawn under this part.

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(6) An application to withdraw forestland from the classification as commercial forest under this part that meets 1 or more of the following requirements shall be granted without payment of the withdrawal application fee or penalty under this section:

(a) Forestland that has been donated to a public body for public use prior to withdrawal.

(b) Forestland that has been exchanged for property belonging to a public body if the property received is classified as a commercial forest as determined by the department.

(c) Forestland that has been condemned for public use.

(7) An application to withdraw forestland from the classification as commercial forest under this part that meets all of the following requirements shall be granted without payment of the withdrawal application fee or penalty under this section:

(a) Evidence is submitted to the department that the land met the legal requirements to be exempt from ad valorem property tax on tax day for the tax year in which the list application was submitted and approved and that the land would have met the legal requirements to be exempt from ad valorem property tax on tax day for each year that the land was classified as commercial forest under this part, if the land had not been classified as commercial forest under this part. As used in this subdivision, "tax day" means that term as provided in section 2 of the general property tax act, 1893 PA 206, MCL 211.2.

(b) The application is submitted to the department by the same landowner that owned the land on tax day for the tax year in which the application was submitted and that submitted the application for determination under section 51103.

(c) The landowner reimburses the state treasurer for the specific tax that was paid by the state treasurer to the county treasurer, as provided in section 51106(1), for each tax year the land was classified as commercial forest under this part.

(8) The department may withdraw forestland from the classification as commercial forest under this part if the forestland has been acquired by a federally recognized Indian tribe and the associated property taxes are subsequently preempted under federal law. A withdrawal under this subsection is not subject to the withdrawal application fee or penalty under this section.

(9) The department shall remit the withdrawal application fee paid pursuant to subsection (2) to the state treasurer for deposit into the fund. The penalty received by the township treasurer under subsection (3) shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township, except as provided by section 51109(2).

(10) If an application to withdraw forestland from classification as commercial forest under this part is granted, the department shall immediately notify the applicant, the assessor of the township, and the register of deeds of the county in which the lands are located of the action and shall file with those officials a list of the lands withdrawn.

(11) Not later than 30 days after the effective date of the amendatory act that added this sentence, the department of natural resources and the department of agriculture and rural development shall establish in writing a basis of interdepartmental cooperation when an owner of forestland seeks to withdraw that forestland from the classification as commercial forest without penalty under subsection (5).

(12) As used in this section:

(a) "Inflation rate" means the lesser of 1.05 or the inflation rate as defined in section 34d of the general property tax act, 1893 PA 206, MCL 211.34d.

(b) "Valuation" means the market value as determined by the state tax commission.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006;—Am. 2008, Act 299, Imd. Eff. Oct. 8, 2008;—Am. 2012, Act 248, Imd. Eff. July 2, 2012;—Am. 2013, Act 48, Imd. Eff. June 6, 2013;—Am. 2014, Act 146, Imd. Eff. June 4, 2014;—Am. 2016, Act 262, Imd. Eff. June 28, 2016.

Popular name: Act 451

Popular name: NREPA

324.51109 Determining proportion for disbursement of revenues and attribution of revenues; number of mills levied for local school operating purposes; distribution of revenues; "revenues" defined.

Sec. 51109. (1) For revenues disbursed after June 30, 1994, to determine the proportion for the disbursement of revenues under this part and for attribution of revenues under subsection (2)(b) for revenues collected under this part, the number of mills levied for local school district operating purposes to be used in the calculation shall equal the number of mills for local school district operating purposes levied in 1993 minus the number of mills levied under the state education tax act, Act No. 331 of the Public Acts of 1993, being sections 211.901 to 211.906 of the Michigan Compiled Laws, for the year for which the disbursement is

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calculated.

(2) Except as provided in subdivision (b), for revenues disbursed after June 30, 1994, the revenues collected under this part shall be distributed as follows:

(a) In the case of intermediate school districts receiving state aid under sections 56, 62, and 81 of the state school aid act of 1979, Act No. 94 of the Public Acts of 1979, being sections 388.1656 , 388.1662, and 388.1681 of the Michigan Compiled Laws, all or a portion of the amount that would otherwise be disbursed to these intermediate school districts from the following revenue sources, as determined under a formula prescribed by the department of management and budget on the basis of the tax rate utilized to compute the amount of state aid for the intermediate school district, shall be paid instead to the state treasury to the credit of the state school aid fund established by section 11 of article IX of the state constitution of 1963:

(*i*) Revenues from that portion of the levy of a specific tax over 15 cents per acre pursuant to section 51105.

(*ii*) Revenues from that portion of state payments in excess of 25 cents per acre which are made pursuant to section 51106.

(*iii*) Revenues from remitted withdrawal penalties and fees imposed pursuant to section 51108.

(*iv*) Revenues from declassification penalties and fees pursuant to section 51116 .

(*v*) Revenues from remitted stumpage or yield tax collections made under former Act No. 94 of the Public Acts of 1925.

(b) For revenues disbursed after June 30, 1994, the amount that would otherwise be disbursed to a local school district for school operating purposes shall be paid instead to the state treasury and credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(3) Except as provided in subsection (2)(a), as used in this section "revenues" means all of the following:

(a) The specific tax levied pursuant to section 51105.

(b) State payments made pursuant to section 51106.

(c) Withdrawal penalties and fees imposed pursuant to section 51108.

(d) Declassification penalties and fees pursuant to section 51116.

(e) Revenue from remitted stumpage or yield tax collections made under former Act No. 94 of the Public Acts of 1925.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

324.51110 Cutting, harvesting, or removing forest products prohibited; exceptions.

Sec. 51110. (1) Except as provided in subsection (2), a person shall not cut, harvest, or remove forest products from a commercial forest.

(2) The owner of a commercial forest is entitled to cut or remove merchantable forest products on his or her commercial forest without withdrawing it or affecting its status as a commercial forest and without payment of a fee or penalty if the owner complies with all of the following:

(a) After an owner certifies to the department that a forest management plan has been prepared and is in effect under section 51103 and cuts, harvests, or removes forest products in compliance with his or her forest management plan.

(b) All other requirements of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51111 Report to department.

Sec. 51111. The owner shall report to the department prior to the cutting, harvesting, or removal of forest products from the commercial forest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51112 Commercial forest fund.

Sec. 51112. (1) The commercial forest fund is created within the state treasury.

(2) The state treasurer shall deposit the money collected from the following sources into the fund:

(a) The application fee and forest management plan fee pursuant to section 51103.

(b) The withdrawal application fee pursuant to section 51108.

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(c) The fee described in section 51116(1)(a).

(d) An amount equal to 10 cents for each acre of land enrolled under this part as certified by the department, to be appropriated each fiscal year from the general fund.

(e) Any restitution ordered by a court payable to this state for a violation of this part.

(3) In addition to the revenues described in subsection (2), the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(4) Money in the fund appropriated from the general fund shall remain in the fund at the close of the fiscal year and shall not lapse to the general fund.

(5) The department shall expend the money from the fund, upon appropriation, for enforcement, administration, and monitoring of compliance with part 512 and this part and rules promulgated under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006.

Popular name: Act 451

Popular name: NREPA

324.51113 Prohibited use of forestland by owner; exception; denying or inhibiting access for public hunting or fishing; exploration for minerals; removal of commercial mineral deposits, sand and gravel, and oil and gas; exploration for wind energy development.

Sec. 51113. (1) Except as provided in this section, the owner of forestland that is classified as commercial forest shall not use that land in a manner that is prejudicial to its development as a commercial forest, use the land for agricultural, mineral extraction except as provided in this section, wind energy development except as provided in this section, grazing, industrial, developed recreational, residential, resort, commercial, or developmental purposes, or deny the general public the privilege of hunting and fishing on commercial forestland unless the land is closed to hunting or fishing, or both, by order of the department or by an act of the legislature. If the department determines that the owner of commercial forestland has taken an action that has the effect of denying or inhibiting access to the commercial forestland for public hunting and fishing, except as specifically provided in this part, the department may require withdrawal of the forestland as commercial forest under this part unless the owner corrects that action and allows access to the commercial forestland for public hunting and fishing. If there is not access to a parcel of commercial forestland and the lack of access is not the consequence of an action taken by the owner of commercial forestland, the forestland may remain as commercial forestland if all of the following apply:

(a) There is not a transfer of title for the parcel of commercial forestland, other than as a part of a larger sale of 10,000 or more acres.

(b) The landowner has not taken an action following acquisition of the commercial forestland that has the effect of denying or inhibiting access to the commercial forestland to the public for hunting and fishing.

(c) The commercial forestland is otherwise in compliance with this part.

(2) Exploration for minerals shall be permitted on forestland that is classified as commercial forest under this part. Except as provided in subsections (3) and (4), before the removal of any commercial mineral deposits, the owner shall withdraw the portion of the commercial forestland directly affected by the removal pursuant to section 51108. The withdrawal of commercial forestland due to mineral removal as provided in this section and section 51108 does not require the remaining portion of the commercial forestland to be withdrawn due to insufficient acreage of the remaining commercial forestland.

(3) Upon application to and approval by the department, sand and gravel may be removed from the commercial forestland without affecting the land's classification as a commercial forest. The department shall approve an application to remove sand and gravel deposits only if the removal site is not greater than 5 acres, excluding access to the removal site, and the sand and gravel are to be utilized by 1 or more of the following:

(a) The owner of a commercial forestland for personal use if the owner of the commercial forestland is also the owner of the sand and gravel deposits.

(b) The owner of the sand and gravel deposits for his or her personal use or for sale to the owner of the commercial forestland for personal use, if the owner of the commercial forestland is not also the owner of the sand and gravel deposits.

(c) For sale to this state, a local unit of government, a federal government agency, or a county road commission, for governmental use, or a contractor or other agent undertaking construction, maintenance, or a project for 1 of these governmental entities.

(4) Upon application to and approval by the department, deposits of oil and gas may be removed from the commercial forestland without affecting the land's classification as a commercial forest.

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(5) The exploration for wind energy development is permitted on forestland classified as commercial forest under this part pursuant to this subsection. Upon application to and approval by the department, meteorological towers may be erected and wind energy exploration or development leases, easements, or license agreements may be entered into without affecting the land's classification as commercial forest. A landowner may be paid compensation for these leases, easements, and license agreements. Before any wind turbines are erected for the purpose of generating electricity for commercial purposes, the owner shall withdraw the portion of the commercial forest directly affected as follows:

(a) The actual physical footprint of each wind turbine, associated buildings, and adjacent areas that will be permanently removed from forest production shall be removed from the classification as commercial forest.

(b) Forestland under a wind energy development lease, easement, or license agreement where forest production will continue may continue to be classified as commercial forest.

(c) Forestland containing road and utility rights-of-way may continue to be classified as commercial forest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 383, Imd. Eff. Sept. 27, 2006;—Am. 2013, Act 48, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.51114 Applications, statements, and reports under oath; forms.

Sec. 51114. All applications, statements, reports, and information required by the department in the administration of this part shall be on forms prescribed by the department and shall be under oath.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51115 Transfer of title; effect; withdrawal; document; notification.

Sec. 51115. (1) The transfer of title of forestland classified as commercial forest under this part does not affect that forestland's classification as a commercial forest if the forestland continues to meet all of the eligibility requirements under this part. If the purchaser desires to withdraw his or her forestland from the classification as commercial forest under this part, the purchaser shall withdraw that forestland pursuant to section 51108. If the forestland's eligibility to be classified as commercial forest is affected by the transfer of title, the department shall determine which forestlands may remain classified as commercial forest under this part and which forestlands must be withdrawn or declassified.

(2) A document that transfers any interest in commercial forestlands shall state on the face of the document that "this property is subject to part 511, the commercial forest part of the natural resources and environmental protection act". Failure to comply with this subsection does not affect the classification of the land as commercial forestland.

(3) Not later than 30 days after the county equalization office receives notice of a transfer of title or the transfer of any interest in a land contract concerning the commercial forestland, the county equalization office shall notify the department in writing of the transfer or ownership change.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2013, Act 48, Imd. Eff. June 6, 2013.

Popular name: Act 451

Popular name: NREPA

324.51116 Removal of designation; declassification; notice; recording; fee.

Sec. 51116. If, after providing notice and an opportunity for a hearing, the department determines that a commercial forest was used in violation of this part, that the owner failed to pay the specific tax pursuant to section 51105, that the owner failed to report to the department pursuant to section 51111, that minerals were removed in violation of section 51113, or, after an owner certifies to the department that a forest management plan has been prepared and is in effect, that the owner failed to plant, harvest, or remove forest products in compliance with the owner's forest management plan, then the department shall remove the commercial forest designation for the commercial forest, serve a notice of declassification of the lands upon the owner, and record a copy of the declassification in the office of the register of deeds of the county in which the lands are located. Upon declassification, the land is subject to the ad valorem general property tax. Within 30 days after the service of the declassification notice on the owner, the owner shall pay both of the following:

(a) A fee equal to the withdrawal application fee described in section 51108 to the department for deposit into the fund.

(b) An amount equal to the penalty described in section 51108 to the township treasurer of the township in which the land is located to be distributed, except as provided in section 51109(2), in the same proportions to

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the various funds as the ad valorem general property tax is allocated in the township.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2006, Act 382, Imd. Eff. Sept. 27, 2006.

Popular name: Act 451

Popular name: NREPA

324.51118 Applicability of changes in part; withdrawal; fees.

Sec. 51118. (1) Except as provided in this section, changes in the terms, fees, taxes, or other provisions of this part apply to all forestlands that are commercial forests when the changes take effect.

(2) An owner, without penalty or payment of the withdrawal application fee pursuant to section 51108, may withdraw commercial forestland from the operation of this part if any change in the terms, fees, taxes, or other provisions of this part materially increases the burden on the owner. However, if an owner elects to withdraw his or her commercial forestlands under this subsection, the owner shall pay a fee for each acre withdrawn equal to the product of the current average ad valorem property tax per acre on timber cutover real property within the township in which the commercial forestland is located, as determined by the township assessor, multiplied by 5. If the township in which the commercial forestland is located does not contain any real property classified as timber cutover real property under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, then 1 of the following applies:

(a) If there is timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property located in the county in which the commercial forestland is located shall be used in calculating the penalty under this subsection.

(b) If there is no timber cutover real property located within the county in which the commercial forestland is located, the per acre average of the ad valorem property tax for all timber cutover real property in townships contiguous to the county in which the commercial forestland is located shall be used in calculating the penalty under this subsection.

(3) The fee described in subsection (2) shall not exceed $100,000.00. The owner shall pay the fee described in subsection (2) before withdrawal.

(4) The owner may not withdraw commercial forestland under this section unless he or she makes application to do so within 1 year after the changes take effect. If an owner elects to withdraw commercial forestlands under this section, he or she shall withdraw all the commercial forestlands owned by him or her at the time of withdrawal.

(5) If an application to withdraw commercial forestlands under subsection (2) is initiated by an owner or by the department before changes in terms, fees, taxes, or other provisions of this part or former Act No. 94 of the Public Acts of 1925 become effective, the owner shall pay the stumpage fees, other fees, taxes, and penalties, if any, in the same manner and at the same rates as were in effect when the application was filed.

(6) The department shall remit the fees paid pursuant to this section to the township treasurer. Except as provided in section 51109(2), all fees remitted to the township treasurer under this section shall be distributed by the township treasurer in the same proportions to the various funds as the ad valorem general property tax is allocated in the township.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51119 Representatives of department; right of entry on commercial forestlands; access to books and papers.

Sec. 51119. A duly authorized representative of the department may at any time go upon commercial forestlands to ascertain the validity of any report made pursuant to this part or otherwise determine compliance with this part. The duly authorized representative of the department may examine or cause to be examined any books, papers, records, or memorandum bearing upon the amounts of timber products cut from the commercial forestland or the owner's forest management plan.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51120 Violation of part; penalty.

Sec. 51120. (1) Except as provided in subsection (2), a person who violates this part is guilty of a

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misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

(2) A person who harvests, cuts, or removes forest products having a value of more than $2,500.00 in violation of this part is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than $10,000.00, or both.

(3) Upon conviction for a violation of this part, the court may declassify all or a portion of the commercial forest pursuant to section 51116.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 512

SUSTAINABLE FOREST CONSERVATION EASEMENT TAX INCENTIVES

324.51201 Owner of commercial forestland subject to sustainable forest conservation easement; specific tax; application for sustainable forest conservation easement tax incentives; form; information; cutting or removing forest products; violation; penalty; definitions.

Sec. 51201. (1) Notwithstanding section 51105, an owner of commercial forestland that is subject to a sustainable forest conservation easement is subject to an annual specific tax equal to the annual specific tax levied under section 51105 less 15 cents per acre. The specific tax described in this section shall be administered, collected, and distributed in the same manner as the specific tax levied in section 51105.

(2) An application for sustainable forest conservation easement tax incentives described in this part shall be submitted on a form prescribed by the department. The application shall be postmarked or delivered to the department not later than April 1 to be eligible for approval for the following tax year. In addition to any information that the department may reasonably require by rule, the applicant shall provide all of the following to the department:

(a) A nonrefundable application fee in the amount of $2.00 per acre or fraction of an acre, but not less than $200.00 and not more than $1,000.00. The department shall remit the application fee to the state treasurer for deposit into the commercial forest fund under section 51112.

(b) A copy of the conservation easement covering the forestland.

(3) The owner of commercial forestlands subject to a sustainable forest conservation easement is entitled to cut or remove forest products on his or her commercial forestlands if the owner complies with part 511 and the requirements of the sustainable forest conservation easement.

(4) If commercial forestland subject to a sustainable forest conservation easement is used in violation of this part or the sustainable forest conservation easement, the owner in addition to any other penalties provided by law shall pay a penalty, per acre, for each year in which the violation occurs equal to the difference between the specific tax paid under this part and the specific tax that would otherwise be paid under part 511. The specific tax collected under this part shall be paid to the township treasurer in which the commercial forestland is located. The penalty shall be distributed by the township treasurer in the same manner as the specific tax is distributed.

(5) As used in this part:

(a) "Commercial forestland" means commercial forestland that is enrolled under part 511.

(b) "Department" means the department of natural resources.

(c) "Forestland" means that term as defined in part 511.

(d) "Sustainable forest conservation easement" means a conservation easement described in section 2140 on commercial forestland that is approved by the department and meets all of the following:

(*i*) Is an easement granted in perpetuity to this state, a political subdivision of this state, or a charitable organization described in section 501(c)(3) of the internal revenue code, 26 USC 501, that also meets the requirements of section 170(h)(3) of the internal revenue code, 26 USC 170.

(*ii*) Covers commercial forestland of 40 or more acres in size.

(*iii*) Provides that the forestland subject to the conservation easement or the manager of the forestland subject to the conservation easement is and continues to be certified under a sustainable forestry certification program that uses independent third party auditors and that is recognized by the department.

(*iv*) Provides that the forestland subject to the conservation easement provides for the nonmotorized recreational use of the forestland by members of the public.

History: Add. 2006, Act 381, Imd. Eff. Sept. 27, 2006.

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Popular name: Act 451

Popular name: NREPA

PART 513
PRIVATE FORESTRY

324.51301 Definitions.

Sec. 51301. As used in this part:

(a) "Conservation district" means that term as it is defined in section 9301.

(b) "Demonstration project" means a forest improvement project designed to illustrate the implementation and impact of alternate forest practices.

(c) "Commission" means the commission of agriculture and rural development.

(d) "Department" means the department of agriculture and rural development.

(e) "Director" means the director of the department or his or her designee.

(f) "Follow-up work" means forest practices to promote the survival of seeds or seedlings or the protection or enhancement of other work previously undertaken under this part.

(g) "Forest improvement project" means any of the following:

(*i*) Production, processing, handling, storage, marketing, or transportation of forest resources, including sawmills, hardboard mills, power stations, warehouses, air and water pollution control equipment, and solid waste disposal facilities.

(*ii*) Forest practice or follow-up work.

(*iii*) Study, planning, or other work intended to improve forestlands or forest resources or to demonstrate means of improving forestlands or forest resources.

(h) "Forest management plan" means that term as it is defined in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(i) "Forest practice" means that term as it is defined in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(j) "Forest resources" means those products, uses, and values associated with forestland, including recreation and aesthetics, fish, forage, soil, timber, watershed, wilderness, and wildlife.

(k) "Forestland" means a tract of land that may include nonproductive land that is intermixed with productive land that is an integral part of a managed forest and the owner of which agrees to develop, maintain, and actively manage the land as a private forest through planting, natural reproduction, or other silvicultural practices. Forestland includes land from which forest tree species have been removed and have not been restocked, but does not include land converted to uses other than the growing of forest tree species or land currently zoned for uses incompatible with forest practices.

(*l*) "Fund" means the private forestland enhancement fund created in section 51305.

(m) "Harvest" means that term as it is defined in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(n) "Landowner" means a person who holds an ownership interest in nonindustrial private forestland.

(o) "Nonindustrial private forestland" means a privately owned tract of land consisting of 20 or more acres, or the timber rights in the land if the timber rights have been severed, that has the productive capacity to grow on average not less than 20 cubic feet per acre per year and that meets either of the following conditions:

(*i*) For a tract of land that contains less than 40 acres, at least 80% of the land is occupied by forest tree species.

(*ii*) For a tract of land that contains 40 or more acres, at least 50% of the land is occupied by forest tree species.

(p) "Qualified forester" means that term as it is defined in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(q) "Technical assistance" means direct on-site assistance provided to individuals.

(r) "Timber" means wood growth, mature or immature, growing or dead, standing or down. Timber does not include any of the following:

(*i*) Christmas trees and associated greens.

(*ii*) Material harvested from an individual's own land and used on that land for the construction of fences or buildings or for other personal use.

(s) "Timber owner" means a person who holds an ownership interest in species of forest trees on forestland. An ownership interest includes a license or other right to harvest timber on state lands.

History: Add. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: Former MCL 324.51301, which pertained to designation of tract of land as private forest reservation, was repealed

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by Act 378 of 2006, Eff. Sept. 1, 2007.

Popular name: Act 451

Popular name: NREPA

324.51302 Management and utilization of private forestland and private forest resources; purpose and intent of part.

Sec. 51302. (1) This part is intended to stimulate improved management and utilization of private forestland and private forest resources within this state. Economic and community development opportunities based on the private forest resource will be enhanced by ensuring adequate future high-quality timber supplies, increased employment opportunities, a diversified economy, and other economic benefits and the conservation, maintenance, and enhancement of a productive and stable forest resource system for the public benefit of present and future generations.

(2) The primary purpose of this part is to assist private landowners in understanding the value of forest resources and the potential threats to forest resources and to provide management guidance.

(3) The department may enter into cooperative agreements with the federal agencies that have been given authority by act of congress for the management of forestlands to assist landowners in management of their nonindustrial private forestlands.

History: Add. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: Former MCL 324.51302, which pertained to number of trees planted on acre of land as subject to part, was repealed by Act 378 of 2006, Eff. Sept. 1, 2007.

Popular name: Act 451

Popular name: NREPA

324.51303 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to number of forest trees planted on tract of private forest reservation to assure spacing of 6 feet by 6 feet.

Popular name: Act 451

Popular name: NREPA

324.51304 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to receipt of benefit if landowner permits cattle, horses, hogs, or goats to pasture upon private forest reservation.

Popular name: Act 451

Popular name: NREPA

324.51305 Private forestland enhancement fund.

Sec. 51305. (1) The private forestland enhancement fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including general fund/general purpose appropriations, gifts, grants, and bequests. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

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

(a) Direct assistance.

(b) Indirect assistance.

(c) Administrative costs.

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

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

(8) As used in this section:

(a) "Administrative costs" includes, but is not limited to, costs incurred in administering the qualified forest program developed in section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

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

(*i*) Programs devoted to nonindustrial private forestland to encourage the judicious management of

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forestlands to maximize economic and ecological value.

(*ii*) Incentive and cost-share programs to assist landowners.

(*iii*) Programs that enhance investment of private and federal funds in sustainable forest management.

(*iv*) Other programs established pursuant to this part.

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

(*i*) Public education and demonstration programs on sustainable management of private forestland for increasing value for wildlife habitat or timber management, or both.

(*ii*) Educational programs.

(*iii*) Technical assistance programs.

(*iv*) The promotion of on-site evaluation systems and management practices.

History: Add. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: Former MCL 324.51305, which pertained to stocking forest trees under rules of department, was repealed by Act 378 of 2006, Eff. Sept. 1, 2007.

Popular name: Act 451

Popular name: NREPA

324.51306 List of qualified foresters; preparation; maintenance; registration; removal; publication on department's website.

Sec. 51306. (1) The department shall prepare and maintain a list of qualified foresters in the state.

(2) An individual who wishes to be included on the list of qualified foresters shall submit a registration to the department on a form prepared by the department. The registration form shall include all of the following:

(a) The category of qualified forester for which the individual meets the necessary requirements.

(b) The continuing education required for the individual to maintain his or her status as a qualified forester, including the date on which the continuing education is required to be completed.

(c) A place for an individual to certify with his or her signature that he or she meets the requirements of a qualified forester and is current with any continuing education that is required.

(d) A place to designate whether the individual is submitting a new registration or a renewal of registration.

(3) An individual may update his or her registration at any time by submitting a renewal of registration.

(4) An individual who no longer meets the requirements to be considered a qualified forester shall notify the department in writing, and the department shall remove the individual from the list of qualified foresters.

(5) The department shall publish the list of qualified foresters on the department's website.

History: Add. 2013, Act 45, Imd. Eff. June 6, 2013.

Compiler's note: Former MCL 324.51306, which pertained to complete restocking of private forest reservation with forest trees, was repealed by Act 378 of 2006, Eff. Sept. 1, 2007.

Popular name: Act 451

Popular name: NREPA

324.51307 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to varieties of forest trees.

Popular name: Act 451

Popular name: NREPA

324.51308 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to record of private forest reservations to be kept by county treasurer.

Popular name: Act 451

Popular name: NREPA

324.51309 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to record of private forest reservations to be kept by township supervisor or assessor.

Popular name: Act 451

Popular name: NREPA

324.51310 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to form of application and contract to be filed with county treasurer and form of notice by the treasurer to supervisor or assessing officer.

Popular name: Act 451

Popular name: NREPA

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324.51311 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to examination of private forest reservations by supervisor or assessor when real estate is assessed for taxation.

Popular name: Act 451

Popular name: NREPA

324.51312 Repealed. 2006, Act 378, Eff. Sept. 1, 2007.

Compiler's note: The repealed section pertained to taxes levied and fees collected after 1993.

Popular name: Act 451

Popular name: NREPA

FOREST FIRES

PART 515
PREVENTION AND SUPPRESSION OF FOREST FIRES

324.51501 Definitions.

Sec. 51501. As used in this part:

(a) "All hazard incident" means an incident, whether natural or human-caused, that requires an organized response by a public, private, or governmental entity to protect life, public health or safety, or other values or to minimize any disruption of governmental, social, or economic services. One or more kinds of incident, such as fire, flood, mass casualty, search, rescue, or evacuation, may occur simultaneously as part of an all hazard incident.

(b) "Certified prescribed burn manager" means an individual who has successfully completed the certification program of the department under section 51513 and possesses a valid certification number.

(c) "Department" means the department of natural resources.

(d) "Domestic purposes" refers to burning that is any of the following:

(*i*) A fire within the curtilage of a dwelling where the material being burned has been properly placed in a debris burner constructed of metal or masonry, with a metal covering device with openings no larger than 3/4 of an inch.

(*ii*) A campfire.

(*iii*) Any fire within a building.

(e) "Extinguished", in reference to prescribed burning, means that there is no longer any spreading flame.

(f) "Forest land", subject to subdivision (f), means any of the following:

(*i*) Timber land, potential timber-producing land, or cutover or burned timber land.

(*ii*) Wetland.

(*iii*) Prairie or other land dominated by grasses or forbes.

(g) "Forest land" does not include land devoted to agriculture.

(h) "Flammable material" means any substance that will burn, including, but not limited to, refuse, debris, waste forest material, brush, stumps, logs, rubbish, fallen timber, grass, stubble, leaves, fallow land, slash, crops, or crop residue.

(i) "Prescribed burn" or "prescribed burning" means the burning, in compliance with a prescription and to meet planned fire or land management objectives, of a continuous cover of fuels.

(j) "Prescription" means a written plan establishing the criteria necessary for starting, controlling, and extinguishing a burn.

(k) "Primary public safety answering point" means that term as defined in section 102 of the emergency 9-1-1 service enabling act, 1986 PA 32, MCL 484.1102.

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

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 529, Imd. Eff. Jan. 3, 2005;—Am. 2017, Act 60, Eff. Sept. 26, 2017;—Am. 2018, Act 80, Eff. June 17, 2018.

Compiler's note: In subdivision (f), the reference to “subject to subdivision (f)” evidently should read “subject to subdivision (g).”

Popular name: Act 451

Popular name: NREPA

324.51502 Department of natural resources; authority; appointment of assistants.

Sec. 51502. The department shall have charge of the prevention and suppression of forest fires and shall

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appoint assistants as needed to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51503 Burning permits; conditions.

Sec. 51503. (1) At any time the ground is not snow-covered, a person shall not burn any flammable material on or adjacent to forest land, except for domestic purposes, without a permit from the department.

(2) The department shall set the times of day and, consistent with this part, the conditions under which burning for other than domestic purposes on or adjacent to forest land is permitted.

(3) Any person doing any burning on or adjacent to forest land for other than domestic purposes, prior to such burning operations, and at all times while the burning continues, shall take such action in and around the area in which the burning is done so as to prevent the spread of fire as may be required by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51503b Prescribed burning; liability; requirements.

Sec. 51503b. (1) Prescribed burning does not constitute a public or private nuisance when conducted in compliance with this part, part 55, and rules promulgated to implement this part or part 55.

(2) Subject to subsections (3) and (4), a property owner or his or her agent conducting prescribed burning is not liable for damage or injury caused by the fire or resulting smoke.

(3) Subsections (1) and (2) apply to a prescribed burn only if all of the following requirements are met:

(a) The landowner or his or her designee has specifically consented to the prescribed burn.

(b) The requirements of section 51503 are met.

(c) There are adequate firebreaks at the burn site and sufficient personnel and firefighting equipment for the control of the fire.

(d) A certified prescribed burn manager is present on site with a copy of the prescription, from ignition of the prescribed burn to its completion.

(e) The damage or injury does not result from the fire escaping the boundary of the area authorized in the permit under section 51503.

(f) The property owner or his or her agent is not grossly negligent.

(4) Subsection (2) does not affect liability for injury to or death of a person engaged in the prescribed burning.

History: Add. 2004, Act 529, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

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324.51503c Prescribed burn; notice of location; record of attempts to notify; contents of notice; violation.

Sec. 51503c. (1) Before conducting a prescribed burn, the department shall attempt to notify by telephone and electronic mail the township supervisor and the primary public safety answering point of each township where the prescribed burn is to take place. The department shall maintain a record of the notification attempts. The notice shall include all of the following:

(a) The location, expected date, and estimated number of acres of the prescribed burn.

(b) The name, electronic mail address, and telephone number of the person in charge of the prescribed burn.

(2) A violation of this section is not subject to section 51512.

History: Add. 2017, Act 60, Eff. Sept. 26, 2017.

Popular name: Act 451

Popular name: NREPA

324.51504 Acts prohibited.

Sec. 51504. A person shall not do any of the following:

(a) Dispose of a lighted match, cigarette, cigar, ashes or other flaming or glowing substances, or any other substance or thing that is likely to ignite a forest, brush, grass, or woods fire; or throw or drop from a moving vehicle any such object or substance.

(b) Set fire to, or cause or procure the setting on fire of, any flammable material on or adjacent to forest

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land without taking reasonable precautions both before and while lighting the fire and at all times after the lighting of the fire to prevent the escape of the fire; or leave the fire before it is extinguished.

(c) Set a backfire or cause a backfire to be set, except under the direct supervision of an established fire control agency or unless it can be established that the setting of the backfire is necessary for the purpose of saving life or valuable property.

(d) Destroy, break down, mutilate, or remove any fire control sign or poster erected by an established fire control agency in the administration of its lawful duties and authorities.

(e) Use or operate on or adjacent to forest land, a welding torch, tar pot, or other device that may cause a fire, without clearing flammable material surrounding the operation or without taking other reasonable precautions necessary to ensure against the starting and spreading of fire.

(f) Operate or cause to be operated any engine, other machinery, or powered vehicle not equipped with spark arresters or other suitable devices to prevent the escape of fire or sparks.

(g) Discharge or cause to be discharged a gun firing incendiary or tracer bullets or tracer charge onto or across any forest land.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51505 Refuse disposal facilities; devices; conditions; rules.

Sec. 51505. Any person maintaining or operating a refuse disposal facility shall provide devices and conditions that will promote the safe operation and guard against the escape of fire. The department may promulgate rules for the implementation of this section. This part does not give the department the authority to allow burning of garbage at refuse disposal facilities contrary to part 115.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51506 Violation of part causing forest or grass fire; violation of MCL 324.51503c; liability; other right of action for damages.

Sec. 51506. (1) Except as provided in section 51503b, a person who, in violating this part, causes a forest or grass fire is liable for all damages resulting from that fire, including the cost of any governmental unit fighting the fire. This subsection does not apply to a violation by the department of section 51503c.

(2) If the department violates section 51503c, the department is liable for any costs incurred by a township as a result of the prescribed burn.

(3) Except as provided in section 51503b, this part does not affect any other right of action for damages.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 529, Imd. Eff. Jan. 3, 2005;—Am. 2017, Act 60, Eff. Sept. 26, 2017.

Popular name: Act 451

Popular name: NREPA

324.51507 Extreme fire hazard conditions; proclamation by governor as to use of fire; prohibited acts.

Sec. 51507. (1) Whenever the governor finds that conditions of extreme fire hazard exist and that it is necessary in the public interest and for the preservation of the public peace, health, and safety, he or she may forbid, by proclamation, the use of fire by any person entering forest lands or lands adjacent to forest lands in parts of the state as he or she considers the public interest requires. The proclamation shall be in full force and effect 24 hours after notice is given by the governor.

(2) During periods described in subsection (1), and in such areas as the governor proclaims, a person shall not do any of the following:

(a) Build a campfire of any nature, except within containers at authorized campgrounds or places of habitation.

(b) Smoke a pipe, cigarette, or cigar, except at places of habitation, authorized improved campgrounds, or in any automobile or truck.

(c) Burn or cause to be burned any flammable material unless he or she first obtains a permit, in writing, to do so as provided in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.51508 Repealed. 2015, Act 210, Eff. Mar. 14, 2016.

Compiler's note: The repealed section pertained to persons subject to call to assistance in emergency.

324.51509 Fire suppression expenses; liability; determination; collection of claim; actions.

Sec. 51509. (1) Except as provided in section 51503b, a person who sets fire on any land and negligently allows the fire to escape and become a forest or grass fire is liable for all expenses incurred by the state in the suppression of the fire.

(2) The department shall certify, in writing, to the person the claim of the state under subsection (1) and shall list the items of expense incurred in the suppression of the fire. The claim shall be paid within 60 days and, if not paid within that time, the department may bring suit against the person in a court of competent jurisdiction in the county of the residence of the defendant or of any defendant if there is more than 1, for the collection of the claim at any time within 2 years after the fire. If the amount of the claim is cognizable by a circuit court, the department may file the suit in the circuit court of Ingham county, or in the circuit court of the county of the residence of the defendant or any defendant if there is more than 1.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 529, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.51510 Prohibited acts; exception.

Sec. 51510. (1) A person shall not do any of the following:

(a) Willfully, maliciously, or wantonly set fire or cause or procure to be set on fire any forest land, lands adjacent to forest land, or flammable material on such forest land.

(b) Willfully, maliciously, or wantonly set, throw, or place any device, instrument, paraphernalia, or substance in or adjacent to any forest land with intent to set fire to the land or which in the natural course of events would result in fire being set to the forest land.

(2) This section does not apply to a prescribed burn conducted in compliance with section 51503b.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 529, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

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324.51511 Department of natural resources officer, employee, or agent; right of entry.

Sec. 51511. Any duly authorized officer, employee, or agent of the department, in the performance of his or her duty, may enter upon or enter into any premises on or in which he or she has reasonable cause to believe a violation of this part is occurring. For purposes of this section, premises shall not include buildings or dwellings.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51512 Violation of part or rule; penalty.

Sec. 51512. Any person who violates this part or any rule promulgated under this part is guilty of a misdemeanor. Any person convicted of violating section 51510 is guilty of a felony and upon conviction shall be imprisoned for not more than 10 years or fined not more than $10,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51513 Administration of part; rules; investigations; surveys; construction of part as to other law enforcement agencies and local ordinances and regulations.

Sec. 51513. (1) The department shall administer this part and shall promulgate rules necessary to implement this part. The department shall adopt rules governing prescribed burning and for certifying and decertifying prescribed burn managers based on their past experience, training, certification by another state, and record of compliance with section 51503b. The department shall submit the proposed rules for public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 6 months after the effective date of the 2004 amendatory act that amended this section.

(2) The department may make, conduct, or participate in investigations and surveys designed to establish

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the cause of or responsibility for a particular forest fire or forest fire conditions generally.

(3) This part does not limit or otherwise impair the jurisdiction or powers of any other department, agency, or officer of this state to investigate, apprehend, and prosecute violators of this part. This part does not preempt local ordinances or local regulations that are as restrictive or more restrictive than this part, except to the extent the ordinances or regulations conflict with the exemption from liability for, or otherwise apply to either of the following:

(a) Prescribed burns conducted in compliance with section 51503b.

(b) Prescribed burns conducted by a federal agency or state agency on land that the agency is authorized to manage.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 529, Imd. Eff. Jan. 3, 2005.

Popular name: Act 451

Popular name: NREPA

324.51514 Forest fire and other hazard incidents; control; interstate and federal assistance agreements; employee training considered as work inside state; compensation and benefits.

Sec. 51514. The department may enter into agreements with other states, territories of the United States, the federal government, Canada, or provinces of Canada to provide assistance and to accept assistance in the control of forest fires and all hazard incidents, including the training of personnel. Any employee of the department assigned to fire control duties and all hazard incidents or training programs outside this state shall be considered the same as working inside this state for purposes of compensation and any other employee benefits.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2018, Act 80, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

PART 517
PREVENTION OF FOREST FIRES

324.51701 Legislation, rules, or policies creating conditions promoting, fostering, or leading to forest fires.

Sec. 51701. The state or a department, bureau, board, commission, or other agency of the state or a political subdivision of the state shall not enact, adopt, promulgate, enforce, or practice any law, rule, policy, or concept that creates or tends to create a condition that promotes, fosters, or leads or may tend to promote, foster, or lead to the beginning or spreading of a forest fire that could jeopardize the public trust in the forests of the state or any private land contiguous to the forests of the state, except as may be required for the protection of the public health, safety, and welfare, or as prescribed for forest management or wildlife management programs under the authority of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51702 Inconsistent acts or rules repealed.

Sec. 51702. To the extent authorized by law, all acts and parts of acts or rules promulgated pursuant to acts or parts that are inconsistent with this part are repealed.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 519
SLASH DISPOSAL

324.51901 Forest cutting, slash, and debris; disposal methods, specifications, and elimination; approval by department.

Sec. 51901. Any person who cuts any forest growth within any public road or highway, or on land bordering on any public road or highway in this state, shall dispose of all cutting, slash, and debris resulting from the cutting, and dead stubs and windfalls from the area cut over so that inflammable material does not constitute a fire hazard within the limits of the road or highway or within 50 feet of the edge of the cleared

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portion of the limits of the road or highway. The method of disposal, the disposal specifications, and the elimination of fire hazards shall be approved by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51902 Forest cutting, slash, and debris; public utilities; responsibility for disposal.

Sec. 51902. All cuttings of forest growth, slash, and debris resulting from the construction and maintenance of any railroad, that is a common carrier, telephone, telegraph, power, oil and gas line, or other public utility shall be disposed of by the person either directly or indirectly responsible for creating the cuttings, slash, and debris, in a manner approved by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51903 Forest cutting, slash, and debris; time for disposal; burning permit required.

Sec. 51903. All cuttings of forest growth, slash, and debris referred to in sections 51901 and 51902 shall be disposed of within 30 days after cutting the same in the manner prescribed by the department. The disposal shall not be injurious to or endanger public or private property. Any burning of cuttings of forest growth, slash, and debris shall be done only under permit and at a time when forest and grass lands are not endangered by the fire.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51904 Forest cutting, slash, and debris; noncompliance; disposal by department; statement of expenditures; reimbursement; neglect or refusal to pay amount; action; money collected; disposition.

Sec. 51904. If cuttings of forest growth, slash, and debris are not disposed of as provided under section 51903, the department shall notify, by registered mail, the person responsible for the cuttings of the requirements imposed for the removal or elimination of fire hazards. If the responsible party or parties fail to comply with the provisions in the notification, the department may remove or eliminate the fire hazards, and the department is not liable in any action or trespass for that action. The department shall pay for the disposal or elimination of fire hazards resulting from cuttings of forest growth, slash, and debris from the forest fire control appropriation, and the department shall keep an accurate account of the expenditures incurred by it in implementing this part. The department shall present a full and complete statement of its expenditures, verified by oath, requiring the person to pay to the state the amount set forth. If the offender refuses or neglects to pay that amount within 30 days after the notice and demand, the department may bring suit against the person in a court of competent jurisdiction in the county where the forest growth cuttings, slash, and debris were not disposed of as required by the department, or in the county of the residence of the defendant or of any defendant if there is more than 1. All money collected as result of action under this section shall be paid to the state treasurer and credited to the forest fire control appropriation from which the expenditures were made.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51905 Violation of part; penalty; civil liability.

Sec. 51905. Any person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both. If through the violation of this part any damage or injury is suffered by the owner of any property, the person who is guilty of the violation is liable in an action for damages to be recovered in an action of trespass on the case for the benefit of the owner who suffered the damage.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.51906 Rules, regulations, and specifications.

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Sec. 51906. All rules, regulations, and specifications prescribed under this part shall be prescribed in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

MISCELLANEOUS TOPICS

PART 525

SUSTAINABLE FORESTRY ON STATE FORESTLANDS

324.52501 Definitions.

Sec. 52501. As used in this part:

(a) "Breast height" means 4.5 feet from highest ground at the base of the tree.

(b) "Certification" means a process where an independent third party organization assesses and evaluates forest management practices according to the standards of a certification program resulting in an issuance of a certificate of compliance or conformity.

(c) "Certification program" means a program that develops specific standards that measure whether forest management practices are consistent with principles of sustainable forestry.

(d) "Conservation" means the wise use of natural resources.

(e) "Diameter class specifications" means a classification of trees based on the diameter at breast height.

(f) "Plan" means the forestry development, conservation, and recreation management plan for state forests as provided for in section 52503.

(g) "Reforestation" means adequate stocking of forestland is assured by natural seeding, sprouting, suckering, or by planting seeds or seedlings.

(h) "Residual basal area" means the sum of the cross-sectional area of trees 4 inches or greater in diameter measured at breast height left standing within a stand after a harvest.

(i) "State forest" means state land owned or controlled by the department that is designated as state forest by the director.

(j) "Sustainable forestry" means forestry practices that are designed to meet present and future needs by employing a land stewardship ethic that integrates the reforestation, managing, growing, nurturing, and harvesting of trees for useful products with the conservation of soil, air and water quality, wildlife and fish habitat, and visual qualities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 125, Imd. Eff. May 28, 2004.

Popular name: Act 451

Popular name: NREPA

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324.52502 Management of state forest; manner; duties of department.

Sec. 52502. (1) The department shall manage the state forest in a manner that is consistent with principles of sustainable forestry.

(2) In fulfilling the requirements of subsection (1), the department shall do all of the following:

(a) Manage forests with consideration of their economic, social, and environmental values by doing all of the following:

(*i*) Broadening the implementation of sustainable forestry by employing an array of economically, environmentally, and socially sound practices in the conservation of forests, using the best scientific information available.

(*ii*) Promoting the efficient utilization of forest resources.

(*iii*) Broadening the practice of sustainable forestry by cooperating with forestland owners, wood producers, and consulting foresters.

(*iv*) Where appropriate, promoting working forests for the production of forest products and ecological value.

(*v*) Actively managing for enhanced wildlife habitat.

(b) Conserve and protect forestland by doing all of the following:

(*i*) Ensuring long-term forest productivity and conservation of forest resources through prompt reforestation, soil conservation, afforestation, and other measures.

(*ii*) Protecting the water quality in streams, lakes, and other water bodies in a manner consistent with the department's best management practices for water quality.

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(*iii*) Managing the quality and distribution of wildlife habitats, contributing to the conservation of biological diversity, implementing stand and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals, including aquatic flora and fauna and unique ecosystems, while giving due consideration to loss of economic values.

(*iv*) Managing forests to mitigate or minimize impacts from wildfire, pests, diseases, and other damaging agents.

(*v*) Managing areas of ecologic, geologic, cultural, or historic significance in a manner that recognizes their special qualities.

(*vi*) Managing activities in high conservation value forests by maintaining or enhancing the attributes that define those forests, while giving due consideration to loss of economic values.

(c) Communicate to the public by doing all of the following:

(*i*) Publicly reporting the department's progress in fulfilling its commitment to sustainable forestry.

(*ii*) Informing the public of the positive aspects of managed forests.

(*iii*) Providing opportunities for persons to participate in the commitment to sustainable forestry.

(*iv*) Preparing, implementing, and keeping current a management plan that clearly states the long-term objectives of management and the means of achieving those objectives.

(d) Promote continual improvement in the practice of sustainable forestry and monitor, measure, and report performance in achieving sustainable forestry.

(e) Consider the local community surrounding state forestland by doing both of the following:

(*i*) Requiring that forest management plans and operations comply with applicable federal and state laws.

(*ii*) Requiring that forest management operations maintain or enhance the long-term social and economic well-being of forest workers and local communities.

History: Add. 2004, Act 125, Imd. Eff. May 28, 2004;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.52503 Forestry development, conservation, and recreation management plan.

Sec. 52503. (1) The department shall adopt a forestry development, conservation, and recreation management plan for state-owned lands owned or controlled by the department. Parks and recreation areas, state game areas, and other wildlife areas on these lands shall be managed according to their primary purpose. Subject to subsection (2)(g), the department may update the plan as the department considers necessary or appropriate. The plan and any plan updates shall be consistent with section 52502 and shall be designed to ensure a stable, long-term, sustainable timber supply from the state forest as a whole.

(2) The plan and any plan updates shall include all of the following:

(a) An identification of the interests of local communities, outdoor recreation interests, the tourism industry, and the forest products industry.

(b) Methods to promote and encourage the use of the state forest for outdoor recreation, tourism, and the forest products industry.

(c) A landscape management plan for the state forest incorporating biodiversity conservation goals, indicators, and measures.

(d) Standards for sustainable forestry consistent with section 52502.

(e) An identification of environmentally sensitive areas.

(f) An identification of the need for forest treatments to maintain and sustain healthy, vigorous forest vegetation and quality habitat for wildlife and environmentally sensitive species.

(g) Yearly harvest objectives for all state forest land by forest region for a 10-year period. At least every 5 years, the department shall review the yearly harvest objectives. At least once every 10 years, the department shall update the yearly harvest objectives for all state forest land for a 10-year period. The department shall post and maintain the current yearly harvest objectives on the department's website. The harvest objectives for each forest region shall not exceed the sustainable yields. In setting harvest objectives, the department may consider physical, biological, environmental, and recreational objectives.

(3) Beginning October 1, 2018 and each year thereafter, the department shall prepare for sale a minimum of 90% of the yearly statewide harvest objective.

History: Add. 2004, Act 125, Imd. Eff. May 28, 2004;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.52504 Harvest and sale of timber; deposit of proceeds into forest development fund;

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report.

Sec. 52504. (1) The department shall harvest timber from the state forest and other state owned lands owned or controlled by the department in compliance with the plan and any plan updates.

(2) Unless otherwise dedicated by law, proceeds from the sale of timber from the state forest and other state owned lands owned or controlled by the department shall be forwarded to the state treasurer for deposit into the forest development fund established pursuant to section 50507.

(3) Not later than December 31 of each year, the department shall submit a report, to the standing committees of the senate and house of representatives with jurisdiction over forestry issues, that includes all of the following:

(a) The total number of acres in the state forest that have been identified by the department as having site conditions that restrain timber sales.

(b) The site conditions applicable to acreage identified under subdivision (a).

(c) The total number of acres identified under subdivision (a) in the previous year's report that are not identified under subdivision (a) in the current report and have been made available for timber sale.

(d) The locations where the acres identified under subdivision (a) and acres as identified under subdivision (c) are located.

(e) A statement of what the department intends to do to remove the particular site conditions identified under subdivision (b).

History: Add. 2004, Act 125, Imd. Eff. May 28, 2004;—Am. 2006, Act 500, Imd. Eff. Dec. 29, 2006.

Popular name: Act 451

Popular name: NREPA

324.52505 Third-party certification that forestry standards satisfied; report.

Sec. 52505. (1) The department shall seek and maintain third-party certification that the management of the state forest and other state owned lands owned or controlled by the department satisfies the sustainable forestry standards of at least 1 credible nonprofit, nongovernmental certification program and this part.

(2) Beginning January 1, 2006, the department shall ensure that the state forest is certified as provided for in subsection (1).

(3) Beginning the effective date of the amendatory act that added this section, the department shall commence a review and study to determine the appropriateness of certifying parks and recreation areas, state game areas, and other wildlife areas on state owned lands owned or controlled by the department. Not later than 1 year after the effective date of the amendatory act that added this section, the department shall report and recommend to the legislature the appropriateness and feasibility of certifying those lands.

History: Add. 2004, Act 125, Imd. Eff. May 28, 2004.

Popular name: Act 451

Popular name: NREPA

324.52506 Report.

Sec. 52506. By January 1 of each year, the department shall prepare and submit to the natural resources commission, the standing committees of the senate and the house of representatives with primary jurisdiction over forestry issues, and the senate and house appropriations committees a report that details the following from the previous state fiscal year:

(a) The number of harvestable acres in the state forest, as determined from information in the state forest management plan under section 52503.

(b) The number of acres of the state forest that were harvested and the number of cords of wood that were harvested from the state forest.

(c) The number of acres of state-owned lands owned or controlled by the department other than state forest that were harvested and the number of cords of wood that were harvested from those lands.

(d) Efforts by the department to promote recreational opportunities in the state forest.

(e) Information on the public's utilization of the recreational opportunities offered by the state forest.

(f) Efforts by the department to promote wildlife habitat in the state forest.

(g) The status of the plan and whether the department recommends any changes in the plan.

(h) The status of certification efforts required in section 52505 and a definitive statement of whether the department is maintaining certification of the entire state forest.

History: Add. 2004, Act 125, Imd. Eff. May 28, 2004;—Am. 2018, Act 238, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

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324.52511 Repealed. 2004, Act 123, Eff. Dec. 31, 2011.

Compiler's note: The repealed section pertained to establishment and design of forest pilot project areas and contracts for management of each area.

Popular name: Act 451

Popular name: NREPA

PART 527
MUNICIPAL FORESTS

324.52701 Definitions.

Sec. 52701. As used in this part:

(a) "Forestry commission" means a forestry commission appointed by a municipality pursuant to this part.

(b) "Legislative body" means any board of supervisors, township board, city or village legislative body, or school district board.

(c) "Municipality" means a county, township, city, village, or school district.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52702 Municipality; right to acquire and use lands for forestry.

Sec. 52702. Any municipality may acquire by purchase, gift, or devise, or may provide land already in its possession, and use the land for a forestry or recreational purpose, or both, either within or outside of the territorial limits of the municipality, and may carry on forestry or recreational activities, or both, on the land. However, the use of the land for forestry is the highest priority objective of the land and use of the land for recreational activities shall not interfere with its use for forestry. Any municipality may also receive and expend or hold in trust gifts of money or personalty for a forestry or recreational purpose, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2012, Act 488, Imd. Eff. Dec. 28, 2012.

Popular name: Act 451

Popular name: NREPA

324.52703 Municipal forestry commission; members; appointment; terms; vacancies.

Sec. 52703. The legislative body of any municipality desiring to proceed under this part may appoint a forestry commission for the municipality to consist of 3 members, only 1 of whom shall be a member of the legislative body making the appointment. The members of a forestry commission shall hold office for a term of 4 years and until their successors are appointed and have qualified, except that when first appointed 1 shall be appointed for a term of 4 years, 1 for a term of 3 years, and 1 for a term of 2 years. Any vacancy shall be filled by appointment by the legislative body at any regular session.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52704 Forestry commission; powers and duties.

Sec. 52704. A forestry commission shall supervise and manage all land of the municipality devoted to forestry and provide labor on forest land by foresters and others as may be necessary for the proper care and maintenance of the land as a forest producing area, to make reasonable rules and regulations concerning the land, and to expend money as may be appropriated or received for this purpose.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52705 Forestry commission; report; contents; filing.

Sec. 52705. Every forestry commission shall annually at a time to be designated by the legislative body make a report to the legislative body showing the activities of the forestry commission and embracing a detailed statement of its receipts and expenditures during the preceding year. The forestry commission shall also file a copy of the report with the board of supervisors if it is not a county commission and a copy with the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.52706 Authority to sell state lands to municipalities for forestry; reversion; relinquishing reversionary interest; re-acquisition; definitions; use of term "this section."

Sec. 52706. (1) The department, the department of treasury, or a state officer having charge of state land, may sell homestead, tax, swamp, or primary school land to a public agency for a forestry or recreational purpose, or both, at a price set by the department, the department of treasury, or the state officer. However, the amount of land sold shall not exceed the amount that may be necessary for the public agency, and any land that is sold shall be suitable for and used for a forestry or recreational purpose, or both, unless conveyed as provided in this section. Land sold to a public agency under this section or section 6 of former 1931 PA 217 shall be used only for a forestry or recreational purpose, or both, if the land is prime land. When the prime land is no longer used for a forestry or recreational purpose, or both, the land shall revert to this state.

(2) Except as provided in subsection (6), the department shall relinquish a reversionary interest in municipal forestland, conveyed to a public agency under this section or section 6 of former 1931 PA 217 before October 12, 2004, within 90 days after the department receives, on a form prescribed by the department, a written request for relinquishment from the public agency that owns the municipal forestland subject to the reversionary interest. The department shall relinquish its reversionary interest by an instrument approved by the department of attorney general and recorded by the department with the register of deeds of the county where the municipal forestland is located. The instrument shall include provisions implementing subsections (3) through (8). The department may charge the public agency an amount equal to the charge for recording the release.

(3) A public agency to which a reversionary interest was relinquished under subsection (2) shall not convey the municipal forestland formerly subject to the reversionary interest unless the conveyance is approved by the department.

(4) Subject to subsection (5), a public agency to which a reversionary interest was relinquished under subsection (2) and any public agency that is a successor in interest shall not convey the municipal forestland formerly subject to the reversionary interest, or any part thereof, unless the conveyance is to a public agency for $1.00 or to a public agency or any other person for fair market value. If the conveyance is to a public agency for $1.00, the deed shall recite "MCL 324.52706 requires an accounting and specifies how proceeds are to be distributed when the property is subsequently conveyed for fair market value.". If the conveyance is to a public agency or any other person for fair market value, the public agency conveying the property shall have an accounting taken, shall retain 50% of the proceeds, and shall submit the remaining 50% of the proceeds to the department of treasury for deposit as follows:

(a) The first $18,000,000.00 in total proceeds from all such conveyances shall be deposited in the general fund.

(b) Any proceeds in excess of $18,000,000.00 shall be deposited in the fire protection fund created in section 732a of the Michigan vehicle code, 1949 PA 300, MCL 257.732a.

(5) Once the municipal forestland or part thereof formerly subject to a reversionary interest is conveyed for fair market value and an accounting is taken and the proceeds are distributed as provided under subsection (4), subsection (4) does not apply to subsequent conveyances of that municipal forestland or part thereof, respectively.

(6) Subsection (2) does not apply to prime land.

(7) A public agency to which a reversionary interest is relinquished under subsection (2) shall not convey the municipal forestland formerly subject to the reversionary interest to a third person unless the public agency has conducted a public hearing on the proposed conveyance. The public agency may conduct a second public hearing on the proposed conveyance if the public agency determines that a second public hearing may be necessary. Notice of a public hearing under this subsection shall be published at least twice in a newspaper of general circulation in the county or counties where the municipal forestland is located, not more than 28 or less than 7 days before the hearing. The notice shall describe where the municipal forestland is located, specify the approximate size of the municipal forestland, describe its current use, and identify the person to whom the municipal forestland is proposed to be sold, if known. The public agency shall provide a copy of the notice to the director of the department not less than 7 days before the hearing.

(8) The requirements of subsection (7) do not relieve the public agency of any notice, hearing, or other requirements imposed by any other law.

(9) If municipal forestland was conveyed to a public agency under this section or section 6 of former 1931 PA 217 and the municipal forestland is subsequently conveyed by the public agency to the department, then, for purposes of subparts 13 and 14 of part 21, the municipal forestland shall not be considered to have been

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reacquired by the department on or after January 1, 1933 for natural resource purposes unless the municipal forestland was originally acquired by the department on or after January 1, 1933 for natural resource purposes.

(10) As used in this section:

(a) "Basal area" means the sum of the cross-sectional area of trees 4 inches or greater in diameter measured at 4.5 feet from the highest ground at the base of each tree.

(b) "Municipal forestland" means homestead, tax, swamp, or primary school land sold to a public agency under this section or section 6 of former 1931 PA 217 for a forestry or recreational purpose, or both.

(c) "Prime land" means municipal forestland that meets 1 or more of the following requirements:

(*i*) Is within a boundary of a program administered by the department.

(*ii*) Provides access to a public body of water.

(*iii*) Is not less than 121 acres in size and, at any time during the preceding 10 years, had a basal area of not less than 90 square feet per acre.

(d) "Public agency" means a school district, public educational institution, governmental unit of this state or agency of this state, or a municipality.

(e) "Recreational purpose" includes any motorized or nonmotorized recreational activity.

(11) The use in this section of the phrase "this section or section 6 of former 1931 PA 217" does not imply that the term "this section" as used elsewhere in this act does not include the relevant section as it existed in former law codified in this act.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2002, Act 356, Imd. Eff. May 23, 2002;—Am. 2004, Act 377, Imd. Eff. Oct. 12, 2004;—Am. 2006, Act 179, Imd. Eff. June 6, 2006;—Am. 2012, Act 488, Imd. Eff. Dec. 28, 2012.

Popular name: Act 451

Popular name: NREPA

324.52707 Forestry commissions and department of natural resources; cooperation.

Sec. 52707. A forestry commission and the department shall cooperate with each other in all matters pertaining to the establishment and maintenance of public forests. The department may inspect municipal forests as often as it considers necessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52708 Municipality; appropriation for forestry; limitation.

Sec. 52708. The legislative body of any county, city, or village or the electors of any township or school district in which a forestry commission has been appointed may appropriate money to be used by the forestry commission to carry out the purposes of this part. However, if the legislative body desires to spend an amount in excess of 1/10 mill per dollar assessed valuation or in excess of $5,000.00, or both, in any 1 year for the purposes of this part, the sum shall not be appropriated unless the electors of the county, city, or village agree to the expenditure at any general or special election by a 3/5 vote.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52709 Forestry funds; accounting.

Sec. 52709. A separate account of all revenue and expense of all funds appropriated or invested, or both, to the forestry commission shall be kept by the financial officer of the municipality and the funds may be expended upon the warrant of 2 members of the forestry commission.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52710 Special forestry fund; creation; payments in lieu of property taxes.

Sec. 52710. Any income from forest land shall be paid into the general fund of the municipality and may be set up in a special forestry fund by the municipality. A forestry commission and the townships and school districts in which its municipal forest lies by agreement shall determine a formula under which the forestry commission shall make payments to the townships and school districts in lieu of general property taxes which would otherwise be levied against the land and forests comprising the municipal forest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

PART 529

CHRISTMAS TREES, BOUGHS, PLANTS, AND OTHER TREES

324.52901 Removal of certain plants; "plant" defined; bill of sale or other evidence of title required.

Sec. 52901. (1) A person shall not cut, remove, or transport, without having in possession a bill of sale from the owner or other evidence of title on a form prescribed by and available from the department or the department of agriculture or the federal agency that has jurisdiction, any of the following:

(a)	Christmas trees.	
(b)	Evergreen boughs.	
(c)	Any other trees, shrubs, or vines.	
(d)	Trailing arbutus	Epigaea.
(e)	Bird's foot violet	Viola pedata.
(f)	Climbing bittersweet	Celastrus scandens.
(g)	Club mosses	Lycopodiaceae.
(h)	Flowering dogwood	Cornus florida.
(i)	All Michigan holly	Ilex sp. and nemopanthus sp.
(j)	North American lotus	Nelumbo sp.
(k)	Pipsissewa	Chimaphila umbellata.
(*l*)	All native orchids	Orchidaceae.
(m)	Trilliums	Trillium sp.
(n)	Gentians	Eustoma sp.
(o)	Parts of any plant listed in this subsection.	

(2) As used in this part, "plant" means a tree, bough, shrub, vine, or other native plant, or a part of a tree, bough, shrub, vine, or other native plant, listed in subsection (1).

(3) A person shall produce a bill of sale for a plant listed in subsection (1) or other evidence of title upon demand of a law enforcement officer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.52902 Transportation of plants.

Sec. 52902. A person shall not transport within this state any plant in either of the following circumstances:

(a) If the plant has been removed from property owned by the person, unless he or she has in possession a current tax receipt or deed with respect to the property or a copy of the receipt or deed.

(b) If the plant has been removed from property not owned by the person, unless either of the following has been met:

(*i*) Each plant bears a tag placed on the plant by and identifying the person and his or her address and stating from whom the plant was acquired.

(*ii*) The person has in his or her possession a bill of sale or other evidence of title acquisition in a form prescribed by and available from the department or the department of agriculture or the federal agency that has jurisdiction. The person shall display the bill of sale or other evidence of title upon demand of a law enforcement officer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52903 Sale of plants; bill of sale or other evidence of title required; records of transactions.

Sec. 52903. A person shall not sell or offer for sale any plant without having in his or her possession the evidence of title prescribed by section 52902 or without furnishing the purchaser with a bill of sale or other evidence of title acquisition in a form prescribed by the department or the department of agriculture or the federal agency that has jurisdiction. Vendors shall maintain and keep records of their transactions for the period of time that the department or the department of agriculture or the federal agency that has jurisdiction

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prescribes by rule or regulation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52904 Trees, shrubs, vines or plants; shipment; evidence of title.

Sec. 52904. A common carrier shall not accept for shipment any of the trees, boughs, shrubs, vines, or plants listed in section 52901 unless the consignor whose name and address is recorded at the time of consignment exhibits the evidence of title prescribed by section 52902.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52905 Law enforcement officers; inspection; impoundment of plants or equipment; failure to exhibit bill of sale or other evidence of title.

Sec. 52905. A law enforcement officer having probable cause to believe that this part is being violated, including authorized employees of the department of agriculture or the department, may make inspections to determine whether this part has been violated, including the right to stop any vehicle that is transporting a plant at any time, to inspect and make copies of bills of sale or other evidence of title prescribed by the department or the department of agriculture or the federal agency that has jurisdiction, to arrest persons found to have any plants in possession in violation of this part and to impound any plants or equipment used to remove or transport the plants. Pursuant to court order, any plants or equipment impounded pursuant to this section shall be permanently seized and disposed of as required under sections 1603 and 1604. Failure to exhibit a bill of sale or other evidence of title prescribed by the department or the department of agriculture or the federal agency that has jurisdiction is prima facie evidence that a bill of sale or other evidence of title does not exist.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52906 Construction of part.

Sec. 52906. Nothing in this part shall be construed to interfere with the insect pest and plant disease act, Act No. 189 of the Public Acts of 1931, being sections 286.201 to 286.226 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52907 Enforcement of part; rules.

Sec. 52907. The director of agriculture and the department, in cooperation with law enforcement agencies, shall enforce this part. The director of agriculture, after consultation with the department, shall promulgate rules as he or she considers necessary for the enforcement of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.52908 Violation of part; penalties; determination of total value; prior convictions; prohibition; additional penalties.

Sec. 52908. (1) A person who violates this part is guilty of a crime as follows:

(a) If the damages are less than $200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or 3 times the aggregate value of the property involved, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00 or 3 times the value of the property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The value of the property involved is $200.00 or more but less than $1,000.00.

(*ii*) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this part.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more

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than 5 years or a fine of not more than $10,000.00 or 3 times the value of the property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The value of the property involved is $1,000.00 or more but less than $20,000.00.

(*ii*) The person violates subdivision (b)(*i*) and has 1 or more prior convictions for violating or attempting to violate this part. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(*ii*).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00 or 3 times the value of the property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The property involved has a value of $20,000.00 or more.

(*ii*) The person violates subdivision (c)(*i*) and has 2 or more prior convictions for committing or attempting to commit an offense under this part. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(*ii*).

(2) The values of property damaged in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property damaged.

(3) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(5) A person who forges a bill of sale or other evidence of title prescribed by the department or the department of agriculture or the federal agency that has jurisdiction is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.

(6) In addition to the penalties provided for in this section, a person who violates this part by illegally removing or cutting a plant is liable in a civil action filed by the state or the property owner for up to 3 times the fair market value of the damage caused by the unlawful act or $100.00, whichever is greater, and for court costs and attorney fees. Damages collected under this subsection shall be paid to the owner of the lands from which the plants were illegally removed or, if removed from state owned lands, to the state treasurer, who shall credit the deposit to the fund that was used to purchase the land on which the violation occurred.

(7) A person who violates this part by not having in his or her possession a current tax receipt or deed with respect to property, or a copy of the receipt or deed, indicating that the person owned the land from which the plants were taken shall not be prosecuted under this part for that violation if he or she subsequently produces a current tax receipt or deed showing that person's ownership of the property from which the plants were taken.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 155, Eff. Jan. 1, 2002.

Popular name: Act 451

Popular name: NREPA

324.52909 Christmas trees; transportation during December.

Sec. 52909. This part does not apply to the sale of or the transportation by any 1 person of not more than 2 Christmas trees between November 30 and December 31 of the same year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 535.
REGISTERED FORESTERS

324.53501 Definitions.

Sec. 53501. As used in this part:

(a) "Board" means the board of foresters created in section 53505(1).

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(b) "Department" means the department of natural resources.

(c) "Forest development fund" means the forest development fund created in section 50507.

(d) "Forester" means an individual who, by reason of his or her knowledge of the natural sciences, mathematics, and the principles of forestry, acquired by forestry education and practical experience, is qualified to engage in the practice of professional forestry.

(e) "Practice of professional forestry" means the science, art, and practice of creating, managing, using, planning and researching, and conserving forests and associated resources for human benefit and in a sustainable manner to meet desired goals, needs, and values.

(f) "Registered forester" means a forester registered under section 53509.

(g) "SAF" means Society of American Foresters.

(h) "State forester" means that term as defined in section 50502.

(i) "Violations committee" means the violations committee appointed under section 53505.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53503 Forester program evaluation; review; ceasing administration of part; conditions.

Sec. 53503. (1) The department shall timely review each registered forester program evaluation provided under section 53507.

(2) The department may cease administering this part if either of the following applies:

(a) The revenue available from registered forester fees under section 53509 is not sufficient to administer this part.

(b) The department and the board agree to separate and cease operations under this part.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53505 Board of foresters; creation; membership; qualifications; appointment; terms; vacancy; meetings; quorum; compliance with open meetings act; writings subject to freedom of information act; expenses; violations committee.

Sec. 53505. (1) The board of foresters is an independent self-directed body appointed by the state forester and created within the department.

(2) To be eligible to serve on the board, an individual must be a citizen of the United States and a full-time resident of this state and must have at least 10 years of professional forestry experience. The board shall consist of not fewer than 5 or more than 7 of the following individuals, who shall be appointed by the state forester from and nominated by the group represented:

(a) An individual representing the Association of Consulting Foresters.

(b) An individual representing the Society of American Foresters.

(c) An individual representing the forestry program faculty of a university whose forestry program is accredited by the SAF.

(d) An individual representing state agencies that have forestry staff.

(e) An individual representing forest products advocacy or the forest products industry, including logging.

(f) An individual representing private forest landowners.

(g) An individual representing a municipal, urban, or community forestry field.

(3) The members first appointed to the board shall be appointed within 60 days after the effective date of the amendatory act that added this part.

(4) Members of the board shall serve for terms of 4 years or until a successor is appointed, whichever is later, except that, of the members first appointed, 3 shall serve for 2 years.

(5) If a vacancy occurs on the board, the state forester shall make an appointment for the unexpired term in the same manner as the original appointment. The state forester may remove a member of the board for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(6) The state forester shall call the first meeting of the board. At the first meeting, the board shall elect from among its members a chairperson, vice-chairperson, secretary, and other officers as it considers appropriate. Officers of the board shall serve for terms of 2 years. After the first meeting, the board shall meet once annually in person and once annually by conference call or video conference, or more frequently at the call of the chairperson or if requested by 2 or more members.

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(7) Five or more members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the board.

(8) Business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The secretary of the board shall record all proceedings of the board.

(9) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

(11) For the purposes of section 53517, the chairperson of the board shall appoint a violations committee consisting of 3 members of the board. Members of the violations committee shall serve on the committee for terms of 2 years.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53507 Duties of board; power to call witnesses and receive evidence.

Sec. 53507. (1) The board shall do all of the following:

(a) Adopt bylaws.

(b) Comply with section 53515.

(c) Make available a list of registered foresters. The department shall post the list on its website.

(d) Make an annual report to the state forester on proceedings, applications, renewals, complaints, and hearings under this part.

(e) On a biennial basis, provide the department an evaluation of the registered forester program, including both of the following:

(*i*) The number of registered foresters, economic data, and other relevant program data.

(*ii*) The sufficiency of the fee under section 53509 to operate a fiscally sound program. The department may recommend to the legislature changes in the fee.

(2) The board may call witnesses and receive evidence in hearings under this part.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53509 Registration as forester; application; submission; contents; denial or approval; validity; duties of individual.

Sec. 53509. (1) To be registered as a forester, an individual shall submit an application to the board on a form provided by the department. The application shall include all of the following:

(a) The name, address, telephone number, and electronic mail address of the applicant.

(b) Information demonstrating that the individual meets 1 or more of the following educational requirements:

(*i*) An associate's degree in forestry from an SAF-accredited university program or board-approved program, plus 4 years of experience under the guidance of a registered forester, an SAF-certified forester, or a member of the Association of Consulting Foresters.

(*ii*) A bachelor's degree in forestry from an SAF-accredited university program or a board-approved program, plus 2 years of forestry experience as described in subparagraph (*i*).

(*iii*) A bachelor's degree in a natural resource field from an SAF-accredited university program or a board-approved program, plus 2 years of forestry experience described in subparagraph (*i*).

(*iv*) A graduate degree in forestry from an SAF-accredited university program or a board-approved program, plus 2 years of forestry experience described in subparagraph (*i*).

(c) References or endorsements from 3 registered foresters.

(d) Verification of successful completion of any continuing education required by the board.

(e) Other relevant information required by the board.

(2) The board shall grant or deny registration within 30 days after a complete application is filed and notify the applicant of its determination in writing. If an application is denied, the notification shall include the reasons for the denial. If the application is approved, the department shall issue a registration certificate and certification number to the applicant. The registration is valid for 2 years.

(3) To maintain registration as a forester, an individual shall do all of the following:

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(a) Pay the department a fee of $200.00 for the registration period. The first payment shall be made not more than 30 days after the application for registration is granted under subsection (2).

(b) Successfully complete not fewer than 24 hours of continuing education every 2 years as approved by the board.

(c) Demonstrate completion of continuing education requirements under subdivision (b) as a condition for registration renewal by submitting evidence of fulfillment to the board within 60 days of a request to do so.

(d) Maintain good standing with the board by complying with section 53515.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53511 Automatic registration of members of affiliated professional organizations; forester registered or licensed in another state or country.

Sec. 53511. (1) The board shall determine whether members of affiliated professional organizations within and outside of this state are eligible for automatic registration under this part.

(2) The board shall register an applicant who is a registered or licensed forester in another state or country if the board considers the requirements of the state or country to be equivalent to the requirements for registration in this state.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53513 Use of "registered forester" as title.

Sec. 53513. An individual shall not use the title "registered forester" unless he or she is registered under this part.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53515 Registered forester; requirements.

Sec. 53515. A registered forester shall comply with all of the following:

(a) In his or her professional capacity, perform the following general forestry activities as necessary for the practice of sustainable forest management and silviculture:

(*i*) Forest management planning.

(*ii*) Forest stand improvement.

(*iii*) Forest mensuration, inventory, forest products appraisal, and timber sale administration.

(*iv*) Reconnaissance and mapping of forest and watershed lands; investigation of wildland soils; delineation and mapping of forestlands and forest management boundaries, not including the establishment of property corners or boundaries.

(*v*) Preparation and utilization of GIS/GPS maps, equipment, and software to assist in forest management planning, planting, harvesting, and protection. GIS/GPS maps created for forest management purposes are not official survey maps.

(*vi*) Forest economics.

(*vii*) Forest utilization, renewable energy production, and forest product development.

(*viii*) Forest protection and restoration.

(*ix*) Forest regeneration, reforestation, and afforestation.

(*x*) Forest nursery production.

(*xi*) Application of best management practices.

(*xii*) Addressing legal and social aspects of forestry and forestlands.

(*xiii*) Preparation of forest management related contracts, litigation reports, timber trespass investigation, and testimony.

(*xiv*) Development, maintenance, conservation, and protection of wildlife habitat and forest range resources.

(*xv*) Forest recreation and environmental studies.

(*xvi*) The development of access for protection and management of the resource.

(*xvii*) Adaptation of forests and forest practices related to climate change.

(*xviii*) Urban forestry and arboriculture.

(*xix*) Utility forestry and utility vegetation management.

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(*xx*) Teaching collegiate-level forestry courses or forestry outreach based on sound scientific principles or conducting scientific research in forestry at an SAF-accredited university or a board-approved program.

(*xxi*) Forest research and monitoring.

(b) Fully disclose personal or financial interests in any forestry project undertaken by the registered forester if there is a potential conflict of interest.

(c) Not accept compensation or expenses from more than 1 client or employer for the same service, unless the parties involved are informed and consent.

(d) Not make exaggerated, false, misleading, or deceptive written or verbal statements, including, but not limited to, statements on the value of individual trees, timber, or timberlands, in the conduct of professional practice.

(e) Clearly and accurately represent his or her qualifications, the extent of the forestry services offered, and the basis for charges for those services.

(f) Not offer or make bribes or unlawful inducements to those responsible for letting forestry contracts.

(g) Not interfere with competitive bidding for forestry projects, including making false representations or misleading statements about bidders, prospective bidders, or competitors.

(h) Not issue a forestry plan, map, specification, or report prepared by that registered forester or under his or her actual supervision unless it is endorsed with the registered forester's name and certificate of registration number.

(i) Not endorse a forestry plan, specification, estimate, or map unless prepared by that registered forester or under his or her actual supervision.

(j) Provide forestry services in a manner that will ensure the public health, safety, and welfare and if, in his or her professional judgment, any of these are endangered, notify the client or employer and give appropriate recommendations or instructions.

(k) If a client or employer fails or refuses to follow recommendations or instructions under subdivision (j), notify the responsible governmental department or agency of the threat to public health, safety, or welfare.

(*l*) Not violate or conceal violations of this part and not knowingly permit others to do so.

(m) Report violations of this part to the board.

(n) Not conspire or collude to restrain trade through price arrangement with other registered foresters or forestry firms and not engage in price-fixing activities.

(o) Not take forestry project funds under false pretenses and not abandon a forestry project without notifying the client or employer.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53517 Violation of MCL 324.53515 or order; complaint; determination by violations committee; notification; investigation; proposed order; objection; review; final order; revocation or suspension.

Sec. 53517. (1) A person may submit to the chairperson of the board a complaint about a violation of section 53515 or of an order under this section. The department shall maintain on its website a complaint form that can be completed and submitted to the chairperson of the board online or printed and completed. The department shall also make complaint forms available at customer service centers. Unless the complaint form is submitted online, the complainant shall submit the form by mailing it to the chairperson of the board.

(2) If the chairperson of the board receives a completed complaint form, the chairperson shall, within 30 days, submit the complaint to the members of the violations committee. Within 30 days after receiving the complaint from the chairperson, the violations committee shall determine if there is sufficient reason to believe that a violation has occurred.

(3) If the violations committee determines that there is not sufficient reason to believe that a violation has occurred, the violations committee shall, within 30 days after its determination, notify the complainant in writing of its determination and the reasons for its determination. No further action shall be taken on that complaint.

(4) If the violations committee determines that there is sufficient information to believe that a violation has occurred, the violations committee shall, within 30 days after its determination, notify, by United States mail, the registered forester who is the subject of the complaint of all of the following:

(a) The allegations in the complaint.

(b) That the registered forester may respond to the allegations in writing.

(c) That the response must be received within 60 days after the date the notice was mailed.

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(5) The board shall consider the allegations of the complaint and any written response to the allegations timely received from the registered forester and may further investigate the complaint. Within 30 days after the deadline under subsection (4) for a response from the registered forester, the board shall do 1 of the following:

(a) Dismiss the complaint and notify the complainant and registered forester in writing.

(b) Issue a letter of caution to the registered forester and provide a copy to the complainant.

(c) Issue to the registered forester a proposed order that, together with preliminary findings, includes proposed sanctions under subsection (8), a proposed negotiated resolution, or a proposed consent agreement and provide a copy to the complainant.

(6) If the board issues a proposed order under subsection (5), the registered forester shall within 30 days submit to the board 1 of the following, in writing:

(a) A statement accepting the proposed order, at which point the board shall issue the order as a final order. Failure of the registered forester to timely respond shall be considered to be acceptance of the proposed order.

(b) A statement objecting to the proposed order and providing reasons for the objection.

(7) If the registered forester objects to the proposed order, the board shall review the objections and issue to the registered forester a final order, amending the preliminary findings as necessary, within 90 days after issuance of the proposed order and shall provide a copy of the final order to the complainant.

(8) The board may permanently revoke or temporarily suspend registered forester status for a violation of section 53515 or an order issued under this section.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.53519 Revenue; fees; disposition.

Sec. 53519. (1) Revenue from registered forester fees under section 53509 shall be deposited in the forest development fund.

(2) The state treasurer shall promptly transfer to the forest development fund the fund balance from registered forester fees in the licensing and regulation fund created in section 3 of the state license fee act, 1979 PA 152, MCL 338.2203.

History: Add. 2018, Act 116, Eff. July 25, 2018.

Popular name: Act 451

Popular name: NREPA

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CHAPTER 3
MANAGEMENT OF NONRENEWABLE RESOURCES

SUBCHAPTER 1
GEOLOGICAL SURVEY DIVISION

PART 601
GEOLOGICAL SURVEY

324.60101 Definitions.

Sec. 60101. As used in this part:

(a) "Governing institution" means the state university within which the Michigan geological survey is established or continued under section 60102.

(b) "State geologist" means the chief of the office of oil, gas, and minerals, or a successor office, of the department of environmental quality.

(c) "State university" means a state university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60102 Michigan geological survey; establishment within western Michigan university; duties of governing institution; transfer and establishment within another state university; conditions; order; agreement.

Sec. 60102. (1) Subject to subsection (2), the Michigan geological survey is established within western

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Michigan university and shall continue as an entity within a governing institution. The governing institution shall do both of the following:

(a) Oversee the operations of the Michigan geological survey.

(b) Appoint a director to supervise and carry out the duties of the Michigan geological survey.

(2) If western Michigan university, or a successor governing institution under this subsection, ceases to have an academic program that is primarily engaged in the study of geology or geosciences or substantially fails to fulfill the duties of the Michigan geological survey under this part in an adequate manner, or if the governing institution notifies the state geologist that it does not desire the Michigan geological survey to remain as an entity within that governing institution, the director of the department of environmental quality shall issue an order to transfer the Michigan geological survey to and establish it within another state university that has an academic program that is primarily engaged in the study of geology or geosciences. Before issuing an order under this subsection, the director of the department of environmental quality shall do all of the following:

(a) Provide public notice, including notice to the legislature, and an opportunity for public comment.

(b) Consider the recommendations of the state geologist.

(3) The Michigan geological survey may enter into an agreement with any state university to perform designated duties described in sections 60104 to 60106. Subject to the terms of the agreement, the state university entering into the agreement with the Michigan geological survey, or a department or office of that state university, may directly receive money or other assets to implement the agreement in the same manner as the Michigan geological survey under section 60108.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60103 Repealed. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Compiler's note: The repealed section pertained to establishment of salaries of geological survey employees.

324.60104 Michigan geological survey; scope.

Sec. 60104. The Michigan geological survey shall continue to make a thorough geological survey of this state, which may include a determination of the succession and arrangement, thickness, and position of all strata and rocks; their mineral character and contents and their economical uses; an investigation of soils and subsoils and the determination of their character and agricultural adaptation; and the investigation of all deposits of brines, coal, marl, clay, gypsum, lime, petroleum, natural gas, metals and metallic ores, building stone, marble, gritstone, materials for mortar and cement, mineral paint, and all other geological productions or features in this state capable of being converted to the uses of humans.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60105 Michigan geological survey; collection and conservation of cores, samples, and specimens.

Sec. 60105. The Michigan geological survey shall provide for the collection and conservation of cores, samples, and specimens for the illustration of every division of the geology and mineralogy of this state, to the extent that facilities and funds are available to do so.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60106 Annual report; contents.

Sec. 60106. The Michigan geological survey shall prepare and submit to the state geologist an annual report of progress and other reports, documents, and maps as necessary to fulfill its responsibilities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60107 Notes, compilations, specimens, diagrams, and illustrations as state property.

Sec. 60107. All notes, memoranda, compilations, collections, specimens, diagrams, and illustrations that

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are made in the operation of the Michigan geological survey are the property of this state and shall be under the control of the governing institution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

324.60108 Michigan geological survey; receipt of money and assets.

Sec. 60108. The Michigan geological survey may receive money or other assets to implement this part from any of the following:

(a) Funds appropriated by the legislature.

(b) Federal, state, municipal, or private grants.

(c) Any other source approved by the governing institution.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 167, Imd. Eff. Oct. 11, 2011.

Popular name: Act 451

Popular name: NREPA

PART 603
SOIL AND ECONOMIC SURVEY

324.60301 Soil and economic survey; duty of department.

Sec. 60301. The department shall conduct a soil and economic survey of all lands in the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60302 Soil and economic survey; purpose; direction and control; assistants; compensation; reimbursement.

Sec. 60302. The soil and economic survey provided for in this part shall be conducted by counties; and the order in which the soil and economic survey is conducted shall be determined by the department. The purpose of the work is to procure and make available for public use information and data as to the character of the lands surveyed; their adaptability to agricultural purposes or similar uses; the various crops, if any, that may be profitably raised on those lands; and such other matters as are considered desirable and advantageous. The details of the work shall be under the direction and control of the department, which shall employ assistants as the department considers necessary. The compensation of these persons shall be established by the department, and paid as provided in this part. The employees of the department may be reimbursed only for money actually and necessarily expended in the performance of their duties under this part, such reimbursement to be made out of the fund created by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60303 Soil and economic survey; completion; report; copies; printing.

Sec. 60303. Upon completion of the soil and economic survey in any county, the department shall cause a full and detailed report of the soil and economic survey to be made. The department shall cause as many copies of the report to be printed as the department determines are necessary. The expense of the printing shall be paid out of the general fund in the same way that other state printing is, by law, required to be paid for.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60304 Soil and economic survey; report; contents; maps; distribution.

Sec. 60304. The report required under section 60303 to be made upon the soil and economic survey in each county, subject to this part, shall set forth such information and data as will fulfill the general purpose defined in section 60302. However, the report shall not state or represent the money value of land surveyed. Insofar as is possible and expedient, the land surveyed shall be classified as to its agricultural adaptability and general character and as to the uses to which it may be put. Maps shall be prepared and incorporated in the report as may be considered necessary for public information and convenience. A copy of the report shall be sent to

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every public library in the state, and the remainder of the copies shall be kept for distribution, subject to the rules and regulations pertaining to the report that the department may, from time to time, adopt.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60305 Soil and economic survey; payment of expenses; claim or account; statement of unexpended funds.

Sec. 60305. Payments shall be made out of the fund created by this part only on the warrant of the state treasurer. However, payments shall not be made until the department has approved the claim or account and has certified the correctness of the claim or account. At the request of the department, the state treasurer shall furnish a statement at any time as to the amount of money remaining in the fund to be expended for the purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60306 Cooperation with other agencies; effect.

Sec. 60306. In implementing the work contemplated in this part, the department may cooperate with the various counties of the state, with development bureaus, with any department, officer, bureau, or institution established and maintained by the United States government, and with any other institution, board, society, or association, either within or outside of this state. An agreement for cooperation shall not change or modify, in any way, the purpose of this part, as defined in section 60302.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60307 Right of entry on private property by department.

Sec. 60307. For the purposes of performing their respective duties under this part and carrying on the work of the soil and economic survey, the department and its employees may enter onto and be on private property. That property shall, however, not be injured or damaged in any way.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60308 Annual appropriation; carrying forward unexpended funds; disposition; reduction through federal aid.

Sec. 60308. Any portion of the annual appropriation provided for in this part that remains unexpended at the close of any fiscal year shall be carried forward into the next fiscal year, to the credit of the department, for the purposes provided under this part, and is subject to expenditure accordingly, it being the intention to make the entire amount appropriated available for the purposes of this part. Any sum remaining in the appropriation on the completion of the soil and economic survey provided for in this part, and after the making of the final report required in this part, is and shall remain a part of the general fund of the state and subject to the incidents pertaining to the general fund. However, if the federal government or any department of the federal government renders aid to this state for the general purposes covered by this part, the appropriation made pursuant to this part shall be reduced by the same amount, which amount shall revert to the general fund of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60309 Reports to legislature; contents.

Sec. 60309. The department shall prepare and submit to each legislature a report covering the work of the preceding 2 years. The report shall indicate specifically the lands that have been surveyed, the general progress and condition of the work, the expenditures that have been made, and the cooperative agreements, if any, that have been entered into. On the completion of the work, a detailed financial report shall be made to the legislature, together with the recommendations and suggestions that the department considers necessary.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 605
AERIAL PHOTOS, SURVEYS, AND MAPS

324.60501 Aerial photographs and ground control surveys for preparation of base maps; cooperative agreements.

Sec. 60501. The department, on behalf of the state, may confer with the director of the United States geological survey or his or her representatives and accept the cooperation of the federal government with this state in making aerial photographs and necessary ground control surveys of those portions of the state as may be mutually agreed upon by the cooperating governments, for the preparation of (utility) base maps of those portions of the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60502 Preparation of base maps; authority of department to contract with federal government; contents; right of entry on private lands.

Sec. 60502. The department may, on behalf of the state, contract with the United States government for the aerial photographing and mapping, scale of photographs and maps, determining the method, form, and execution of maps, and all other details of the work necessary to prepare base maps of those portions of the state as may be agreed upon. The state shall receive negatives of all aerial photographs and copies of all base maps prepared. The maps shall be prepared so as to show the location of roads, railroads, streams, canals, lakes, rivers, timbered areas, and all other natural and artificial features capable of being mapped by the methods to be mutually agreed upon by the geological surveys of the state and the federal government. The state shall not contract to pay more than the amounts paid by the federal government for these purposes. For the purpose of making these surveys, persons employed in making the surveys may enter at reasonable times upon all parts of all lands within the boundaries of this state, but this part does not authorize any unnecessary interference with private rights or the performance of any act not necessary for the preparation of the base maps.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.60503 Preparation of base maps; payment of expenses.

Sec. 60503. The amounts authorized to be paid under this part shall first be certified to be correct by the department and shall be paid out of the state treasury upon warrant of the state treasurer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 607
STATE SOIL SURVEY

324.60701 Definitions.

Sec. 60701. As used in this part:

(a) "Soil survey" means the identification and description of kinds of soil, the plotting of boundaries on aerial photographs between kinds of soils, and the description and evaluation of their importance and response under various uses and management practices.

(b) "Soil scientist" means a person who meets the qualification standards of the GS-470 soil scientist series established by the United States civil service commission.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60702 Inventory of soil resources of state; 10-year program; minimum acres for soil

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surveys; conducting soil surveys on proportional basis.

Sec. 60702. (1) The department of agriculture shall provide an inventory of the soil resources of the state by a 10-year program for the acceleration of the soil survey on nonfederal lands. Soil surveys will be made on a minimum of 3,000,000 acres over the 10 years following December 14, 1977 under former Act No. 268 of the Public Acts of 1977.

(2) Soil surveys shall be conducted on a proportional basis of not more than 2 counties in the Lower Peninsula being surveyed for each county in the Upper Peninsula until all counties in the Upper Peninsula have been surveyed. If the soil surveys cannot be conducted on a proportional basis due to the lack of funding from any of the counties, then the department of agriculture shall establish an alternative proportional basis to promote the conducting of the surveys in the time period established in subsection (1).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60703 Authority of department of agriculture.

Sec. 60703. The department of agriculture shall implement this part by employing, subject to civil service rules, and equipping soil scientists, within appropriations for that purpose, to make soil surveys through cooperative arrangements with the United States department of agriculture soil conservation service and the Michigan agricultural experiment station. The soil survey shall be conducted under national standards and guidelines for naming, classifying, and interpreting soils and for publishing soil surveys in the United States department of agriculture series. The department of agriculture shall also, in conjunction with the department, design and implement standards and guidelines for use in primarily forested areas. The standards and guidelines may include the additional soil characteristics which must be measured to determine forest growth and continued protection, and the modification of soil body grouping methods to allow interpretation and inventory of soils for forest management purposes. Michigan technological university, Ford forestry center shall provide technical backup with respect to soil survey in forestry areas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60704 Department of agriculture; budget requests; appropriations.

Sec. 60704. The department of agriculture shall make yearly budget requests and the legislature shall annually appropriate funds to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 609

RESOURCE INVENTORY

324.60901 Definitions.

Sec. 60901. As used in this part:

(a) "Classification system" means a mechanism to identify the current use of land and any structures on the land.

(b) "Data management system" means a mechanism which relies on a computer to manipulate, store, and retrieve information collected and updated during a resource inventory.

(c) "Inventory" means the land resource and current use inventory.

(d) "Regional planning commission" means a regional planning commission designated by the governor pursuant to executive directive to carry out planning in a multicounty region of the state.

(e) "Technical assistance" means the aid that the department shall provide to municipalities, counties, and other interested groups and individuals, on the use of the land resource and current use inventory and related information for planning and resource management decisions.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60902 Project design study; land resource and current use inventory; technical assistance program; recommendations.

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Sec. 60902. (1) The department shall make or have made a project design study. The study shall determine the appropriate operational criteria, computer software and hardware, staffing, available information resources, data updating methodology, most economical inventory resources, location of data management operations, linkages with other data management systems in the state, data geographic base configuration, data delivery system, and other information necessary to complete the inventory and development of a data management system.

(2) The department shall make or have made a land resource and current use inventory, as provided in sections 60904 and 60905, of all land, public or private, in this state. The land resource and current use inventory shall, if appropriate, rely on any other information and surveys.

(3) The department shall create a technical assistance program for the purpose of providing services to municipalities and counties as provided in section 60903.

(4) The department shall prepare recommendations regarding means to address problems or issues indicated by the inventory.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60903 Technical assistance program; creation and purpose; utilizing programs of regional planning commissions; scope of technical assistance.

Sec. 60903. (1) The department shall create a technical assistance program designed to help municipalities and counties effectively use the inventory. The technical assistance program shall, when feasible, utilize the technical assistance programs of regional planning commissions. The technical assistance shall include all of the following:

(a) The publication and distribution of the inventory as applicable to each municipality and county in the state.

(b) The preparation and distribution of land resource management manuals to assist municipalities and counties, planning and resource management entities, and other federal, state, and local agencies in updating their planning and resource management programs to incorporate the inventory. Land resource management manuals may also be prepared to assist municipalities and counties in solving problems that confront their planning resource management programs.

(c) The conducting of workshops, in conjunction with local government associations, regarding the inventory.

(d) The provision of a team of experts on the inventory to assist in problem solving by municipalities and counties.

(e) The provision of an inventory information center and library function that municipalities and counties may utilize in their own programs.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60904 Land resource portion of inventory; format; scope of inventory; option to purchase or exchange wetland; exemption from property taxes.

Sec. 60904. (1) The land resource portion of the inventory shall be completed in a format that may be readily integrated into the data management system, and shall provide a base of information to analyze the existing and future productivity of the state's natural resources and provide information to assist in the analysis of the timing, location, and intensity of future development in the state. The format should also include information that will be readily usable and available to assist local governmental units in their land use planning. The inventory may include any of the following:

(a) Geological features, including groundwater features such as depth to groundwater, groundwater recharge zones, and potable aquifers.

(b) Land area with characteristics that pose problems to development, such as an area subject to reasonably predictable hazardous natural phenomenon, which may include flooding, high-risk erosion, or subsidence.

(c) Land area with characteristics that make it suited for agricultural use.

(d) Land area with characteristics that make it suited for silvicultural use.

(e) Metallic and nonmetallic mineral deposits.

(f) Hydrological features, including lakes, rivers and creeks, impoundments, drainage basins, and wetlands.

(g) Land area of wildlife habitat, including each significant breeding area or area used by migratory

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wildlife.

(h) Topographic contours.

(2) If the department designates an area as wetland, the state may negotiate and contract for an option to purchase or exchange the wetland in order to protect the wetland. The option to purchase or exchange the wetland shall be valid for 5 years. After an option to purchase is negotiated, a person may apply for and receive consideration for an exemption from property taxes levied pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, for the duration of the option to purchase.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60905 Current use portion of inventory; classification system; scope.

Sec. 60905. The current use portion of the inventory shall be completed using a consistent classification system that can be readily integrated into the data management system, and shall provide the base to analyze the existing use and cover in the state. The current use inventory may include any of the following:

(a) Substantially undeveloped land devoted to the production of plants and animals useful to humanity, including forages and sod crops; grain and feed crops; dairy and dairy products; livestock, including the breeding and grazing of those animals; fruits of all kinds; vegetables; and other similar uses and activities.

(b) Land used in the production of fiber and other woodland products or that supports trees that are protective of water resources, soils, recreation, or wildlife habitat.

(c) Land that is being mined, drilled, or excavated for metallic and nonmetallic mineral, rock, stone, gravel, clay, soil, or other earth, petroleum, or natural gas resources.

(d) A site, structure, district, or archaeological landmark that is officially included in the national register of historic places or designated as a historic site pursuant to state or federal law.

(e) Urban and developed land, including residential, commercial, industrial, transportation, communication, utilities, and open space uses and including recreational land.

(f) Land owned on behalf of the public, including land managed by federal, state, or local government or school districts.

(g) Land enrolled in part 361.

(h) Land enrolled in part 511.

(i) Land designated for tax abatements, restricted use, or specific use under a public act of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60906 Conducting current use portion of inventory; preparation and contents of criteria; circulation of criteria; notice of intent to perform work; assistance, data, and information.

Sec. 60906. (1) The current use portion of the inventory may be conducted by municipalities, counties, or regional planning commissions as provided in subsection (4). A municipality, county, or regional planning commission conducting a portion of the current use inventory shall conduct that portion on a scale, level of detail, format, and classification system prepared by the department.

(2) By December 27, 1980, the department shall prepare criteria for municipality, county, and regional planning commission participation in the current use inventory process. The criteria shall specify the scale, level of detail, format, and classification system to be used in the current use portion of the inventory and shall contain forms and information on the financial reimbursement provisions provided in section 60907.

(3) The criteria prepared under subsection (2) shall be circulated by the department to local government associations and to a municipality, county, or regional planning commission, upon request. By March 27, 1982, a municipality with an established planning commission may submit to the department and to the county board of commissioners of the county in which the municipality is primarily located a notice of intent to perform or cause to be performed the work necessary to complete the current use portion of the inventory. By June 27, 1982, a county with an established planning commission may submit to the department a notice of intent to perform or cause to be performed the work necessary to complete the current use portion of the inventory for each area for which a municipality is not performing the work necessary to complete the current use portion of the inventory. By September 27, 1982, a regional planning commission may submit a notice of intent to the department to perform the work necessary to complete the current use inventory for each area not covered by a municipality or county notice of intent. For each area not covered by a notice of intent under this subsection, the department shall make or cause to be made the current use portion of the inventory.

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(4) A municipality, county, or regional planning commission engaged in the preparation of the current use portion of the inventory may make use of assistance, data, and information made available to it by public or private organizations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60907 Reimbursement for preparation of current use portion of inventory; certification; prorating amount.

Sec. 60907. The state shall reimburse each municipality, county, or regional planning commission engaged in the preparation of the current use portion of the inventory for 75% of the expenditures certified by the department. Certification shall be based upon conformance to the format, scale, and classification system provisions of the contract between the municipality, county, or regional planning commission and the department. If the amount appropriated during any fiscal year is not sufficient to provide the 75% reimbursement, the director of the department of management and budget shall prorate an amount among the eligible municipalities, counties, and regional planning commissions.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60908 Review and updating of land resource and current use portions of inventory.

Sec. 60908. (1) The land resource portion of the inventory shall be reviewed and updated when necessary, but not less than once every 10 years.

(2) The current use portion of the inventory shall be reviewed and updated when necessary, but not less than once each 5 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60909 Fees for generating products or rendering services.

Sec. 60909. The department may charge fees for generating products or rendering services based on the information in the inventory. The fees shall not exceed the costs to the department of generating the products or rendering the services. The amount of money expended by the department for generating products or rendering services in a fiscal year shall not exceed the amount appropriated for that fiscal year or the amount of the fees actually received during that fiscal year, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.60910 Controlling or curtailing development of private property; prohibitions.

Sec. 60910. (1) This part shall not be construed to permit the state, the department, or a person to exercise control over private property or to curtail development of private property.

(2) This part shall not:

(a) Constitute a state land use plan.

(b) Be used by any state agency to control the existing and future productivity of the state's natural resources or the timing, location, or intensity of future development in the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 2
REGULATION OF OIL AND GAS WELLS

PART 610
UNIFIED SURFACE AND SUBSURFACE OIL OR GAS OWNERSHIP

324.61001 Definitions.

Sec. 61001. As used in this part:

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(a) "Department" means the department of natural resources.

(b) "Severed oil and gas rights" means those subsurface oil and gas rights held by the department on land in which the department does not own the surface rights to the land.

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.61002 Inventory and categorization of land; contract.

Sec. 61002. (1) Within 4 years after the effective date of this section, the department shall complete an inventory of all land under the jurisdiction of the department and shall categorize the land as follows:

(a) All land in which the department owns both the surface rights and the oil and gas rights.

(b) All land in which the department owns the surface rights but not the oil and gas rights.

(c) All land in which the department owns the oil and gas rights but not the surface rights.

(2) The department may contract for the completion of the inventory under subsection (1).

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.61003 Divestiture of severed oil and gas rights; reuniting oil and gas rights with surface rights; deed restriction; reversion of subsurface rights.

Sec. 61003. (1) The department shall implement procedures in compliance with this part that allow the department, after consultation with the natural resources trust fund board and approval of the natural resources commission, to divest itself of severed oil and gas rights and reunite the oil and gas rights with the surface rights. The department is not required to divest itself of oil and gas rights to land that is in production or is leased or permitted for production, or to land which the department determines has unusual or sensitive environmental features that should be reserved by the state and maintained in an undeveloped state, or to land which the department may consider offering for exchange to consolidate inholdings within management areas.

(2) When the department transfers oil and gas rights under this part, the department shall include a deed restriction that restricts the oil and gas rights from being severed from the surface rights in the future. If the landowner severs the subsurface rights from the surface rights, the subsurface rights revert to this state.

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

324.61004 Divestiture of severed oil and gas rights; basis; priority; plan for attaching monetary value; offer to sell or transfer severed rights to surface owner; notice; duration of designated price; petition; disposition of money received.

Sec. 61004. (1) The department may divest itself of severed oil and gas rights on a county-by-county basis. The department may prioritize counties in the order in which it intends to offer divestiture sales or transfers pursuant to this part.

(2) Prior to divesting itself of severed oil and gas rights, the department shall develop a plan for attaching a monetary value to those rights based upon current market conditions. This plan may include requiring the purchasing party to pay all costs associated with completing the transaction including a proportional share of the costs of completing the inventory. Additionally, the department may trade severed oil and gas rights for other land or rights in land if such a trade is in the best interest of the state. At the time the department transfers oil and gas rights for land held by a local unit of government, and for parcels of land smaller than 5 acres in size, the department shall transfer the oil and gas rights only for the cost of processing the transaction.

(3) In each county in which the department offers to sell or transfer severed oil and gas rights to the surface owner. The department shall publish a notice in a newspaper of general circulation in the county where the oil and gas rights are located and provide notification to the local taxing authority of this state's offer to sell severed oil and gas rights to surface owners. A price designated by the department for the purchase of oil and gas rights shall be valid for a minimum of 90 days. A landowner who desires to accept the department's offer to sell or transfer the severed oil and gas rights shall provide the department with a copy of a recorded deed showing the person's ownership of the land. A person who attempts to purchase oil and gas rights from the department who is not the surface owner forfeits any money given to the department.

(4) After the 90-day period described in subsection (3), the surface owner or a subsequent surface owner

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may petition the department for sale of the severed oil and gas rights at a price agreeable to the department.

(5) All money received by the department for the sale or transfer of oil or gas rights pursuant to this part shall be forwarded to the state treasurer for deposit into the Michigan natural resources trust fund established in part 19.

History: Add. 1998, Act 117, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

PART 615
SUPERVISOR OF WELLS

324.61501 Definitions.

Sec. 61501. Unless the context requires a different meaning, the words defined in this section have the following meanings when used in this part:

(a) "Department" means the department of environmental quality.

(b) "Field" means an underground reservoir or reservoirs containing oil or gas, or both. Field also includes the same general surface area that is underlaid or appears to be underlaid by at least 1 pool. Field and pool have the same meaning if only 1 underground reservoir is involved. However, field, unlike pool, may relate to 2 or more pools.

(c) "Fund" means the oil and gas regulatory fund created in section 61525b.

(d) "Gas" means a mixture of hydrocarbons and varying quantities of nonhydrocarbons in a gaseous state which may or may not be associated with oil, and includes those liquids resulting from condensation.

(e) "Illegal container" means a receptacle that contains illegal oil or gas or illegal products.

(f) "Illegal conveyance" means a conveyance by or through which illegal oil or gas or illegal products are being transported.

(g) "Illegal oil or gas" means oil or gas that has been produced by an owner or producer in violation of this part, a rule promulgated under this part, or an order of the supervisor issued under this part.

(h) "Illegal product" means a product of oil or gas or any part of a product of oil or gas that was knowingly processed or derived in whole or in part from illegal oil or gas.

(i) "Market demand" means the actual demand for oil or gas from any particular pool or field for current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of oil or gas or the products of oil or gas.

(j) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and that are not the result of condensation of gas after it leaves the underground reservoir.

(k) "Owner" means the person who has the right to drill a well into a pool, to produce from a pool, and to receive and distribute the value of the production from the pool for himself or herself either individually or in combination with others.

(*l*) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Pool includes a productive zone of a general structure that is completely separated from any other zone in the structure, or is declared to be a pool by the supervisor of wells.

(m) "Producer" means the operator, whether owner or not, of a well or wells capable of producing oil or gas or both in paying quantities.

(n) "Product" means any commodity or thing made or manufactured from oil or gas, and all derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue treated crude oil, residuum, gas oil, naphtha, distillate, gasoline, casing-head gasoline, natural gas gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, and blends or mixtures of oil or gas or any derivatives of oil or gas whether enumerated or not.

(o) "Supervisor" or "supervisor of wells" means the department.

(p) "Tender" means a permit or certificate of clearance, approved and issued or registered under the authority of the supervisor, for the transportation of oil or gas or products.

(q) "Waste" in addition to its ordinary meaning includes all of the following:

(*i*) "Underground waste", as those words are generally understood in the oil business, and including all of the following:

(A) The inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from

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any pool.

(B) Unreasonable damage to underground fresh or mineral waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

(*ii*) "Surface waste", as those words are generally understood in the oil business, and including all of the following:

(A) The unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas, oil, or other product, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage, or fire, especially a loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing a well or wells, or incident to or resulting from inefficient storage or handling of oil.

(B) The unnecessary damage to or destruction of the surface; soils; animal, fish, or aquatic life; property; or other environmental values from or by oil and gas operations.

(C) The unnecessary endangerment of public health, safety, or welfare from or by oil and gas operations.

(D) The drilling of unnecessary wells.

(*iii*) "Market waste", which includes the production of oil or gas in any field or pool in excess of the market demand as defined in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998;—Am. 1998, Act 252, Imd. Eff. July 10, 1998;—Am. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61502 Construction of part.

Sec. 61502. It has long been the declared policy of this state to foster conservation of natural resources so that our citizens may continue to enjoy the fruits and profits of those resources. Failure to adopt such a policy in the pioneer days of the state permitted the unwarranted slaughter and removal of magnificent timber abounding in the state, which resulted in an immeasurable loss and waste. In an effort to replace some of this loss, millions of dollars have been spent in reforestation, which could have been saved had the original timber been removed under proper conditions. In past years extensive deposits of oil and gas have been discovered that have added greatly to the natural wealth of the state and if properly conserved can bring added prosperity for many years in the future to our farmers and landowners, as well as to those engaged in the exploration and development of this great natural resource. The interests of the people demand that exploitation and waste of oil and gas be prevented so that the history of the loss of timber may not be repeated. It is accordingly the declared policy of the state to protect the interests of its citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503 Supervisor of wells; assistants; commission as appeal board; hearing; compensation and expenses; office.

Sec. 61503. (1) The supervisor of wells shall designate suitable assistants as are required to implement this part.

(2) The commission shall act as an appeal board regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit under this part. When a producer or owner considers an order, action, inaction, or procedure as proposed, initiated, or made by the supervisor to be burdensome, inequitable, unreasonable, or unwarranted, the producer or owner may appeal to the commission or the court for relief from the order, action, inaction, or procedure as provided in this act. The chairperson of the commission shall set a date and place to hear the appeal, which may be at a regular meeting of the commission or a special meeting of the commission called for that purpose.

(3) The supervisor and employees, in addition to their salaries, shall receive their reasonable expenses while away from their homes traveling on business connected with their duties. A member of the commission shall not receive compensation for discharging duties under this part; however, a member is entitled to

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reasonable expenses while traveling in the performance of a duty imposed by this part. Salaries and expenses authorized in this part shall be paid out of the state treasury in the same manner as the salaries and expenses of other officers and employees of the department are paid.

(4) The department of management and budget shall furnish suitable offices for the use of the supervisor and his or her employees.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503a Gas lease; duties of lessee; monthly revenue statements and payments; initiation; deferment.

Sec. 61503a. (1) Beginning 12 months after the effective date of this section, a person who has entered into a gas lease as a lessee prior to or after the effective date of this section shall do all of the following:

(a) Starting after production begins, for a well that begins continuous gas production after the effective date of this section, or starting on the effective date of this section for a well that began continuous gas production on or before the effective date of this section, provide the lessor who has an interest in the leased property with monthly revenue statements written in plain English that provide all of the following:

(*i*) Under the heading "unit price", the price received by the lessee per 1,000 cubic feet or 1,000,000 BTUs of gas sold. The lessee shall pay to the lessor his or her proper share of the gross proceeds or value, as provided in the lease.

(*ii*) A statement of the deductions taken from the lessor's royalty, and the purpose of those deductions. The statement of the deductions shall be itemized, except that a lessee may group deductions under general categories if the lessee states that a separate itemized statement of the deductions will be furnished upon written request and states the address to which a written request for an itemized statement should be directed. This section does not prohibit a lessee from making deductions on an estimated basis for a calendar year or other 12-month accounting period if this is disclosed in the monthly revenue statement or the separate itemized statement. If an estimate is used, the lessee shall determine the actual amount and make any necessary adjustments within 180 days after the end of the calendar year or other 12-month accounting period. However, if any costs have not been finally determined, the lessee may reserve an amount which the lessee considers in good faith to be adequate to cover the costs that have not been finally determined and shall make any necessary adjustments when the actual costs have been finally determined.

(b) Starting at the end of the calendar year or other 12-month accounting period after production begins for a well that begins continuous production after the effective date of this section, or starting at the end of the calendar year or other 12-month accounting period when this section becomes effective for a well that began continuous production on or before the effective date of this section, prepare an annual accounting of gas sales from the leased property and any deductions taken from the lessor's royalty during the calendar year or other 12-month accounting period. The lessee shall complete the accounting within 180 days after the end of the calendar year or other 12-month accounting period. However, if any costs have not been finally determined, the lessee may account for these on the basis of a reserve which the lessee considers in good faith to be adequate to cover the costs that have not been finally determined, and shall prepare a supplemental accounting when the actual costs have been finally determined. The lessee shall notify the lessor of the availability of the accounting within 180 days after the end of the calendar year or other 12-month accounting period, and shall furnish a copy of the accounting upon request of the lessor within 30 days of receipt of the request. The notification as to the availability of the accounting may be made on a monthly revenue statement and need not be a separate document.

(2) Subject to section 61503b(4), the monthly revenue statements and payments under subsection (1)(a) shall be initiated promptly after the determination of the divisions of interest of the parties entitled to share in the production, unless a valid agreement between the lessee and the lessor provides otherwise. However, if the entitlement of the lessor to receive payment is in question because of lack of good and marketable record title or because of any circumstance that may expose the lessee to the risk of multiple liability or liability to a third party if the payment is made, the lessee may defer payment to that lessor until the title or other circumstance has been resolved, unless a valid agreement between the lessee and the lessor provides otherwise. If the mailing address of the lessor, or place where payment should be made, is unknown, payment may be deferred until the lessee receives that information. If the total amount of the royalties is less than $50.00 at the end of any month, payment may be deferred until the total amount reaches at least $50.00, unless a valid agreement between the lessor and the lessee provides otherwise.

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History: Add. 1998, Act 127, Eff. Mar. 28, 2000.

Compiler's note: Enacting section 2 of 1998 PA 127, which provided that 1998 PA 127 would not take effect unless House Bill No. 4259 of the 89th Legislature was enacted into law, was repealed by Enacting section 1 of 1999 PA 246.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61503b Postproduction costs.

Sec. 61503b. (1) A person who enters into a gas lease as a lessee after March 28, 2000 shall not deduct from the lessor's royalty any portion of postproduction costs unless the lease explicitly allows for the deduction of postproduction costs. If a lease explicitly provides for the deduction of postproduction costs, the lessee may only deduct postproduction costs for the following items, unless the lease explicitly and specifically provides for the deduction of other items:

(a) The reasonable costs of removal of carbon dioxide (CO_2), hydrogen sulfide (H_2S), molecular nitrogen (N_2), or other constituents, except water, the removal of which will enhance the value of the gas for the benefit of the lessor and lessee.

(b) Transportation costs after the point of entry into any of the following:

(*i*) An independent, nonaffiliated, third-party-owned pipeline system.

(*ii*) A pipeline system owned by a gas distribution company or any subsidiary of the gas distribution company, which is regulated by the Michigan public service commission.

(*iii*) An affiliated pipeline system, if the rates charged by the pipeline system have been approved by the Michigan public service commission, or if the rates charged are reasonable, as compared to independent pipeline systems, based on the pipeline system's location, distance, cost of service, and other pertinent factors.

(2) A lessee shall not charge postproduction costs incurred on gas produced from 1 drilling unit, pooled or communitized area, or unit area against a lessor's royalty for gas produced from another drilling unit, pooled or communitized area, or unit area. As used in this subsection, "unit area" means the formation or formations that are unitized and surface acreage that is a part of the unitized lands, as described in either of the following:

(a) The plan for unit operations that is the subject of the supervisor's order as provided in section 61706.

(b) An applicable agreement providing for unit operations.

(3) If a person who has entered into a gas lease as a lessee prior to or after March 28, 2000 charges the lessor for any portion of postproduction costs, the lessee shall notify the lessor in writing of the availability of the following information and if the lessor requests in writing to receive this information, the lessee shall provide the lessor, in writing, a specific itemized explanation of all postproduction costs to be assessed.

(4) A division order or other document that includes provisions that stipulate how production proceeds are distributed, received by the lessor from the lessee, shall not alter or define the terms of a lease unless voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to amend the lease. A lessee shall not precondition the payment of royalties upon the lessor signing a division order or other document that stipulates how production proceeds are distributed, except as provided in this subsection. As a condition for the payment of royalties under a lease other than a lease granted by the state of Michigan, a lessee or other payor shall be entitled to receive a signed division order from the payee containing only the following provisions, unless other provisions have been voluntarily and explicitly agreed to by both parties in a signed document or documents in which the parties expressly indicate their intention to waive the provisions of this subsection:

(a) The effective date of the division order.

(b) A description of the property from which the oil or gas is being produced and the type of production.

(c) The fractional or decimal interest in production, or both, claimed by the payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify the payor at least 1 month in advance of the effective date of any change in the interest in production owned by the payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold.

(d) The authorization to suspend payment to the payee for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production claimed by the payee.

(e) The name, address, and taxpayer identification number of the payee.

(f) A statement that the division order does not amend any lease or operating agreement between the interest owner and the lessee or operator or any other contracts for the purchase of oil or gas.

History: Add. 1999, Act 246, Eff. Mar. 28, 2000;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001.

Popular name: Act 451

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Popular name: NREPA

Popular name: Supervisor of Wells

324.61503c Violation of MCL 324.61503a or MCL 324.61503b; penalty; injunction or damages; separate offenses; recovery of postproduction costs and attorney fees; notice.

Sec. 61503c. (1) Notwithstanding section 61522, a person who knowingly violates section 61503a or 61503b is responsible for the payment of a civil fine of not more than $1,000.00. A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(2) The attorney general or the lessor of a gas lease with respect to his or her lease may bring an action in circuit court for injunctive relief or damages, or both, against a person who violates section 61503a or 61503b.

(3) If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b, each day the violation continues constitutes a separate offense only for 5 days; thereafter, each day the violation continues does not constitute a separate offense. If a person who has entered into a gas lease as a lessee violates section 61503a or 61503b and such a violation affects more than 1 lessor having an interest in the same well, pooled unit, or unitized area, the violation as to all lessors constitutes only 1 offense.

(4) If a court finds that a lessee deducted postproduction costs from a lessor's royalty contrary to section 61503b(1), the lessor may recover as damages the amount of postproduction costs deducted contrary to section 61503b(1) and may also recover reasonable attorney fees incurred in bringing the action unless the lessee endeavored to cure the alleged violation pursuant to subsection (5) prior to the bringing of the action. In addition, a lessee who prevails in litigation under this subsection may recover reasonable attorney fees incurred in defending an action under this subsection, if the court finds that the position taken by the lessor in the litigation was frivolous.

(5) A person shall not bring an action under this section unless the person has first given the lessee written notice of the alleged violation of section 61503a or 61503b, with reasonably comprehensive details, and allowed a period of at least 30 days for the lessee to cure the alleged violation.

History: Add. 1999, Act 247, Eff. Mar. 28, 2000;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

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324.61504 Waste prohibited.

Sec. 61504. A person shall not commit waste in the exploration for or in the development, production, handling, or use of oil or gas, or in the handling of any product of oil or gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61505 Supervisor of wells; jurisdiction; authority; enforcement of part.

Sec. 61505. The supervisor has jurisdiction and authority over the administration and enforcement of this part and all matters relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and all matters relating to the prevention of waste and the conservation of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61505a Drilling permit for well beneath lake bottomlands for exploration or production of oil or gas; condition.

Sec. 61505a. Notwithstanding any other provision of this part or the rules promulgated under this part, beginning on the effective date of this section, the supervisor shall not issue a permit for drilling, or authorize the drilling of, a well beneath the lake bottomlands of the Great Lakes, the connected bays or harbors of the Great Lakes, or the connecting waterways as defined in section 32301, for the exploration or production of oil or gas unless the applicant holds a lease that was in effect prior to the effective date of the amendatory act that

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added this section that allows the well to be drilled.

History: Add. 2002, Act 148, Imd. Eff. Apr. 5, 2002.

Compiler's note: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506 Supervisor of wells; powers and duties generally.

Sec. 61506. The supervisor shall prevent the waste prohibited by this part. To that end, acting directly or through his or her authorized representatives, the supervisor is specifically empowered to do all of the following:

(a) To promulgate and enforce rules, issue orders and instructions necessary to enforce the rules, and do whatever may be necessary with respect to the subject matter stated in this part to implement this part, whether or not indicated, specified, or enumerated in this or any other section of this part.

(b) To collect data to make inspections, studies, and investigations; to examine properties, leases, papers, books, and records as necessary to the purposes of this part; to examine, check, and test and gauge oil and gas wells and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; and to provide for the keeping of records and making of reports, and for the checking of the accuracy of the records and reports.

(c) To require the locating, drilling, deepening, redrilling or reopening, casing, sealing, operating, and plugging of wells drilled for oil and gas or for secondary recovery projects, or wells for the disposal of salt water, brine, or other oil field wastes, to be done in such manner and by such means as to prevent the escape of oil or gas out of 1 stratum into another, or of water or brines into oil or gas strata; to prevent pollution of, damage to, or destruction of fresh water supplies, including inland lakes and streams and the Great Lakes and connecting waters, and valuable brines by oil, gas, or other waters, to prevent the escape of oil, gas, or water into workable coal or other mineral deposits; to require the disposal of salt water and brines and oily wastes produced incidental to oil and gas operations in a manner and by methods and means so that unnecessary damage or danger to or destruction of surface or underground resources, to neighboring properties or rights, or to life does not result.

(d) To require reports and maps showing locations of all wells subject to this part, and the keeping and filing of logs, well samples, and drilling, testing, and operating records or reports. All well data and samples furnished to the supervisor as required in this part, upon written request of the owner of the well, shall be held confidential for 90 days after the completion of drilling and shall not be open to public inspection except by written consent of the owner.

(e) To prevent the drowning by water of any stratum or part of the stratum capable of producing oil or gas, or both oil and gas, and to prevent the premature and irregular encroachment of water, or any other kind of water encroachment, that reduces or tends to reduce the total ultimate recovery of oil or gas, or both oil or gas, from any pool.

(f) To prevent fires or explosions.

(g) To prevent blow-outs, seepage, and caving in the sense that the conditions indicated by such terms are generally understood in the oil business.

(h) To regulate the mechanical, physical, and chemical treatment of wells.

(i) To regulate the secondary recovery methods of oil and gas, including pulling or creating a vacuum and the introduction of gas, air, water, and other substances into the producing formations.

(j) To fix the spacing of wells and to regulate the production from the wells.

(k) To require the operation of wells with efficient gas-oil ratios and to establish the ratios.

(*l*) To require by written notice or citation immediate suspension of any operation or practice and the prompt correction of any condition found to exist that causes or results or threatens to cause or result in waste.

(m) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil, gas, or any product of oil or gas.

(n) To require identification of the ownership of oil and gas producing leases, properties, and wells.

(o) To promulgate rules or issue orders for the classifications of wells as oil wells or gas wells; or wells drilled, or to be drilled, for secondary recovery projects, or for the disposal of salt water, brine, or other oil or gas field wastes; or for the development of reservoirs for the storage of liquid or gaseous hydrocarbons, or for other means of development, extraction, or production of hydrocarbons.

(p) To require the filing of an adequate surety, security, or cash bonds of owners, producers, operators, or

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their authorized representatives in such reasonable form, condition, term, and amount as will ensure compliance with this part and with the rules promulgated or orders issued under this part and to provide for the release of the surety, security, or cash bonds.

(q) To require the immediate suspension of drilling or other well operations if there exists a threat to public health or safety.

(r) To require a person applying for a permit to drill and operate any well regulated by this part to file a complete and accurate written application on a form prescribed by the supervisor.

(s) To require the posting of safety signs and the installation of fences, gates, or other safety measures if there exists a threat to public health, safety, or property.

(t) To prevent regular or recurring nuisance noise or regular or recurring nuisance odor in the exploration for or development, production or handling of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

Administrative rules: R 324.101 et seq. of the Michigan Administrative Code.

324.61506a Notice of violation.

Sec. 61506a. Upon completion of an inspection under this part, the supervisor shall notify the owner or operator of the well of any violation of this or any other part of this act that is identified during the inspection.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506b Conditions prohibiting issuance of permit or authorization to drill oil or gas well; waiver; exception.

Sec. 61506b. (1) Except as provided in subsections (2) and (3), beginning on the effective date of this section, the supervisor shall not issue a permit for or authorize the drilling of an oil or gas well if both of the following apply:

(a) The well is located within 450 feet of a residential building.

(b) The residential building is located in a city or township with a population of 70,000 or more.

(2) The supervisor may grant a waiver from the requirement of subsection (1)(a) if the clerk of the city, village, or township in which the proposed well is located has been notified of the application for a permit for the proposed well and if either of the following conditions is met:

(a) The owner or owners of all residential buildings located within 450 feet of the proposed well give written consent.

(b) The supervisor determines, pursuant to a public hearing held before the waiver is granted, that the proposed well location will not cause waste and there is no reasonable alternative for the location of the well that will allow the oil and gas rights holder to develop the oil and gas.

(3) Subsection (1) does not apply to a well utilized for the injection, withdrawal, and observation of the storage of natural gas pursuant to this part.

History: Add. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61506c Toll-free telephone number; maintenance; use.

Sec. 61506c. The department shall maintain a toll-free telephone number that a person or a representative of a local unit of government may call in order to receive information on department standards, safety requirements and educational information related to oil and gas exploration, drilling, permitting, hydrogen sulfide management, pooling, and other topics related to the extraction of oil and gas.

History: Add. 1998, Act 392, Imd. Eff. Dec. 17, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

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324.61507 Prevention of waste; procedure; hearing; rules; orders.

Sec. 61507. Upon the initiative of the supervisor or upon verified complaint of any person interested in the subject matter alleging that waste is taking place or is reasonably imminent, the supervisor shall call a hearing to determine whether or not waste is taking place or is reasonably imminent, and what action should be taken to prevent that waste. If the supervisor determines it appropriate, the supervisor shall hold a hearing and shall promptly make findings and recommendations. The supervisor shall consider those findings and recommendations and shall promulgate rules or issue orders as he or she considers necessary to prevent waste which he or she finds to exist or to be reasonably imminent.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61508 Rules of order or procedure in hearings or other proceedings; entering in book; copy of rule or order as evidence; availability of writings to public.

Sec. 61508. (1) The supervisor shall prescribe rules of order or procedure in hearings or other proceedings before the supervisor under this part. Rules promulgated or orders issued by the supervisor shall be entered in full in a book to be kept for that purpose by the supervisor. A copy of a rule or order, certified by the supervisor, shall be received in evidence in the courts of this state with the same effect as the original.

(2) A writing prepared, owned, used, in the possession of, or retained by the supervisor in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61509 Hearings; subpoena; witnesses and production of books; incriminating testimony.

Sec. 61509. The supervisor may compel by subpoena the attendance of witnesses and the production of books, papers, records, or articles necessary in any proceeding before the supervisor or the commission. A person shall not be excused from obeying a subpoena issued in a hearing or proceeding brought under this part on the ground or for the reason that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject that person to a penalty or forfeiture. However, this section does not require a person to produce books, papers, or records or to testify in response to any inquiry that is not pertinent to a question lawfully before the supervisor, commission, or court for determination under this part. Incriminating evidence, documentary or otherwise, shall not be used against a witness who testifies as required in this section in a prosecution or action for forfeiture. A person who testifies as required in this section is not exempt from prosecution and punishment for perjury in so testifying.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61510 Failure to comply with subpoena; refusal to testify; attachment; contempt; fees and mileage of witnesses.

Sec. 61510. (1) If a person fails or refuses to comply with a subpoena issued by the supervisor, or if a witness refuses to testify as to any matters regarding which he or she may be lawfully interrogated, any circuit court in this state, or any circuit court judge, on application of the supervisor, may issue an attachment for the person and compel that person to comply with the subpoena and to attend a hearing before the supervisor and produce documents, and testify upon matters, as may be lawfully required, and the court or judge has the power to punish that person for contempt in the same manner as if the person had disobeyed the subpoena of the court or refused to testify in that court.

(2) A witness summoned by subpoena or by written request of the supervisor and attending a hearing called by the supervisor is entitled to the same fees and mileage as are or may be provided by law for attending the circuit court in a civil matter or proceeding. The fees and mileage of witnesses subpoenaed at the instance of the supervisor shall be paid out of the general funds of the state treasury upon proper voucher approved by the supervisor. The fees and mileage of witnesses subpoenaed at the instance of any other

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interested party shall be paid by that party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61511 False swearing as perjury; penalty.

Sec. 61511. If a person who is required to give an oath under this part, or by any rule promulgated or order issued by the supervisor, willfully swears falsely in regard to any matter or thing respecting which the oath is required, or willfully makes any false affidavit required or authorized by this part, or by any rule promulgated or order issued by the supervisor, that person is guilty of perjury, punishable by imprisonment for not more than 5 years or less than 6 months.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61512 Allocation or distribution of allowable production in well, field, or pool; basis.

Sec. 61512. If, to prevent waste, the supervisor limits the amount of oil or gas to be produced from any well, pool, or field in this state, the supervisor shall allocate or distribute the allowable production in the field or pool. The supervisor shall make such a determination or distribution in the field or pool on a reasonable basis, giving, if reasonable, under all circumstances, to each small well of settled production in the pool or field an allowable production that will prevent a general or premature abandonment of the wells in the pool or field.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61513 Proration or distribution of allowable production among wells; basis; drilling unit; unnecessary wells; pooling of properties; location of well; exceptions; minimum allowable production; allowable production pursuant to rules or orders.

Sec. 61513. (1) When, to prevent waste, the total allowable production for any oil or gas field or pool in the state is fixed in an amount less than that which the field or pool could produce if no restriction were imposed, the supervisor shall prorate or distribute on a reasonable basis the allowable production among the producing wells in the field or pool, to prevent or minimize reasonably avoidable drainage from each developed area which is not equalized by counter drainage. The rules or orders of the supervisor, so far as it is practicable to do so, shall afford the owner of each property in a pool the opportunity to produce his or her just and equitable share of the oil or gas in the pool, being an amount, so far as can be practicably determined and obtained without waste, and without reducing the bottom hole pressure materially below the average for the pool, substantially in the proportion that the quantity of the recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for this purpose to use his or her just and equitable share of the reservoir energy. A well in a pool producing from an average depth of 1,000 feet or less, on the basis of a full drilling unit as may be established under this section, shall be given a base allowable production of at least 100 barrels of oil per well per week; for a well in a pool producing from an average depth greater than 1,000 feet, the base allowable production shall be increased 10 barrels per well per week for each addition 100 feet of depth greater than 1,000 feet, if the allowable production is or can be made without surface or underground waste.

(2) To prevent the drilling of unnecessary wells, the supervisor may establish a drilling unit for each pool. A drilling unit, as described in this subsection, is the maximum area that may be efficiently and economically drained by 1 well. A drilling unit constitutes a developed area if a well is located on the drilling unit that is capable of producing the economically recoverable oil or gas under the unit. Each well permitted to be drilled upon any drilling unit shall be located in the approximate center of the drilling unit, or at such other location on the drilling unit as may be necessary to conform to a uniform well spacing pattern as adopted and promulgated by the supervisor after due notice and public hearing, as provided in this part.

(3) The drilling of unnecessary wells is hereby declared waste because unnecessary wells create fire and other hazards conducive to waste, and unnecessarily increase the production cost of oil and gas to the

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operator, and therefore also unnecessarily increase the cost of the products to the ultimate consumer.

(4) The pooling of properties or parts of properties is permitted, and, if not agreed upon, the supervisor may require pooling of properties or parts of properties in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the owner of such a tract of the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool. The owner of any tract that is smaller than the drilling unit established for the field shall not be deprived of the right to drill on and produce from that tract, if the drilling and production can be done without waste. In this case, the allowable production from that tract, as compared with the allowable production if that tract were a full unit, shall be in the ratio of the area of the tract to the area of a full unit, except as a smaller ratio may be required to maintain average bottom hole pressures in the pool, to reduce the production of salt water, or to reduce an excessive gas-oil ratio. All orders requiring pooling described in this subsection shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pooling plan the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool as provided in this subsection, and without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed tract that is not equalized by counter drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by voluntary agreement or by a pooling order shall be considered as if it had been produced from the tract by a well drilled on the tract.

(5) Each well permitted to be drilled upon a drilling unit or tract shall be drilled at a location that conforms to the uniform well spacing pattern, except as may be reasonably necessary where after notice and hearing the supervisor finds any of the following:

(a) That the unit is partly outside the pool or that, for some other reason, a well at the location would be unproductive.

(b) That the owner or owners of a tract or tracts covering that part of the drilling unit or tract on which the well would be located if it conformed to the uniform well spacing pattern refuses to permit drilling at the regular location.

(c) That topographical or other conditions are such as to make drilling at the regular location unduly burdensome or imminently threatening to water or other natural resources, to property, or to life.

(6) If an exception under subsection (5) is granted, the supervisor shall take such action as will offset any advantage that the person securing the exception may have over other producers in the pool by reason of the drilling of the well as an exception, and so that drainage from the developed areas to the tract with respect to the exception granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil or gas in the pool as the share is set forth in this part, and to that end the rules and orders of the supervisor shall be such as will prevent or minimize reasonably avoidable drainage from each developed area that is not equalized by counter drainage and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy.

(7) Minimum allowable production for some wells and pools may be advisable from time to time, especially with respect to wells and pools already drilled on May 3, 1939, when former Act No. 61 of the Public Acts of 1939 took effect, so that the production will repay reasonable lifting costs and thus prevent premature abandonment of wells and resulting wastes.

(8) After the effective date of any rule promulgated or order issued by the supervisor as provided in this part establishing the allowable production, a person shall not produce more than the allowable production applicable to that person, his or her wells, leases, or properties, and the allowable production shall be produced pursuant to the applicable rules or orders.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61513a Pooling of properties not required.

Sec. 61513a. The supervisor shall not require the pooling of state owned properties or parts of properties under section 61513 if the state provides for the orderly development of state owned hydrocarbon resources through an oil and gas leasing program and the supervisor determines the owner of each tract is afforded the opportunity to recover and receive his or her just and equitable share of the hydrocarbon resources in the pool.

History: Add. 1998, Act 303, Imd. Eff. July 28, 1998.

Popular name: Act 451

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324.61514 Certificates of clearance or tenders; issuance.

Sec. 61514. The supervisor may issue certificates of clearance or tenders if required to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61515 Handling or disposition of illegal oil or gas; penalty.

Sec. 61515. A person shall not sell, purchase, acquire, transport, refine, process, or otherwise handle or dispose of any illegal oil or gas or any illegal product of oil or gas. A penalty or forfeiture shall not be imposed as a result of an act described in this section until certificates of clearance or tenders are required by the supervisor as provided in section 61514.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61516 Rule or order; public hearings required; emergency rules or orders without public hearing; requirements for public hearings held pertaining to pooling of properties.

Sec. 61516. (1) A rule or order shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, except emergency orders, unless public hearings are held. Except as provided in subsection (2), public hearings shall be held at such time, place, and manner and upon such notice, not less than 10 days, as shall be prescribed by general order and rules adopted in conformity with this part. The supervisor may promulgate emergency rules or issue orders without a public hearing as may be necessary to implement this part. The emergency rules and orders shall remain in force and effect for no longer than 21 days, except as otherwise provided for rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) A public hearing held pursuant to this section pertaining to the pooling of properties or parts of properties under section 61513(4) shall be held at a place as determined by this subsection. At the time that the supervisor provides for notice of the public hearing, the supervisor shall provide notice of the right to request a change in location of the public hearing. A public hearing shall be held in the county in which the oil and gas rights are located if the majority of the owners of oil or gas rights that are subject to being pooled file with the supervisor a written request to hold the hearing in that county.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61517 Actions against department or commission; jurisdiction of Ingham county circuit court; injunction or restraining order; actions pertaining to pooling of properties.

Sec. 61517. (1) Except as provided in subsection (2), the circuit court of Ingham county has exclusive jurisdiction over all suits brought against the department, the supervisor, or any agent or employee of the department or supervisor, by or on account of any matter or thing arising under this part. A temporary restraining order or injunction shall not be granted in any suit described in this section except after due notice and for good cause shown.

(2) A suit brought against the supervisor pertaining to an order of the supervisor requiring the pooling of properties or parts of properties under section 61513(4) may be brought in the circuit court for the county in which the oil or gas rights are located or in the circuit court of Ingham county. A suit brought in the circuit court of Ingham county against the supervisor pertaining to an order of the supervisor requiring the pooling of properties or parts of properties under section 61513(4) may be removed to the circuit court for the county in which the oil or gas rights are located upon petition by a majority of the owners of the oil and gas rights who are subject to the order. Additionally, if all of the owners of the oil and gas interests being pooled reside in a county in Michigan other than the county in which the oil and gas rights are located, the suit may be brought in, or removed to, the circuit court for the county in which the owners reside. A petition for removal under

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this subsection shall be filed within 28 days after filing and service of the complaint in circuit court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 115, Imd. Eff. June 9, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61518 Enforcement of part and rules; representation by attorney general; complaint; proceedings; powers of supervisor; exception.

Sec. 61518. (1) The supervisor may proceed at law or for the enforcement of this part and a rule promulgated under this part or for the prevention of the violation of this part or a rule promulgated under this part, and the attorney general shall represent the supervisor in an action brought under this part. The supervisor or an assistant appointed by the supervisor may file a complaint and cause proceedings to be commenced against a person for a violation of this part without the sanction of the prosecuting attorney of the county in which the proceeding is commenced. The supervisor or an assistant of the supervisor may appear for the people in a court of competent jurisdiction in a case for a violation of this part or a rule promulgated under this part, and prosecute the violation in the same manner and with the same authority as the prosecuting attorney of a county in which the proceeding is commenced, and may sign vouchers for the payment of fees and do all other things required in the same manner and with the same authority as the prosecuting attorney.

(2) Subsection (1) does not apply to a violation of this part that is subject to the penalty prescribed pursuant to section 61522(3) or (4).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61519 Failure of owner or operator to obtain permit or to construct, operate, maintain, case, plug, or repair well; notice of determination; liability; claims.

Sec. 61519. If the supervisor determines that the owner or operator of a well subject to this part has failed or neglected to properly obtain a permit, construct, operate, maintain, case, plug, or repair the well in accordance with this part or the rules promulgated under this part, the supervisor shall give notice of this determination, in writing, to the owner and operator and to the surety executing the bond filed with the supervisor by the owner or operator in connection with the issuance of the permit authorizing the drilling of a well. This notice of determination may be served upon the owner or operator and surety in person or by registered mail. If the owner or operator cannot be found in the state, the mailing of the notice of determination to the owner or operator at his or her last known post office address by registered mail constitutes service of the notice of determination. If the owner or operator, or surety, fails or neglects to properly case, plug, or repair the well described in the notice of determination within 30 days of the date of service or mailing of the notice, the supervisor may enter into and upon any private or public property on which the well is located and upon and across any private or public property necessary to reach the well, and case, plug, or repair the well, and the owner or operator and surety are jointly and severally liable for all expenses incurred by the supervisor. The supervisor, acting for and in behalf of the state, shall certify in writing to the owner or operator and surety the claim of the state in the same manner provided in this section for the service of the notice of determination, and shall list thereon the items of expense incurred in casing, plugging, or repairing the well. The claim shall be paid by the owner or operator, or surety, within 30 days, and if not paid within that time the supervisor, acting for and in behalf of the state, may bring suit against the owner or operator, or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction in the county of Ingham.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61520 Abandoning well without properly plugging; violation of part or rule; penalty; liability of owner; "owner" and "operator" defined.

Sec. 61520. (1) A person who abandons a well without properly plugging the well as provided in this part or the rules promulgated under this part, or, except as provided in section 61522(3) or (4), who violates this part or a rule promulgated under this part, whether as principal, agent, servant, or employee, is guilty of a

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misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00 and costs of prosecution, or both. This section does not impose liability upon the owner of land upon which a well is located, unless the property owner is the owner or part owner of the well.

(2) The words "owner" and "operator", as used in this section and section 61519 mean a person who, by the terms of this part and the rules promulgated under this part, is responsible for the plugging of a well.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61521 Unlawful acts; penalties.

Sec. 61521. (1) A person who, for the purpose of evading this part or of evading a rule promulgated or an order issued under this part, intentionally makes or causes to be made false entry or statement of fact in a report required by this part or by a rule promulgated or an order issued under this part, or who, for that purpose, makes or causes to be made false entry in an account, record, or memorandum kept by a person in connection with this part, or of a rule promulgated or an order issued under this part; or who, for that purpose, omits to make, or causes to be omitted, full, true, and correct entries in the accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of that person as may be required by the supervisor under authority given in this part or by any rule promulgated or any order issued under this part; is guilty of a felony, punishable by imprisonment for not more than 3 years, or a fine of not more than $3,000.00, or both.

(2) A person who for the purpose of evading this part or a rule promulgated or an order issued under this part removes from the jurisdiction of the state, or mutilates, alters, or by other means falsifies a book, record, or other paper pertaining to transactions regulated by this part is subject to the penalties prescribed in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61522 Violations of part, rule, or order; penalties.

Sec. 61522. (1) Unless a penalty is otherwise provided for in this part, a person who violates this part or a rule or order promulgated or issued under this part is subject to a penalty of not more than $1,000.00. Each day the violation continues constitutes a separate offense. The penalty shall be recovered by an action brought by the supervisor.

(2) A person aiding in the violation of this part or a rule or order promulgated or issued under this part is subject to the same penalties as are prescribed in this section for the person who committed the violation.

(3) If the supervisor arbitrarily and capriciously violates section 61508(2), the supervisor is subject to the penalties prescribed in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61523 Confiscation of illegal oil or gas, oil or gas products, conveyances, and containers; notice; seizure; sale; intervention.

Sec. 61523. All illegal oil or gas, products derived from illegal oil or gas, conveyances used in the transportation of illegal oil or gas or oil or gas products, and containers used in their storage, except railroad tank cars and pipelines, are subject to confiscation, and the supervisor may seize such illegal oil or gas, oil or gas products, conveyances, and containers. The supervisor shall immediately upon such seizure institute a proceeding in rem to confiscate the oil or gas, oil or gas products, conveyances, and containers in the circuit court of the county in which the seizure was made or in the circuit court of Ingham county. Upon commencement of these proceedings, notice shall be given to all known interested persons in the manner as directed by the court. The court, upon finding that the oil or gas, oil or gas products, conveyances, or containers seized are illegal, shall order those items to be sold under the terms and conditions as it directs.

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Any person claiming an interest in any oil or gas, oil or gas product, conveyance, or container that is seized has the right to intervene in the proceedings, and the rights of that person shall be determined by the court as justice may require.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61524 Fee for monitoring, surveillance, enforcement, and administration of part.

Sec. 61524. (1) For the purposes of monitoring, surveillance, enforcement, and administration of this part, a fee not in excess of 1%, based upon the gross cash market value, is levied upon oil and gas produced in this state. The fee shall be collected by the revenue division of the department of treasury in the same manner, at the same time, and subject to the provisions of the tax levied by 1929 PA 48, MCL 205.301 to 205.317.

(2) The fee shall be computed as follows:

(a) The director of the department of management and budget, on or before November 1, shall certify to the department of treasury the amount appropriated for the fiscal year for the purposes of monitoring, surveillance, enforcement, and administration of this part.

(b) The department shall estimate the total production and gross cash market value of all oil and gas that will be produced in this state during the fiscal year ending September 30, and shall certify its estimate to the department of treasury on or before November 1.

(c) Within 30 days after the effective date of the 1998 amendments to this section and on or before December 1 of each succeeding year, the department of treasury shall determine the fee as follows:

(*i*) If the fund balance is less than $7,000,000.00 as of the end of the fiscal year immediately prior to November 1, the fee shall be 1% of the gross cash market value of oil and gas produced, or an amount calculated to cause the fund to accumulate to $7,000,000.00 at the end of the current fiscal year, whichever is less.

(*ii*) If the fund balance is equal to or exceeds $7,000,000.00 as of the end of the fiscal year immediately prior to November 1, the fee shall be the ratio, to the nearest 1/100 of 1%, that the appropriation bears to the total gross cash market value of the oil and gas that will be produced in this state as estimated by the department as provided in subdivision (b).

(*iii*) Any money accumulated in the fund in excess of $7,000,000.00 as of the end of the fiscal year shall be deducted from the following year's appropriation in determining an amount to be certified by the director of the department of management and budget to the department of treasury for computing the annual fee provided for in this section.

(d) The percentage determined pursuant to subdivision (c) shall not exceed 1% and shall be the fee beginning the first of the following month and will continue to be the fee for the next 12 months and until a different fee is determined. However, the fee shall be 1% beginning the first day of the second month after the effective date of the 1998 amendments to this section and will continue to be the fee for the remainder of that calendar year.

(3) The proceeds of the fee provided for in this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525 Permit to drill well; application; bond; posting; fee; issuance; disposition of fees; availability of information pertaining to applications; information provided to city, village, or township.

Sec. 61525. (1) A person shall not drill or begin the drilling of any well for oil or gas, for secondary recovery, or a well for the disposal of salt water, or brine produced in association with oil or gas operations or other oil field wastes, or wells for the development of reservoirs for the storage of liquid or gaseous hydrocarbons, except as authorized by a permit to drill and operate the well issued by the supervisor of wells pursuant to part 13 and unless the person files with the supervisor a bond as provided in section 61506. The permittee shall post the permit in a conspicuous place at the location of the well as provided in the rules and requirements or orders issued or promulgated by the supervisor. An application for a permit shall be accompanied by a fee of $300.00. A permit to drill and operate shall not be issued to an owner or his or her

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authorized representative who does not comply with the rules and requirements or orders issued or promulgated by the supervisor. A permit shall not be issued to an owner or his or her authorized representative who has not complied with or is in violation of this part or any of the rules, requirements, or orders issued or promulgated by the supervisor or the department.

(2) The supervisor shall forward all fees received under this section to the state treasurer for deposit in the fund.

(3) The supervisor shall make available to any person, upon request, not less often than weekly, the following information pertaining to applications for permits to drill and operate:

(a) Name and address of the applicant.

(b) Location of proposed well.

(c) Well name and number.

(d) Proposed depth of the well.

(e) Proposed formation.

(f) Surface owner.

(g) Whether hydrogen sulfide gas is expected.

(4) The supervisor shall provide the information under subsection (3) to the county in which an oil or gas well is proposed to be located and to the city, village, or township in which the oil or gas well is proposed to be located if that city, village, or township has a population of 70,000 or more. A city, village, township, or county in which an oil or gas well is proposed to be located may provide written comments and recommendations to the supervisor pertaining to applications for permits to drill and operate. The supervisor shall consider all such comments and recommendations in reviewing the application.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 252, Imd. Eff. July 10, 1998;—Am. 1998, Act 303, Imd. Eff. July 28, 1998;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525a Annual well regulatory fee; report.

Sec. 61525a. The owner or operator of a well used for injection, withdrawal, or observation related to the storage of natural gas or liquefied petroleum gas that has been used for its permitted purpose at any time during the calendar year immediately prior to the time the fee is due is subject to a $20.00 annual well regulatory fee. The owner or operator of a well described in this section shall file an annual report by January 31 of each year stating the number of wells used for injection, withdrawal, or observation related to the storage of natural gas or liquefied petroleum gas that has been utilized for its permitted purpose during the previous calendar year. The report shall include a list of wells identified by permit number, permit name, and gas storage field name on a form provided by the supervisor, or such other form which may be acceptable to the supervisor. The annual well regulatory fee described in this section is due not more than 30 days after the supervisor sends notice to the owner or operator of the amount due. The supervisor shall forward all fees collected under this section to the state treasurer for deposit into the fund.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61525b Oil and gas regulatory fund; creation; disposition of money or other assets; lapse; expenditures; annual report.

Sec. 61525b. (1) The oil and gas regulatory fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for monitoring, surveillance, enforcement, and administration of this part.

(5) The department shall annually submit a report to the legislature that itemizes the expenditure of money in the fund. The report shall include, at a minimum, all of the following:

(a) The amount of money received and the amount of money expended.

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(b) The number of full-time equivalent positions funded with money in the fund.

(c) The number of on-site inspections conducted by the department in implementing this part.

(d) The number of violations identified in enforcing this part, their locations, and a description of the nature of the violations.

History: Add. 1998, Act 252, Imd. Eff. July 10, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61526 Part cumulative; conflicting provisions repealed; exception.

Sec. 61526. This part is cumulative of all existing laws on the subject matter, but, in case of conflict, this part shall control and shall repeal the conflicting provisions, except for the authority given the public service commission in sections 7 and 8 of Act No. 9 of the Public Acts of 1929, being sections 483.107 and 483.108 of the Michigan Compiled Laws, as authorized by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

324.61527 Applicability of part.

Sec. 61527. This part does not apply to drill holes for the exploration for and the extraction of iron, copper, or brine; to water wells; to mine and quarry drill and blast holes; to coal test holes; or to seismograph or other geophysical exploration test holes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Supervisor of Wells

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PART 616
ORPHAN WELL FUND

324.61601 Definitions.

Sec. 61601. As used in this part:

(a) "Abandoned oil or gas well" means an oil or gas well that has not been plugged promptly after having been drilled as a dry hole or has not been used for its intended purpose during 12 consecutive months, unless the supervisor has authorized it to remain idle.

(b) "Fund" means the orphan well fund created in section 61602.

(c) "Oil or gas well" means a well drilled pursuant to part 615, or its predecessor acts, or a well drilled prior to the effective dates of part 615 or its predecessor acts as determined by the supervisor, for oil or gas exploration or development or storage, or associated production or disposal activities.

(d) "Operator" means the person authorized by contract or agreement by the owner to drill, operate, maintain, or plug a well. Operator does not include the operator of a natural gas storage field within the boundary of the natural gas storage field unless the natural gas storage field operator has either drilled, plugged, or replugged the well in question or has utilized the well for the injection or withdrawal of natural gas into or from the natural gas storage field.

(e) "Owner" means the person who has the right to drill a well into a pool, to produce from a pool, and to receive and distribute the value of the production from the pool for himself or herself either individually or in combination with others.

(f) "Response activity" has the same meaning as in part 201.

(g) "Site restoration" means the filling and leveling of all cellars, pits, and excavations; the removal or elimination of all debris; the elimination of conditions that may create a fire or pollution hazard; the minimization of erosion; and the restoration of the well site as nearly as practicable to the original land contour or to a condition approved by the supervisor after consulting with the surface owner of the land and with the operator of a natural gas storage field if the well site is within the boundary of a natural gas storage field.

(h) "Supervisor" means the supervisor of wells as provided by part 615 or his or her designee.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.61602 Orphan well fund; creation; disposition of assets.

Sec. 61602. (1) The orphan well fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61603 Expenditures from fund; consultation with operator.

Sec. 61603. (1) The supervisor shall expend money from the fund, upon appropriation, only for the following purposes:

(a) For plugging of abandoned or improperly closed oil or gas wells or response activity or site restoration at oil or gas wells for which no owner or operator is known, for which all owners or operators are insolvent, or at which the supervisor determines there exists an imminent threat to the public health and safety.

(b) For the reasonable cost of the supervisor for internal administration in connection with the activities included in subdivision (a).

(2) The supervisor shall consult with the operator of a natural gas storage field prior to plugging any abandoned or improperly closed oil or gas wells within the boundary of the storage field operator's natural gas storage field.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61604 List to be submitted to legislature; annual appropriation from fund for listed projects.

Sec. 61604. (1) By January 1 of each year, the supervisor shall prepare and submit to the legislature a list of the oil or gas wells that should be plugged and those at which response activities or site restoration should be performed with money in the fund. The list shall be compiled in order of priority. The list shall be accompanied by estimates of total project costs for the proposed plugging, response activity, site restoration, internal administration, and potential emergency contingencies. Additionally, the supervisor shall include with the list a statement of the criteria used in listing and assigning the priority of these proposed actions.

(2) The legislature shall annually appropriate money from the fund for projects on the list prepared under subsection (1) and for sites where there exists an imminent threat to public health and safety. Except for sites where there exists an imminent threat to public health and safety, projects shall be funded in the order of their priority on the list.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61605 Action by attorney general against well owner or operator; recovery of money expended.

Sec. 61605. Following the expenditure of money from the fund pursuant to section 61603(1)(a), the attorney general may bring an action against a person who was the owner or operator of the well at the time that the condition arose requiring expenditure of money from the fund, to recover from that owner or operator the amount of money expended from the fund for which the owner or operator is liable. Money recovered under this section shall be deposited into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61606 Sale of equipment.

Sec. 61606. The supervisor may sell the well pipe and any other equipment related to an abandoned or

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improperly closed well as to which there is an expenditure of money from the fund. The proceeds of sale shall be credited to the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61607 Report to legislature of expenditures.

Sec. 61607. By December 31 of each year, the supervisor shall prepare and submit to the legislature a report that details expenditures from the fund for the preceding fiscal year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 617
UNITIZATION

324.61701 Definitions.

Sec. 61701. As used in this part, unless the context otherwise requires:

(a) "Field" means an underground reservoir or reservoirs containing oil or gas, or both. Field also includes the same general surface area that is underlaid or appears to be underlaid by at least 1 pool. Field and pool have the same meaning if only 1 underground reservoir is involved. However, field, unlike pool, may relate to 2 or more pools.

(b) "Lessee" means lessees under oil and gas leases and also the owners of unleased lands or mineral rights having the right to develop them for oil and gas.

(c) "Oil and gas" means oil and gas as such in combination one with the other and also means oil, gas, casinghead gas, casinghead gasoline, gas distillate, or other hydrocarbons, or any combination or combinations of these substances, which may be found in or produced from a common source of supply of oil, gas, oil and gas, or gas distillate.

(d) "Pool" or "common source of supply" means a natural underground reservoir containing or appearing to contain a common accumulation of oil and gas. Each productive zone of a general structure that is completely separate from any other zone in the structure, or that may for the purposes of this part be declared by the supervisor to be completely separate, is included in the term pool or common source of supply. Any reference to a separately owned tract, although in general terms broad enough to include the surface and all underlying common sources of supply of oil and gas, shall have reference thereto only in relation to the common source of supply or portion thereof included within the unit area of a particular unit.

(e) "Supervisor" or "supervisor of wells" means the department as provided in part 615.

(f) "Unit area" means the formation or formations that are unitized and surface acreage that is a part of the unitized lands, as described in the plan for unit operations that is the subject of the supervisor's order as provided in section 61706.

(g) "Unit expense" means any and all cost, expense, or indebtedness incurred by the unit in the establishment of its organization or incurred in the conduct and management of its affairs or the operations conducted by it.

(h) "Unit production" means all indigenous oil and gas produced and saved from a unit area after the effective date of the order of the supervisor creating the unit, regardless of the well or tract within the unit area from which that oil and gas is produced.

(i) "Waste", in addition to its ordinary meaning, means physical waste as that term is generally understood in the oil and gas industry. Waste includes all of the following:

(*i*) The inefficient, excessive, or improper use or dissipation of reservoir energy and the locating, spacing, drilling, equipping, operating, producing, or plugging of any oil and gas well or wells in a manner that results or tends to result in reducing the quantity of oil and gas ultimately recoverable from any pool in the state under good oil and gas field practice.

(*ii*) The inefficient production of oil and gas in a manner that causes or tends to cause unnecessary or excessive surface loss or destruction of oil and gas.

(*iii*) The locating, spacing, drilling, equipping, operating, producing, or plugging of a well or wells in a manner that causes or tends to cause unnecessary or excessive loss or destruction of oil and gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.61702 Supervisor of wells; general duties; fees.

Sec. 61702. Subject to the limitations of this part, the supervisor shall make and enforce such orders, rules, and regulations and do such things as may be necessary or proper to carry out and effectuate the purposes of this part, including adoption of a schedule of fees to be paid upon the filing of petitions, amendments to petitions, and other instruments in connection with petitions that bear reasonable relation to the cost of examining, inspectional, and supervisory services required under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61703 Petition; filing; contents.

Sec. 61703. Any interested lessee may file a verified petition with the supervisor requesting an order for the unit operation of a pool, pools, or parts of 1 or more pools. The petition shall contain all of the following:

(a) A description of the proposed unit area containing the pool, pools, or parts of 1 or more pools to be operated.

(b) The names of all persons owning or having an interest in oil and gas in the proposed unit area and the names of all surface owners in the proposed unit area, as disclosed by the records in the office of the register of deeds for the county in which the unit area is situated, and their addresses, if known. If the address of any person is unknown, the petition shall state that information.

(c) A statement of the type of the operations contemplated in order to comply with this part.

(d) A recommended plan of unitization applicable to the proposed unit area which the petitioner considers fair, reasonable, and equitable.

(e) A verified statement indicating in detail what action the petitioner has taken to contact and obtain the approval of all persons of record owning or having an interest in oil and gas in the proposed unit area who have not approved the proposed plan of unitization. If the question of whether the plan for unit operations has been approved as provided for in section 61706 is to be considered at a supplemental hearing pursuant to section 61707, this verified statement need not be part of the petition and may be filed separately prior to the supplemental hearing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2016, Act 316, Imd. Eff. Nov. 3, 2016.

Popular name: Act 451

Popular name: NREPA

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324.61704 Notice to interested persons; contents; notice of protest; order.

Sec. 61704. (1) Upon the filing of a petition as provided in section 61703, the petitioner shall give notice to interested persons as set forth in section 61727. A person protesting the petition shall have 15 days after the completion of the publication of notice as provided in section 61726 to provide the supervisor with written notice of protest and the reason or reasons for the protest.

(2) The notice to interested persons required by subsection (1) shall set forth the procedure required to file a protest and the name, address, and phone number of a representative of the petitioner who is available to discuss the petition, and shall state that the supervisor may issue an order approving the petition without a hearing if no protests are received in the time period provided in subsection (1). The notice to all mineral owners who have not approved the plan of unitization shall include a copy of the petition provided for in section 61703, except that the petitioner may omit from the notice those parts of the petition referred to in section 61703(b) and (e).

(3) If no protests are filed, the supervisor may issue an order as provided in subsection (4) without holding a hearing.

(4) The supervisor shall issue an order providing for the unit operation of a unit area if he or she finds all of the following:

(a) That the unitization requested is reasonably necessary to substantially increase the ultimate recovery of oil and gas from the unit area.

(b) That the type of operations contemplated by the plan are feasible, will prevent waste, and will protect correlative rights.

(c) That the estimated additional cost of conducting such operations will not exceed the value of the additional oil and gas so recovered.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.61705 Order for unit operations; terms and conditions; plan for operations.

Sec. 61705. The order of the supervisor shall be upon terms and conditions that are fair, reasonable, and equitable and shall prescribe a plan for unit operations that includes all of the following:

(a) A description of the unit area.

(b) A statement in reasonable detail of the operations contemplated.

(c) An allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, excepting that production that is used in the conduct of operations on the unit area or unavoidably lost. A separately owned tract's fair, reasonable, and equitable share of production shall be measured by the value of the tract for oil and gas purposes and its contributing value to the unit in relation to like values of all tracts in the unit.

(d) The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to the operations.

(e) Provisions for carrying or otherwise financing a person who elects to be carried or otherwise financed, allowing a reasonable interest and service charge payable out of the person's share of production.

(f) The procedure and basis upon which wells, equipment, and other properties of the several lessees within the unit area are to be taken over and used for unit operations, including the method of arriving at the compensation therefor.

(g) Provisions for supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the person.

(h) The time when the plan of unitization becomes effective and when unit operations commence.

(i) The time when, conditions under which, and method by which the unit shall be dissolved and its affairs wound up.

(j) Additional provisions that are found to be appropriate for carrying on the unit operations and for the protection and adjustment of correlative rights.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.61706 Effective date of order; finding.

Sec. 61706. An order of the supervisor providing for unit operations shall not be declared or become effective until the supervisor makes a finding, either in the order providing for unit operations or in a supplemental order as provided in section 61707, that the plan for unit operations has been approved in writing in 1 of the following ways:

(a) By those persons who under the supervisor's order will be required to pay at least 51% of the costs of unit operation, and also by those persons who under the supervisor's order will be entitled to at least 51% of the production from the unit area or the proceeds of that production that will be credited to interests that are free of cost, including, but not limited to, royalties, overriding royalties, and production payments.

(b) By those persons who under the supervisor's order will be entitled to at least 75% of all production from the unit area or the proceeds of that production, provided that among those persons there must be persons who under the supervisor's order will be entitled to at least 50% of the production from the unit area or the proceeds of that production that will be credited to interests that are free of cost, including, but not limited to, royalties, overriding royalties, and production payments.

(c) By those persons who under the supervisor's order will be entitled to at least 65% of all production from the unit area or the proceeds of that production.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2016, Act 316, Imd. Eff. Nov. 3, 2016.

Popular name: Act 451

Popular name: NREPA

324.61707 Supplemental hearings and orders; ineffective order; time.

Sec. 61707. If a finding is not made as set forth in section 61706 at the time the order for unit operations is made, the supervisor on the supervisor's motion or the motion of any interested person after notice shall hold supplemental hearings to determine if the plan for unit operations has been approved. If the written approval is found, then the supervisor shall make a supplemental order declaring the plan effective and setting forth the date for the commencement of unit operations. If the written approval is not found within a period of 6

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months from the date on which the order providing for unit operations is made, the order shall be ineffective and shall be revoked by the supervisor unless for good cause shown the supervisor extends the time for an additional period not to exceed 1 year.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61708 Amendment of orders; approval; limitations.

Sec. 61708. An order providing for unit operations may be amended by an order made by the supervisor in the same manner and subject to the same conditions as an original order for unit operations. If an amendment affects only the rights and interests of those persons responsible for the payment of the costs of unit operations, only 75% of these persons shall be required to effectuate amendment. If an amendment in whole or in part changes the percentage of allocation of cost, then the consent of all these persons is required. An amendment shall not change the percentage for the allocation of oil and gas as established for any separately owned tract without the consent of all persons entitled to receive the allocation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61709 Signed writings; admissible as evidence.

Sec. 61709. Writings containing signatures that are witnessed and acknowledged in a form acceptable for recording under the laws of this state shall be admissible under this part and shall be considered prima facie evidence in fulfillment of requirements of this part that call for written approval.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61710 Unit area embracing previously established area.

Sec. 61710. The supervisor by order may provide for the unit operation of a unit area that embraces a unit area established by a previous order. The order in providing for the allocation of unit production first shall treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the separately owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61711 Unit area less than whole pool.

Sec. 61711. An order may provide for a unit area less than the whole of a pool if the unit area is of such size or shape as may be reasonably adaptable to unit operation and if the conduct of that unit area will not have a substantially adverse effect upon other portions of the pool, whether unitized or not.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61712 Operations upon unit area considered operation on separate tracts.

Sec. 61712. All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each separately owned tract itself, and the portion of the unit production allocated to a separately owned tract shall be considered for all purposes to have been actually produced from the tract by a well drilled on that tract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61713 Lease obligations; effect on unit operation.

Sec. 61713. Operations conducted pursuant to an order of the supervisor for unit operations constitute a fulfillment of all the express and implied obligations of each lease or contract covering lands in the unit area

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to the extent that compliance with the obligations cannot be had because of the order of the supervisor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61714 Order for unit operation not to affect title; property; acquisition.

Sec. 61714. Except to the extent that the parties specifically agree otherwise, an order for unit operations shall not be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations shall be acquired for the account of the persons to whom its cost is allocated, and in that proportion subject to any lien the unit may have thereon to secure payment of unit expense.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61715 Unit; legal powers; operator of unit; powers.

Sec. 61715. Each unit created under this part, if the plan provides, shall, through its operator, be capable of suing, being sued, and contracting as such in its own right. The operator of the unit, on behalf and for the account of all owners of interest within the unit area, without profit to the unit, may supervise, manage, and conduct further development and operations for the production of oil and gas from the unit area under the authority and limitations of the order creating it.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61716 Operation of well without authority prohibited.

Sec. 61716. After the effective date of the order of the supervisor creating a unit, the operation of any well within the unit area except by authority of and pursuant to the order of the supervisor is unlawful and prohibited.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61717 Property rights as amended or modified.

Sec. 61717. Property rights, leases, contracts, and all other rights and obligations shall be regarded as amended and modified to the extent necessary to conform to the provisions and requirements of this part and to any valid and applicable plan of unitization or order of the supervisor made pursuant to this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61718 Lien for costs; responsibility for costs; subrogation.

Sec. 61718. Subject to reasonable limitations as set out in the plan of unitization, the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon the leasehold estate and other oil and gas rights, exclusive of a 1/8 share of gross production that is attributable to a lessor's royalty interest, in and to each separately owned tract, and the interest of the owners thereof in and to the unit production and equipment in possession of the unit, in the form and manner as provided in Act No. 146 of the Public Acts of 1937, being sections 570.251 to 570.266 of the Michigan Compiled Laws. The interest of the person who by lease, contract, or otherwise is responsible for the cost of developing and operating a given portion of the unit area in the absence of unitization is primarily responsible for costs as allocated by the plan of unitization, and resort may be had to the entire 7/8 of gross production, including, but not limited to, overriding royalties, oil and gas payments, and royalty interests in excess of 1/8 of gross production but which would not otherwise be responsible for allocated costs, only if the person primarily responsible fails to pay the allocated costs pursuant to the unit plan. Persons whose allowable share of production is made secondarily responsible under this section to the extent that their interest is foreclosed are subrogated to all of the rights of the unit to the interest or interests primarily responsible.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.61719 Lessee's obligation; liability.

Sec. 61719. The obligation or liability of each lessee in the several separately owned tracts for the payment of unit expense at all times is several and not joint or collective and a lessee of the oil or gas rights in the separately owned tract is not chargeable with, obligated, or liable, directly or indirectly, for more than the amount apportioned, assessed, or otherwise charged to his or her interest in the separately owned tract pursuant to the plan of unitization.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61720 Allocation of unit production.

Sec. 61720. The portion of the unit production allocated to any tract and the proceeds from the sale of that unit production are the property and income of the several persons to whom or to whose credit the same are allocated or payable under the order for unit operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61721 Division order or contract not affected by unit order.

Sec. 61721. A division order or other contract relating to the sale or purchase of production from a separately owned tract shall not be terminated by the order for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated pursuant to the provisions of the division order or contract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61722 Unit production or proceeds not income of unit; unit as administrative agent only.

Sec. 61722. The unit production, proceeds from the sale of the unit production, or other receipts shall not be treated, regarded, or taxed as income or profits of the unit; but instead all receipts shall be the income of the several persons to whom or to whose credit the receipts are payable under the plan of unitization. To the extent the unit may receive or disburse the receipts, it shall do so only as a common administrative agent of the person to whom the receipts are payable.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61723 Agreements in restraint of trade prohibited.

Sec. 61723. An agreement between or among lessees or other owners of oil and gas rights in oil and gas properties entered into pursuant to this part, or with a view to or for the purpose of bringing about the unitized development or operation of the properties, shall not violate any of the statutes of this state prohibiting monopolies or acts, arrangements, contracts, combinations, or conspiracies in restraint of trade or commerce.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61724 Consent to or participation in plan or program of unitization by governmental subdivision or agency.

Sec. 61724. The department or other proper board or officer of the state having the control and management of state land and the proper board or officer of any political, municipal, or other subdivision or agency of the state, on behalf of the state or of the political, municipal, or other subdivision or agency of the state, with respect to land or oil and gas rights subject to the control and management of that respective board, body, or officer, may consent to or participate in any plan or program of unitization initiated or adopted under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.61725 Rules, regulations, or orders; public hearings; notice.

Sec. 61725. Except as provided in section 61704, rules, regulations, or orders shall not be made, promulgated, put into effect, revoked, changed, renewed, or extended, unless public hearings are held thereon. Public hearings shall be held at such time, place, and manner and upon notice, not less than 20 days, as provided for in this part or by rules promulgated under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61726 Hearings; jurisdictional requirements of notice.

Sec. 61726. Jurisdictional requirements of notice of time, place, and issues involved for all hearings required by this part, except proceedings for criminal or civil enforcement of this part, are satisfied by:

(a) Publication once each week for 2 weeks consecutively in a newspaper of general circulation in the county in which the unit area or any portion of the unit area is located if the date of last publication is at least 20 days prior to the date set for the hearing.

(b) Publication at least 20 days prior to the date set for the hearing in a trade journal, periodical, or newsletter or paper, or commercially available scout report, in general circulation in exploratory and developmental branches of the oil and gas industry in this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61727 Service of notice; filing receipts; filing undelivered notices; filing affidavit of service.

Sec. 61727. (1) Service of the notice described in section 61704(2), which is provided as a matter of public policy and not as a requirement of jurisdiction, before the date of the first publication of notice provided for in section 61726 by personal service or by certified mail, with return receipts requested, shall be provided to the last known address of the following interested persons:

(a) The last owner of record of the oil and gas mineral interests underlying the lands or areas directly affected by the proposed action, and of the surface owners.

(b) The last owner of record of the oil and gas mineral interests underlying the lands or areas immediately adjacent to, and contiguous to, the lands or areas directly affected by the proposed action, and of the surface owners.

(c) The last owner of record of oil and gas leases from 1 or more owners described in subdivision (a) or (b).

(2) Receipts returned following delivery by certified mail shall be filed with the supervisor on or before the date of the hearing, or before the supervisor's order is issued if there is no hearing.

(3) Undelivered notices that are returned to the petitioner shall be filed with the supervisor on or before the date of the hearing, or before the supervisor's order is issued if there is no hearing.

(4) If notice is given by personal service, an affidavit of service shall be filed with the supervisor on or before the date of the hearing, or before the supervisor's order is issued if there is no hearing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61728 Compliance with MCL 24.201 to 24.328; persons authorized to conduct hearings and other actions.

Sec. 61728. Except as otherwise expressly provided in this part, all proceedings under this part, including the filing of petitions, the giving of notices, the conduct of hearings, and other action taken by the supervisor or the supervisor's agents shall be pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. All hearings and other actions in connection with the hearings may be conducted by the supervisor, or by the supervisor's deputy or by any authorized representative duly designated by the supervisor, and all acts of his or her deputy or authorized representative have the same force and effect as if done by the supervisor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.61729 Appellant to comply with order, rule, or regulation; bond.

Sec. 61729. During the pendency of the appeal, the appealing party shall obey the order, rule, or regulation appealed unless the interests sought to be protected by the order, rule, or regulation can be adequately protected by a bond, in which case the supervisor may accept a bond in the amount and on the conditions he or she may prescribe in lieu of immediate performance of the order, rule, or regulation by the appealing party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61730 Judicial review.

Sec. 61730. The action of the supervisor shall be final with respect to jurisdiction for an appeal before any regulatory agency of this state, but any person may seek relief before the commission or in the courts as provided under the laws of the state, and the taking of an appeal as provided in this part is not a prerequisite to seeking relief in the courts. The place of initiation of proceedings for review shall be limited to the circuit court of the county of Ingham, which shall have exclusive jurisdiction of all suits brought against the supervisor or any agent or employee of the supervisor, on account of any matter arising under this part. A temporary restraining order or injunction shall not be granted in any such suit except after due notice and upon a showing of irreparable harm by the appealing party.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61731 Subpoena of witnesses and documentary evidence; incriminating evidence; perjury.

Sec. 61731. The supervisor may compel by subpoena the attendance of witnesses or the production of books, papers, records, or articles necessary in any proceeding before the supervisor. A person shall not be excused from obeying any subpoena for the reason that the testimony or evidence, documentary or otherwise, may tend to incriminate him or her or subject him or her to a penalty or forfeiture. Nothing in this part shall be construed as requiring any person to produce anything or to testify in response to inquiry not pertinent to some question lawfully before the supervisor or any court for determination within the purposes of this part. Any incriminating evidence, documentary or otherwise, shall not thereafter be used against the witness in a prosecution or action for forfeiture. A person testifying is not exempt from prosecution and punishment for perjury in so testifying.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61732 Failure or refusal to comply with subpoena; refusal to testify or answer; penalty.

Sec. 61732. In case of failure or refusal on the part of any person to comply with any subpoena issued by the supervisor, or the refusal of any witness to testify or answer as to any matters regarding which he or she may be lawfully interrogated, any circuit court in this state or any circuit court judge on application of the supervisor may issue an attachment for the person and compel him or her to comply with such subpoena and to attend before the supervisor or any court and produce such documents and give his or her testimony upon such matters as may be lawfully required, and the court or judge may punish for contempt as in case of disobedience of a like subpoena issued by or from such court or a refusal to testify before that court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61733 Fees and travel expense of witnesses.

Sec. 61733. Any witness summoned by subpoena or by written request of the supervisor and attending any hearing called by the supervisor is entitled to the same fees and travel expense as provided by law for attending the circuit court in any civil matter or proceeding. The fees and travel expense of witnesses subpoenaed at the instance of the supervisor shall be paid by the persons filing the petition.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.61734 Witnesses; false swearing or affidavit; penalty.

Sec. 61734. If any person of whom an oath is required under this part, or by any rule, regulation, or order of the supervisor, willfully swears falsely in regard to any matter or thing respecting which the oath is required, or willfully makes any false affidavit required or authorized by this part, or by any rule, regulation, or order of the supervisor, the person is guilty of perjury.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61735 Enforcement of part.

Sec. 61735. The supervisor may bring proceedings for the enforcement of this part and all rules and regulations promulgated under this part or for the prevention of the violation thereof, and the attorney general shall represent the supervisor in all actions brought under this part. The circuit court of Ingham county shall have concurrent jurisdiction over such matters.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61736 Violation of part; penalty.

Sec. 61736. A person who violates this part or any rule, regulation, or order promulgated under this part is subject to a penalty of not more than $1,000.00, and each day a violation continues after notice by the supervisor constitutes a separate offense. The penalty shall be recovered by suit brought by the supervisor. Any penalty assessed under this section shall be credited to the general fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61737 Violation of part; aiding or abetting; penalty.

Sec. 61737. A person aiding or abetting in the violation of this part, or any rule, regulation, or order made under this part, is subject to the same penalties as are prescribed in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61738 Orders of supervisor; recording; notice.

Sec. 61738. A certified copy of any order of the supervisor issued under this part is entitled to be recorded in the office of the register of deeds for the counties where all or any portion of the unit area is located, and such recordation shall constitute notice to all persons in interest, their heirs, successors, and assigns.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 619
DRILLING IN THE PIGEON RIVER STATE FOREST

324.61901 Legislative findings.

Sec. 61901. (1) The legislature finds that it is in the public interest to encourage and promote safe, effective, efficient, and environmentally prudent extraction of hydrocarbon resources in the Pigeon river country state forest; and that economic benefits to the state will result from the exploration for the production of energy resources due to the taxation of production of hydrocarbon deposits and the payment of royalties to the state from production of hydrocarbon deposits, which royalties among other things enable the state to acquire and develop property for the enjoyment of the outdoor recreationists of the state.

(2) The legislature further finds that wise use of our natural resources essential for future energy needs requires that energy resource development must occur in harmony with environmental standards; and that the development of new industry and the expansion of existing industry to obtain the optimum safe production of

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the state's energy resources is an important concern to the economic stability of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61902 Pigeon river country state forest as valuable public resource; production of oil and gas in public interest; amended stipulation and consent order as hydrocarbon development plan.

Sec. 61902. The Pigeon river country state forest as dedicated by the commission on December 7, 1973, is a valuable public resource. It is in the public interest to produce oil and gas as quickly as possible to minimize the duration of activities associated with hydrocarbon development in the Pigeon river country state forest. To expedite the development of oil and gas resources on certain lands presently under lease but undeveloped as of March 31, 1981 and for which the amended stipulation and consent order has been adopted and approved by the commission on November 24, 1980, and in consideration of the protracted nature of the controversy, the legislature finds that this amended stipulation and consent order constitutes an appropriate hydrocarbon development plan for the purposes and within the intent expressed in section 61901.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61903 Hydrocarbon activities not in violation of law.

Sec. 61903. The hydrocarbon activities within the Pigeon river country state forest authorized by the plan referred to in section 61902 can be carried out without violation of law under terms of the amended stipulation and consent order referred to in section 61902.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.61904 Implementation of hydrocarbon development plan.

Sec. 61904. In light of the legislative findings in section 61901, the declaration of public interest in section 61902, and the determination that hydrocarbons can be developed in concert with law in section 61903, the department shall implement the approved hydrocarbon development plan for the Pigeon river country state forest not later than January 1, 1981.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 621
INTERSTATE OIL AND GAS COMPACT

324.62101 Interstate compact for conservation of oil and gas; extension agreements; withdrawal.

Sec. 62101. So that the state of Michigan can cooperate with other states in fostering and encouraging the production of oil and gas without waste, the governor of the state of Michigan is hereby authorized and empowered, for and in the name of the state of Michigan, now a member of the interstate oil and gas compact commission, to execute agreements for the extension of the interstate compact to conserve oil and gas, originally executed at Dallas, Texas, on the sixteenth day of February 1935, and now deposited with the department of state of the United States, and which expires by its terms on September 1, 1947. The governor is further authorized and empowered to execute any necessary agreements for the further extension of the expiration date of said interstate compact to conserve oil and gas, and to determine if and when it shall be for the best interest of the state of Michigan to withdraw from the compact upon 60 days' notice as provided by its terms. In the event he or she shall determine that the state should withdraw, he or she shall have full power and authority to give notice and take any and all steps necessary and proper to effect the withdrawal of the state of Michigan from the compact.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.62102 Interstate oil and gas compact; agreement.

Sec. 62102. The interstate compact to conserve oil and gas referred to in the above section, and which it is hereby proposed to extend by agreement reads as follows:

"AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS"

"ARTICLE I.

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any 3 of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted, then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI.

Each state joining herein shall appoint 1 representative to a commission hereby constituted and designated as the interstate oil compact commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII.

This compact shall expire September 1, 1947, but any state joining herein may, upon 60 days' notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be

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deposited in the archives of the department of state of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

Done in the city of Dallas, Texas, this sixteenth day of February, 1935.

(Originally signed by the representatives of the following states: Oklahoma, Texas, New Mexico, Colorado, Illinois, Michigan, California, Arkansas, and Kansas.)"

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62103 Interstate oil and gas compact commission; governor as representative of state; powers and duties; assistant representatives.

Sec. 62103. The governor shall be the official representative of the state of Michigan on "the interstate oil and gas compact commission," provided for in the compact to conserve oil and gas, and shall exercise and perform for the state of Michigan all the powers and duties as a member of "the interstate oil and gas compact commission": However, he or she may appoint assistant representatives who shall act in his or her stead as the official representatives of the state of Michigan as a member of the commission. The assistant representatives shall take the oath of office prescribed by the constitution, which shall be filed with the secretary of state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBCHAPTER 3
MINERAL WELLS

PART 625
MINERAL WELLS

324.62501 Definitions.

Sec. 62501. As used in this part:

(a) "Artificial brine" means mineralized water formed by dissolving rock salt or other readily soluble rocks or minerals.

(b) "Brine well" means a well drilled or converted for the purpose of producing natural or artificial brine.

(c) "Department" means the department of environmental quality.

(d) "Disposal well" means a well drilled or converted for subsurface disposal of waste products or processed brine and its related surface facilities.

(e) "Exploratory purposes" means test well drilling for the specific purpose of discovering or outlining an orebody or mineable mineral resource.

(f) "Fund" means the mineral well regulatory fund created in section 62509b.

(g) "Mineral well" means any well subject to this part.

(h) "Natural brine" means naturally occurring mineralized water other than potable or fresh water.

(i) "Operator" means the person, whether owner or not, supervising or responsible for the drilling, operating, repairing, abandoning, or plugging of wells subject to this part.

(j) "Owner" means the person who has the right to drill, convert, or operate any well subject to this part.

(k) "Pollution" means damage or injury from the loss, escape, or unapproved disposal of any substance at any well subject to this part.

(*l*) "Storage well" means a well drilled into a subsurface formation to develop an underground storage cavity for subsequent use in storage operations. Storage well does not include a storage well drilled pursuant to part 615.

(m) "Supervisor of mineral wells" means the state geologist.

(n) "Surface waste" means damage to, injury to, or destruction of surface waters, soils, animal, fish, and aquatic life, or surface property from unnecessary seepage or loss incidental to or resulting from drilling, equipping, or operating a well or wells subject to this part.

(o) "Test well" means a well, core hole, core test, observation well, or other well drilled from the surface to determine the presence of a mineral, mineral resource, ore, or rock unit, or to obtain geological or geophysical information or other subsurface data related to mineral exploration and extraction. Test well does not include

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holes drilled in the operation of a quarry, open pit, or underground mine, or any wells not related to mineral exploration or extraction.

(p) "Underground storage cavity" means a cavity formed by dissolving rock salt or other readily soluble rock or mineral, by nuclear explosion, or by any other method for the purpose of storage or disposal.

(q) "Underground waste" means damage or injury to potable water, mineralized water, or other subsurface resources.

(r) "Waste product" means waste or by-product resulting from municipal or industrial operations or waste from any trade, manufacture, business, or private pursuit that could cause pollution and for which underground disposal may be feasible or practical.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 467, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.62502 Waste prohibited.

Sec. 62502. A person shall not cause surface or underground waste in the drilling, development, production, operation, or plugging of wells subject to this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62503 Supervisor of mineral wells; appointment of assistants; salaries; expenses.

Sec. 62503. The supervisor of mineral wells shall appoint, with the approval of the department, assistants as necessary to implement this part. The supervisor of mineral wells and assistants, in addition to salaries, shall receive reasonable traveling expenses while on business connected with their duties pursuant to standard travel regulations of the department of management and budget.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62504 Appeal board; persons entitled to appeal; hearing; right to be heard.

Sec. 62504. The commission shall act as an appeal board regarding the issuance, denial, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a permit under this part. If an owner or operator considers an order made by the supervisor of mineral wells to be unduly burdensome, inequitable, or unwarranted, the owner or operator may appeal to the commission or the court for relief as provided in this act, and shall give notice to the supervisor of mineral wells. The chairperson of the commission shall set a date and place to hear the appeal, which may be at any regular meeting or at any special meeting of the commission duly called for that purpose. The supervisor of mineral wells or any person interested in the matter has the right to be heard at such hearing.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62505 Administration and enforcement of part; jurisdiction of supervisor.

Sec. 62505. The supervisor of mineral wells shall have jurisdiction over the administration and enforcement of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62506 Prevention of waste; rules; waste; enforcement.

Sec. 62506. The supervisor of mineral wells shall prevent the wastes defined in and prohibited by this part. Acting directly or through his or her deputy or authorized representative, and following public hearing, the supervisor of mineral wells shall promulgate rules subject to the approval of the department and issue orders and instructions necessary to enforce these rules.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.62506a Definitions; drilling multisource commercial hazardous waste disposal well; construction permit required; construction of section.

Sec. 62506a. (1) As used in this section:

(a) "Hazardous waste", "storage facility", and "treatment facility" have the meanings ascribed to these terms in part 111.

(b) "Multisource commercial hazardous waste disposal well" means a disposal well that receives hazardous waste that is generated by more than 1 person. Multisource commercial hazardous waste disposal well does not include a disposal well that receives hazardous waste generated from a subsidiary of the person that owns or operates a hazardous waste disposal well.

(c) "Person" includes a governmental entity.

(2) Prior to the drilling of a multisource commercial hazardous waste disposal well or the conversion of a well to a multisource commercial hazardous waste disposal well, a person shall have obtained a construction permit for an on-site treatment facility and storage facility under section 11118.

(3) Nothing in the amendatory act that added this section shall be construed to abrogate common law.

History: Add. 1996, Act 168, Eff. May 3, 1996.

Popular name: Act 451

Popular name: NREPA

324.62507 Emergency orders; issuance; duration.

Sec. 62507. The supervisor of mineral wells, acting directly or through his or her deputy or authorized representative, may issue emergency orders without a public hearing to implement this part. Emergency orders remain in force and effect for not more than 21 days.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62508 Supervisor of mineral wells; powers.

Sec. 62508. The supervisor of mineral wells, acting directly or through his or her deputy or authorized representative, may do any of the following:

(a) Make inspections and provide for the keeping of records and checking on the accuracy thereof.

(b) Require the locating, drilling, deepening, reworking, reopening, casing, sealing, injecting, mechanical and chemical treating, and plugging of wells subject to this part to be accomplished in a manner that is designed to prevent surface and underground waste.

(c) Designate after public hearing those areas of the state in which there is no known or potential danger of surface or underground waste from test well drilling and in which permits to drill test wells are not required.

(d) Require on all wells the keeping and filing of logs containing data that are appropriate to the purposes of this part. Logs on brine and test wells shall be held confidential for 10 years after completion and shall not be open to public inspection during that time except by written consent of the owner or operator. Logs for test wells drilled for exploratory purposes shall be held confidential until released by the owner or operator. The logs on all brine and test wells for exploratory purposes shall be opened to public inspection when the owner is no longer an active mineral producer, mineral lease holder, or owner of mineral lands in this state.

(e) Require on storage and waste disposal wells, when specified by the supervisor of mineral wells, the keeping and filing of drillers' logs and sample logs, the running and filing of electrical and radioactivity logs, and the keeping and filing of drill cuttings, cores, water samples, pilot injection test records, operating records, and other reports.

(f) Release to the department or the commission, for meetings and hearings, only data described in this section that are necessary to the administration of this part in the prevention or correction of surface or underground waste.

(g) Order through written notice the immediate suspension or prompt correction of any operation, condition, or practice found to exist that is causing, resulting in, or threatening to cause or result in surface or underground waste.

(h) Require the filing of an adequate surety or security bond and provide for the release of that surety or security bond.

(i) Qualify persons for blanket permits.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.62509 Drilling or conversion permits; application; bond; permit not required; blanket permit; confidentiality of information, records, logs, and reports; fees.

Sec. 62509. (1) A person shall not drill or begin the drilling of any brine, storage, or waste disposal well, or convert any well for these uses, and except as authorized by a permit issued by the supervisor of mineral wells pursuant to part 13 and rules promulgated by the supervisor of mineral wells, and unless the person files with the supervisor of mineral wells an approved surety or security bond. The application shall be accompanied by a survey of the well site. The department shall conduct an investigation and inspection before the supervisor of mineral wells issues a permit. A permit shall not be issued to any owner or his or her authorized representative who does not comply with the rules of the supervisor of mineral wells or who is in violation of this part or any rule of the supervisor of mineral wells. Upon completion of the drilling or converting of a well for storage or waste disposal and after necessary testing by the owner to determine that the well can be used for these purposes and in a manner that will not cause surface or underground waste, the supervisor of mineral wells, upon receipt of appropriate evidence, shall approve and regulate the use of the well for storage or waste disposal. These operations shall be pursuant to part 31. The supervisor of mineral wells may schedule a public hearing to consider the need or advisability of permitting the drilling or operating of a storage or waste disposal well, or converting a well for these uses, if the public safety or other interests are involved.

(2) A person shall not drill a test well 50 feet or greater in depth into the bedrock or below the deepest freshwater strata, except as provided in section 62508(c), except as authorized by a permit issued by the supervisor of mineral wells pursuant to part 13 and rules promulgated by the supervisor of mineral wells, and unless the person files with the supervisor of mineral wells an approved surety or security bond. The application shall be accompanied by the fee provided in subsection (6). The department shall conduct an investigation and inspection before the supervisor of mineral wells issues a permit. A permit shall not be issued to any owner or his or her authorized representative who does not comply with the rules of the supervisor of mineral wells or who is in violation of this part or any rule of the supervisor of mineral wells. A test well that penetrates below the deepest freshwater stratum or is greater than 250 feet in depth is subject to an individual test well permit. A test well that does not penetrate below the deepest freshwater stratum and is 250 feet or less in depth is subject to a blanket test well permit. This subsection does not apply to a test well regulated under part 111 or part 115, or a water well regulated under part 127 of the public health code, 1978 PA 368, MCL 333.12701 to 333.12771.

(3) A permit is not required to drill a test well in those areas of the state where rocks of Precambrian age directly underlie unconsolidated surface deposits or in those areas that have been designated pursuant to section 62508(c). However, within 2 years after completion of the drilling of the well, the owner shall advise the supervisor of mineral wells of the location of the well and file with the supervisor of mineral wells the log required under section 62508(d). The provisions of this part pertaining to the prevention and correction of surface and underground waste have the same application to these test wells as to other wells defined in this part.

(4) Upon request, the supervisor of mineral wells may issue to qualified persons a blanket permit to drill within a county test wells which will not penetrate below the deepest freshwater stratum and are 250 feet or less in depth.

(5) All information and records pertaining to the application for and issuance of permits for wells subject to this part shall be held confidential in the same manner as provided for logs and reports on these wells.

(6) A permit application submitted under this section shall be accompanied by the following permit application fee:

(a) Disposal well for disposal of waste products other than processed brine	$	2,500.00.
(b) Disposal well for disposal of processed brine	$	500.00.
(c) Storage well	$	500.00.
(d) Natural brine production well	$	500.00.
(e) Artificial brine production well	$	500.00.
(f) Individual test well under subsection (2)	$	500.00.
(g) Blanket permit for test wells drilled pursuant to subsection (4):		
(*i*) 1 to 24 wells	$	75.00.
(*ii*) 25 to 49 wells	$	150.00.

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(*iii*) 50 to 75 wells		$	300.00.
(*iv*) 75 to 200 wells		$	600.00.

(7) The supervisor of mineral wells shall deposit all permit application fees collected under this section into the fund.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1998, Act 467, Imd. Eff. Jan. 4, 1999;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.62509a Mineral well regulatory fee.

Sec. 62509a. (1) The owner or operator of a well regulated under this part is subject to the following annual mineral well regulatory fee. The fee shall apply to any mineral well that is usable for its permitted purpose, or has not been properly plugged in accordance with the requirements of this part and rules promulgated under this part, at the time the fee is due:

(a)	For a disposal well for disposal of waste products other than processed brine	$	2,500.00
(b)	For a disposal well for disposal or processed brine	$	500.00
(c)	For a storage well	$	500.00
(d)	For a natural brine production well	$	500.00
(e)	For an artificial brine production well	$	500.00
(f)	For an individual test well	$	500.00
(g)	For a blanket permit for test wells:		
(*i*)	1 to 24 wells	$	75.00
(*ii*)	25 to 49 wells	$	150.00
(*iii*)	50 to 75 wells	$	300.00
(*iv*)	75 to 200 wells	$	600.00

(2) Mineral well regulatory fees shall be submitted to the department in the manner required by the department along with any documentation required by the department.

(3) The department shall forward all mineral well regulatory fees collected under this section to the state treasury for deposit in the fund.

History: Add. 1998, Act 467, Imd. Eff. Jan. 4, 1999.

Compiler's note: In subsection (1)(b), the phrase "For a disposal well for disposal or processed brine" should evidently read "For a disposal well for disposal of processed brine."

Popular name: Act 451

Popular name: NREPA

324.62509b Mineral well regulatory fund.

Sec. 62509b. (1) The mineral well regulatory fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to implement and enforce this part.

History: Add. 1998, Act 467, Imd. Eff. Jan. 4, 1999.

Popular name: Act 451

Popular name: NREPA

324.62510 Enforcement of part and rules; jurisdiction of court; representation by attorney general.

Sec. 62510. The supervisor of mineral wells may bring proceedings for the enforcement of this part and rules promulgated under this part in the circuit court of Ingham county or in the circuit court of the county in which a violation is alleged to have occurred. The attorney general shall represent the supervisor of mineral wells in all actions brought under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.62511 Suits against supervisor, commission, agent or employee; jurisdiction of Ingham county circuit court.

Sec. 62511. The circuit court of Ingham county has exclusive jurisdiction of all suits brought against the supervisor of mineral wells or commission, or their agents or employees, by or on account of any matter or thing arising under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62512 Hearing; notice of time, place, and issues; service in form of notice by registered mail; responsibility for publication of notice and payment.

Sec. 62512. (1) The jurisdictional requirement of notice of time, place, and issues involved in a hearing required by this part shall be given in the manner prescribed by the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and by publication once each week for 2 weeks consecutively in a newspaper of general circulation in the area where a specific matter of concern is located, with the last date of publication at least 3 days before the date set for hearing.

(2) If a list of interested persons is a part of the petition for hearing, or if the name of an interested person is on record with the supervisor of mineral wells, service in the form of notice by registered mail shall be made by the petitioner to the interested person.

(3) The publishing of a notice of hearing and payment for the publishing are the responsibility of the petitioner. The supervisor of mineral wells is responsible for the publishing and payment for the publishing on a hearing initiated by the supervisor of mineral wells.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62513 Persons authorized to conduct hearings and investigations; acts by supervisor's deputy or representative; effect.

Sec. 62513. All hearings and other actions pertaining to these hearings or investigations may be conducted by the supervisor of mineral wells or the supervisor's deputy or authorized representative, and all acts of the deputy or authorized representative have the same force and effect as if done by the supervisor of mineral wells.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62514 Supervisor of mineral wells; power to summon witnesses, administer oaths, require production of documents; noncompliance; contempt.

Sec. 62514. (1) The supervisor of mineral wells may summon witnesses, administer oaths, and, when necessary to carry out the provisions of this part, require the production of appropriate records, books, and documents.

(2) Upon failure or refusal of any person to comply with a subpoena issued by the supervisor of mineral wells, or upon the refusal of any witness to testify as to any matter on which he or she may be interrogated as being pertinent to the hearing or investigation, the person or witness may be subject to a court order compelling him or her to comply with such subpoena, and to appear before the supervisor of mineral wells and produce the records, books, and documents for examination and to testify. The court may punish for contempt or for refusal to testify.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62515 Failure to case, seal, operate, repair, or plug wells; notice; expense of repair or correction; collection.

Sec. 62515. Whenever the supervisor of mineral wells or the supervisor's deputy or authorized representative determines that an owner or operator has failed or neglected to case, seal, operate, repair, or plug a well pursuant to this part or the rules promulgated or orders issued under this part, notice of the determination shall be given to the owner or operator and to the surety executing the bond filed by the owner

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or operator. If the owner or operator, or surety, fails to correct the specified conditions pursuant to the rule or order of the supervisor of mineral wells within 60 days after service of notice, the supervisor of mineral wells may enter into or upon any private or public property on which the well is located, and across any private or public property to reach the well, and repair or correct the specified condition, and the owner, operator, and surety are jointly and severally liable for all expenses incurred. The supervisor of mineral wells shall certify to the owner, operator, and surety the claim of the state, listing in the claim the items of expense in making the repair or correction. The claims shall be paid by the owner or operator, or surety, within 30 days, and if not paid within that time, the supervisor of mineral wells may bring suit in the circuit court of Ingham county against the owner, operator, and surety, jointly and severally, for the collection.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62516 Prohibited acts.

Sec. 62516. A person shall not do any of the following:

(a) Willfully violate any provision of this part or any rule or order of the supervisor of mineral wells.

(b) Drill or convert any well subject to this part without first obtaining a permit or operate a storage or waste disposal well without approval as provided in this part.

(c) Do any of the following for the purpose of evading or violating this part or any rule promulgated or order issued under this part:

(*i*) Make false entry or statement in any required report or record.

(*ii*) Omit or cause to be omitted from any required report or record full, true, and correct entries as required by this part.

(*iii*) Remove from this state or destroy, mutilate, alter, or falsify any report or record required by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62517 Violations; penalties.

Sec. 62517. A person who violates this part is subject to a fine of not more than $1,000.00, and each day that the violation continues constitutes a separate offense. The penalty shall be recovered by suit brought by the supervisor of mineral wells. A person aiding in a violation of this part or a rule promulgated under this part is subject to the same penalties as prescribed in this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.62518 Construction of part.

Sec. 62518. This part does not apply to wells drilled under the authority of part 41 or part 615. This part does not supersede or contravene any of the provisions of part 81.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 4
MINERAL MINING

PART 631
FERROUS MINERAL MINING

324.63101 Definitions.

Sec. 63101. As used in this part:

(a) "Department" means the department of environmental quality.

(b) "Ferrous mineral" or "mineral" means ferrous ore or material mined for its ferrous content.

(c) "Ferrous mineral operator" or "operator" means a person who owns or leases the plant and equipment utilized in a mining area and is engaged in the business of mining ferrous minerals or preparing to engage in mining operations.

(d) "Ferrous product" means a commercially salable ferrous mineral in its final marketable form or state.

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(e) "Life of the mine" means the period of time from issuance of a permit under this part through the completion of reclamation as required by this part.

(f) "Mining area" or "area subjected to mining" means land from which material is removed in connection with the production or extraction of ferrous minerals by surface or open pit mining methods, on which material from that mining is deposited, on which beneficiating or treatment plants and auxiliary facilities are located, or on which the water reservoirs used in the mining operation are located, and includes auxiliary land that is used for these purposes.

(g) "Mining operation" means a ferrous mineral mining operation.

(h) "Stockpile" means material, including, but not limited to, surface overburden, rock, or lean ore, that in the process of ferrous mineral mining and beneficiation or treatment has been removed from the earth and stored on the surface. However, stockpile does not include materials that are being treated in the production of mineral products and the mineral product that has been produced by that operation.

(i) "Supervisor of reclamation" means the department.

(j) "Surface or open pit mining" means the mining of more than 10,000 tons of a ferrous mineral or disturbing more than 1 acre of land a year in the regular operation of a business either by removing the overburden lying above a natural deposit of a ferrous mineral and mining directly from the natural deposit exposed or by mining directly from a deposit lying exposed in the ferrous mineral's natural state. Surface or open pit mining includes all ferrous mineral mining below the water table or which will upon cessation of mining result in creating a body of water of any size. Surface or open pit mining does not include excavation or grading preliminary to a construction project.

(k) "Tailings basin" means land on which is deposited, by hydraulic or other means, the material that is separated from the mineral product in the beneficiation or treatment of ferrous minerals including any surrounding dikes constructed to contain the material.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

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324.63102 Repealed. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Compiler's note: The repealed section pertained to a study and survey conducted by supervisor of reclamation.

324.63103 Mining operations; rules.

Sec. 63103. The department may promulgate rules pertaining to mining operations conducted subsequent to their effective date, subject to any rights existing pursuant to any permit, license, lease, or other valid existing authorization issued by a governmental entity and to applicable mine safety laws or rules, for the following purposes:

(a) The sloping, terracing, or other practical treatment of stockpiles and tailings basins where erosion is occurring or is likely to occur that results or may result in injury or damage to fish and wildlife or the pollution of public waters or that is causing or might cause injury to the property or person of others.

(b) The vegetation or other practical treatment of tailings basins and stockpiles upon becoming permanently inactive if substantial natural vegetation is not expected within 5 years and if research reveals that vegetation can reasonably be accomplished within practical limitations.

(c) The stabilization of the surface overburden banks of open pits in rock and the entire bank of open pits in unconsolidated materials upon their abandonment.

(d) The cleanup of mining areas and the removal of debris from those areas on termination of the mining operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103a Mining of ferrous minerals; permit required.

Sec. 63103a. A ferrous mineral operator shall not engage in the mining of ferrous minerals except as authorized by a permit issued by the department pursuant to part 13. The department shall not issue a permit unless the applicant has submitted to the department, in addition to the permit application, a mining and reclamation plan for the proposed ferrous mining activity as prescribed by section 63103b.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

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Popular name: NREPA

324.63103b Mining and reclamation plan.

Sec. 63103b. The mining and reclamation plan submitted under section 63103a shall include all of the following for the total project:

(a) The method and direction of mining.

(b) Surface overburden stripping plans.

(c) The depth of grade level over the entire site from which the ferrous mineral will be removed.

(d) Provisions for grading, revegetation, and stabilization that will minimize soil erosion, sedimentation, and public safety concerns.

(e) The location of buildings, equipment, stockpiles, roads, or other features necessary to the mining activity and provisions for their removal and restoration of the area at the project termination.

(f) The interim use or uses of reclaimed areas before the cessation of the entire mining operation.

(g) Maps and other supporting documents required by the department.

(h) Fencing or other techniques to minimize trespass or unauthorized access to the mining activity.

(i) If required by the department when mining activity below the water table is proposed, a hydrogeological survey of the surrounding area.

(j) If threatened or endangered species are identified, an indication of how the threatened or endangered species will be protected or, if not protected, what mitigation measures will be performed.

(k) If the proposed mining activity includes beneficiation or treatment of the ferrous ore or material mined for its ferrous content, the application documents shall include specific plans depicting the beneficiation and treatment methods and techniques, and manufacturer's material safety data sheets on all chemicals or other additives that are not natural to the site, that will be utilized in the process. The operator shall obtain all applicable state and federal permits before beginning the beneficiation process.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103c Ferrous mineral mining permit.

Sec. 63103c. (1) A ferrous mineral mining permit issued by the department is valid for the life of the mine. However, the department may revoke a ferrous mineral mining permit under the following conditions:

(a) The permittee has not commenced construction of plant facilities or conducted actual mining and reclamation activities covered by the permit within 3 years after the date of issuance of the permit.

(b) The permittee requests the revocation of the ferrous mineral mining permit and the department determines the mining activity has not polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in those resources, as provided in part 17.

(c) The permittee fails to submit the annual report of production as required by section 63103d(2).

(d) The department finds that the permittee is not in compliance with this part, the rules promulgated under this part, or the ferrous mineral permit and there exists an imminent threat to the health and safety of the public.

(2) The department may order immediate suspension of any or all activities at a ferrous mineral mining operation, including the removal of ferrous product from the site, if the department finds there exists an emergency endangering the public health and safety or an imminent threat to the natural resources of the state.

(3) An order suspending operations shall be in effect until the operation is in compliance and protection of the public health and safety is ensured or the threat to the natural resources has been eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the department shall issue an emergency order to continue the suspension of operations and shall schedule a hearing as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The total duration of the suspension of operations shall not be more than 30 days.

(4) A ferrous mineral mining permit may be transferred with approval of the department. The person seeking to acquire the permit shall submit a request for transfer of the permit to the department on forms provided by the department. The person acquiring the permit shall accept the conditions of the existing permit and adhere to the requirements set forth on the approved mining and reclamation plan. Pending the transfer of the existing permit, the person seeking to acquire the permit shall not operate the mine.

(5) A ferrous mineral mining permit shall not be transferred to a person who has been determined by the department to be in violation of any of the following, until the person acquiring the permit has corrected the violation or the department has accepted a compliance schedule and a written agreement has been reached to correct the violations:

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(a) This part.
(b) The rules promulgated under this part.
(c) Permit conditions.
(d) An order of the department.

(6) If the permittee of a ferrous mineral mining operation is under notice because of unsatisfactory conditions at the mining site involved in the transfer, then the permit for the mining operation shall not be transferred to a person until the permittee has completed the necessary corrective actions or the person acquiring the permit has entered into a written agreement to correct all of the unsatisfactory conditions.

(7) A ferrous mineral mining permit may be amended upon submission to the department of a request by the permittee. Upon receipt of the request to amend an existing ferrous mineral permit, the department shall determine if the request constitutes a significant change from the conditions of the approved permit. If the department determines the request is a significant change from the conditions of the approved permit, the department may submit the request for amendment to the same review process as provided in part 13. If a request to amend the permit is denied, the reasons for denial shall be stated in a written report to the permittee. If the department determines the request for amendment does not constitute a significant change from the conditions of the approved permit, the department shall approve the amendment and notify the permittee.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103d Ferrous mineral surveillance fee; annual report of production.

Sec. 63103d. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, a ferrous mineral operator shall be assessed a ferrous mineral surveillance fee on the ferrous product produced for the calendar year reported as described in subsection (2). The fee shall be assessed upon ferrous product and shall not be more than 1 cent per metric ton. Funds collected by the assessment of the ferrous mineral surveillance fee shall not exceed the actual costs to the department of implementing the sections of this part that pertain to ferrous mineral mining. Surveillance fees collected under this section shall be forwarded to the state treasurer for deposit in the ferrous mineral surveillance fund created in section 63103e.

(2) A ferrous mineral operator shall file an annual report of production on or before February 15 of each year. The report shall contain the annual production of ferrous product from each ferrous mineral mine.

(3) The ferrous mineral surveillance fee described in subsection (1) is due 30 days after the department sends written notice to the ferrous mineral operator of the amount due.

(4) Failure to submit an annual report of production in compliance with rules promulgated by the department constitutes grounds for revocation of a permit.

(5) A penalty equal to 10% of the amount due, or $1,000.00, whichever is greater, shall be assessed against the ferrous mineral operator for a fee that is not paid when due. An unpaid fee and penalty constitute a debt and the basis of a judgment against the operator. Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

(6) Records upon which the annual report of production is based shall be preserved for 3 years and are subject to audit by the department.

History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63103e Ferrous mineral surveillance fund.

Sec. 63103e. (1) The ferrous mineral surveillance fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the ferrous mineral surveillance fund. The state treasurer shall direct the investment of the ferrous mineral surveillance fund. The state treasurer shall credit to the ferrous mineral surveillance fund interest and earnings from fund investments.

(3) Money in the ferrous mineral surveillance fund at the close of the fiscal year shall remain in the ferrous mineral surveillance fund and shall not lapse to the general fund.

(4) The department shall expend money from the ferrous mineral surveillance fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part and for computing the surveillance fee under section 63103d.

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History: Add. 1997, Act 149, Imd. Eff. Dec. 2, 1997;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011.

Popular name: Act 451

Popular name: NREPA

324.63104 Mining operations; variance or modification from rules.

Sec. 63104. The supervisor of reclamation, on application by the landowner or operator, may modify or permit variance from the rules promulgated under this part if the supervisor of reclamation determines that the modification or variance is not contrary to the public interest.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63105 Supervisor of reclamation; administration of part and rules; powers.

Sec. 63105. The supervisor of reclamation shall administer and enforce this part and the rules promulgated under this part. The supervisor of reclamation may do any of the following:

(a) Consult with and obtain the assistance of the other divisions of the department.

(b) Enter on the mining areas in connection with any investigation and inspection without liability to the operator or landowner if reasonable prior notice of the intention to do so has been given to the operator or landowner.

(c) Conduct research or enter into contracts related to mining areas and the reclamation of mining areas as may be necessary to implement this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63106 Plan maps; filing by operator; form; annual changes; long-range plans.

Sec. 63106. For the purpose of information and to assist the supervisor of reclamation in proper enforcement of rules promulgated under this part, an operator shall file with the supervisor of reclamation a plan map in the form determined by the supervisor of reclamation showing all existing mining areas or areas subjected to mining by the operator. Annually thereafter, on or before March 15, the operator shall file a plan map in similar form showing any changes made during the preceding calendar year and the mining area that the operator anticipates will be subjected to mining during the current calendar year. The supervisor of reclamation periodically shall ascertain the long-range land environment plans of the operator.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63107 Performance bond, security, or assurance of operator.

Sec. 63107. The supervisor of reclamation, if he or she has reasonable doubts as to an operator's financial ability to comply with the rules promulgated under this part as to actions to be taken after completion of mining operations or any phase of mining operations, may require an operator to furnish a performance bond or other security or assurance satisfactory to the supervisor of reclamation. The supervisor of reclamation may postpone furnishing of the bond, security, or assurance depending upon the life of the mining operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63108 Injunctive relief to prevent violation of rules.

Sec. 63108. At the request of the supervisor of reclamation, the attorney general may institute an action in a circuit court of the county in which the mining operation affected is conducted for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the terms and conditions of any rule promulgated under this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63110 Scope of part.

Sec. 63110. This part does not apply to activities subject to part 632.

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History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: NREPA

PART 632
NONFERROUS METALLIC MINERAL MINING

324.63201 Definitions.

Sec. 63201. As used in this part:

(a) "Administratively complete" describes an application for a mining permit under this part that contains all of the documents and information required under this part and any rules promulgated under this part.

(b) "Affected area" means an area outside of the mining area where the land surface, surface water, groundwater, or air resources are determined through an environmental impact assessment to be potentially affected by mining operations within the proposed mining area.

(c) "Department" means the department of environmental quality.

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

(e) "Fund" means the nonferrous metallic mineral surveillance fund created in section 63217.

(f) "Metallic product" means a commercially salable mineral produced primarily for its nonferrous metallic mineral content in its final marketable form or state.

(g) "Mining", except as provided in subdivision (h), means the excavation or removal of more than 10,000 tons of earth material in a calendar year or disturbing more than 1 acre of land in a calendar year in the regular operation of a business for the purpose of extracting a nonferrous metallic mineral or minerals by 1 or both of the following:

(*i*) Removing the overburden lying above natural deposits of a mineral and excavating directly from the natural deposits thus exposed or by excavating directly from deposits lying exposed in their natural state.

(*ii*) Excavating from below the surface of the ground by means of shafts, tunnels, or other subsurface openings.

(h) Mining does not include an operation that is subject to part 634.

(i) "Mining area" means an area of land from which earth material is removed in connection with nonferrous metallic mineral mining, the lands on which material from that mining is stored or deposited, the lands on which beneficiating or treatment plants and auxiliary facilities are located, the lands on which the water reservoirs used in the nonferrous metallic mineral mining process are located, and auxiliary lands that are used in connection with the mining.

(j) "Mining permit" means a permit issued under this part for conducting nonferrous metallic mineral mining and reclamation operations.

(k) "Nonferrous metallic mineral" means any ore or material to be excavated from the natural deposits on or in the earth for its metallic content, but not primarily for its iron or iron mineral content, to be used for commercial or industrial purposes.

(*l*) "Nonferrous metallic mineral operator" or "operator" means a permittee or other person who is engaged in, or who is preparing to engage in, mining operations for nonferrous metallic minerals, whether individually or jointly, or through agents, employees, or contractors.

(m) "Permittee" means a person who holds a mining permit.

(n) "Postclosure monitoring period" means a period following closure of a nonferrous metallic mineral mine during which the permittee is required to conduct monitoring of groundwater and surface water.

(o) "Stockpile" means material, including, but not limited to, surface overburden, rock, or lean ore, that in the process of mining and beneficiation or treatment has been removed from the earth and stored on the surface. Stockpile does not include materials that are being treated in the production of metallic products and the metallic product that has been produced by that operation.

(p) "Tailings basin" means land on which is deposited, by hydraulic or other means, the material that is separated from the metallic product in the beneficiation or treatment of minerals and includes any surrounding dikes constructed to contain the material.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63202 Legislative findings.

Sec. 63202. The legislature finds that:

(a) It is the policy of this state to foster the conservation and development of the state's natural resources.

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(b) Discoveries of nonferrous metallic sulfide deposits have resulted in intensive exploration activities and may lead to the development of 1 or more mines.

(c) Nonferrous metallic sulfide deposits are different from the iron oxide ore deposits currently being mined in Michigan in that the sulfide minerals may react, when exposed to air and water, to form acid rock drainage. If the mineral products and waste materials associated with nonferrous metallic sulfide mining operations are not properly managed and controlled, they can cause significant damage to the environment, impact human health, and degrade the quality of life of the impacted community.

(d) The special concerns surrounding nonferrous metallic mineral mining warrant additional regulatory measures beyond those applied to the current iron mining operations.

(e) Nonferrous metallic mineral mining may be an important contributor to Michigan's economic vitality. The economic benefits of nonferrous metallic mineral mining shall occur only under conditions that assure that the environment, natural resources, and public health and welfare are adequately protected.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63203 Nonferrous metallic mineral mining; administration and enforcement; rules; regulation or control by local units of government.

Sec. 63203. (1) The department shall administer and enforce this part in order to regulate nonferrous metallic mineral mining. In addition to other powers granted to it, the department may promulgate rules it considers necessary to carry out its duties under this part, including standards for construction, operation, closure, postclosure monitoring, reclamation, and remediation of a nonferrous metallic mineral mine. However, the department shall not promulgate any additional rules under this part after February 15, 2006.

(2) The department may do either of the following:

(a) Enter at all reasonable times in or upon a mining area for the purpose of inspecting and investigating conditions relating to the operation of a mining area. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(b) Conduct research or enter into contracts related to mining areas and the reclamation of mining areas as may be necessary to implement this part.

(3) Subject to subsections (4) and (5), a local unit of government shall not regulate or control mining or reclamation activities that are subject to this part, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities, and does not have jurisdiction concerning the issuance of permits for those activities.

(4) A local unit of government may enact, maintain, and enforce ordinances, regulations, or resolutions affecting mining operations if the ordinances, regulations, or resolutions do not duplicate, contradict, or conflict with this part. In addition, a local unit of government may enact, maintain, and enforce ordinances, regulations, or resolutions regulating the hours at which mining operations may take place and routes used by vehicles in connection with mining operations. However, such ordinances, regulations, or resolutions shall be reasonable in accommodating customary nonferrous metallic mineral mining operations.

(5) Subsections (3) and (4) do not prohibit a local unit of government from conducting water quality monitoring.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2005, Act 299, Imd. Eff. Dec. 21, 2005.

Popular name: Act 451

Popular name: NREPA

324.63205 Mining permit; application procedure.

Sec. 63205. (1) A person shall not engage in the mining of nonferrous metallic minerals except as authorized in a mining permit issued by the department.

(2) An application for a mining permit shall be submitted to the department in a format to be developed by the department. The application shall be accompanied by all of the following:

(a) A permit application fee of $5,000.00. The department shall forward all permit application fees received under this section to the state treasurer for deposit in the fund.

(b) An environmental impact assessment for the proposed mining operation that describes the natural and human-made features, including, but not limited to, flora, fauna, hydrology, geology, and geochemistry, and baseline conditions in the proposed mining area and the affected area that may be impacted by the mining, and the potential impacts on those features from the proposed mining operation. The environmental impact assessment shall define the affected area and shall address feasible and prudent alternatives.

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(c) A mining, reclamation, and environmental protection plan for the proposed mining operation, including beneficiation operations, that will reasonably minimize the actual and potential adverse impacts on natural resources, the environment, and public health and safety within the mining area and the affected area. The plan shall address the unique issues associated with nonferrous metallic mining and shall include all of the following:

(*i*) A description of materials, methods, and techniques that will be utilized.

(*ii*) Information that demonstrates that all methods, materials, and techniques proposed to be utilized are capable of accomplishing their stated objectives in protecting the environment and public health, except that such information may not be required for methods, materials, and techniques that are widely used in mining or other industries and are generally accepted as effective. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations, or documented applications in similar uses and settings.

(*iii*) Plans and schedules for interim and final reclamation of the mining area following cessation of mining operations.

(*iv*) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, and tailings, including characterization of leachability and reactivity.

(*v*) Provisions for the prevention, control, and monitoring of acid-forming waste products and other waste products from the mining process so as to prevent leaching into groundwater or runoff into surface water.

(d) A contingency plan that includes an assessment of the risk to the environment or public health and safety associated with potential significant incidents or failures and describes the operator's notification and response plans. When the application is submitted to the department, the applicant shall provide a copy of the contingency plan to each emergency management coordinator having jurisdiction over the affected area.

(e) Financial assurance as described in section 63211.

(f) A list of other state and federal permits that are anticipated to be required.

(3) The applicant has the burden of establishing that the terms and conditions set forth in the permit application; mining, reclamation, and environmental protection plan; and environmental impact assessment will result in a mining operation that reasonably minimizes actual or potential adverse impacts on air, water, and other natural resources and meets the requirements of this act.

(4) Effective 14 days after the department receives an application for a mining permit, the application shall be considered to be administratively complete unless the department proceeds as provided under subsection (5).

(5) If, before the expiration of the 14-day period under subsection (4), the department notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that the fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection (4) is tolled until the applicant submits to the department the specified information or fee amount due. The notice shall be given in writing or electronically.

(6) Within 42 days after an application for a mining permit is determined to be administratively complete, the department shall hold a public meeting on the application. The department shall give notice of the public meeting not less than 14 or more than 28 days before the date of the public meeting. The notice shall specify the time and place of the public meeting, which shall be held in the county where the proposed mining operation is located, and shall include information on how to review a copy of the application. The notice shall be given in writing to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The notice shall also be given by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located.

(7) The department shall accept written public comment on the permit application for 28 days following the public meeting under subsection (6). Within 28 days after the expiration of the public comment period, the department shall reach a proposed decision to grant or deny a mining permit and shall establish a time and place for a public hearing on the proposed decision. The department shall give notice of the public hearing not less than 14 or more than 28 days before the date of the public hearing. The notice shall be given in writing to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The notice shall also be given by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located. The notice shall contain all of the following:

(a) A summary of the permit application.

(b) Information on how to review a complete copy of the application. The application shall be made available at a public location in the area.

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(c) A listing of other permits and hearings that are pending or anticipated under this act with respect to the proposed mining operation.

(d) The time and place of the public hearing, which shall be held in the area where the proposed mining operation is located.

(8) The department shall accept written public comment on the proposed decision to grant or deny a mining permit for 28 days following the public hearing. At the expiration of the public comment period, the department shall issue a report summarizing all comments received and providing the department's response to the comments.

(9) Within 28 days after the expiration of the public comment period under subsection (8), the department shall grant or deny the mining permit application in writing. A determination that an application is administratively complete does not preclude the department from requiring additional information from the applicant. The 28-day period under this subsection shall be tolled until such time as the applicant submits the requested information. If a mining permit is denied, the reasons shall be stated in a written report to the applicant.

(10) A mining permit shall not be issued or transferred to a person if the department has determined that person to be in violation of this part, rules promulgated under this part, the permit, or an order of the department under this part, unless the person has corrected the violation or the person has agreed in writing to correct the violation pursuant to a compliance schedule approved by the department.

(11) Subject to subsection (10), the department shall approve a mining permit if it determines both of the following:

(a) The permit application meets the requirements of this part.

(b) The proposed mining operation will not pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources, in accordance with part 17 of this act. In making this determination, the department shall take into account the extent to which other permit determinations afford protection to natural resources. For the purposes of this subsection, excavation and removal of nonferrous metallic minerals and of associated overburden and waste rock, in and of itself, does not constitute pollution, impairment, or destruction of those natural resources.

(12) The department shall deny a mining permit if it determines the requirements of subsection (11) have not been met.

(13) Terms and conditions that are set forth in the permit application and the mining, reclamation, and environmental protection plan and that are approved by the department shall be incorporated in and become a part of the mining permit.

(14) A mining permit is not effective until all other permits required under this act for the proposed mining operation are obtained.

(15) If a person submits an application for a mining permit and 1 or more other permits under this act with respect to a particular mining operation, the department may process the applications in a coordinated fashion to the extent feasible given procedural requirements applicable to individual permits. The coordinated permit process may include consolidating public hearings under this part with public hearings required under other parts of this act. Any notice of a consolidated public hearing shall state clearly which permits are to be considered at the public hearing. An applicant may waive any required timelines under subsections (4) to (9) to facilitate the coordination.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63207 Mining permit; duration; termination; revocation; transfer; amendment; exceptions.

Sec. 63207. (1) A mining permit issued by the department remains in effect until terminated or revoked by the department.

(2) The department may terminate a mining permit under 1 or more of the following conditions:

(a) The permittee has not commenced construction of plant facilities or conducted actual mining activities covered by the mining permit within 2 years after the effective date of the mining permit.

(b) The permittee has completed final reclamation of the mining area and requests the termination of the mining permit and the department determines all of the following:

(*i*) The mining operation has not polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in those resources by activities conducted within the scope of the permit.

(*ii*) The permittee has otherwise fulfilled all conditions determined to be necessary by the department to protect the public health, safety, and welfare and the environment.

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(*iii*) The requirements for the postclosure monitoring period have been satisfied.

(3) The department may revoke a mining permit pursuant to section 63221.

(4) A permittee shall not transfer a mining permit to a new operator unless all of the following occur:

(a) The person acquiring the mining permit submits to the department on forms provided by the department a request for transfer of the mining permit and provides the financial assurance required under section 63211.

(b) The person acquiring the mining permit accepts the conditions of the existing mining permit and adheres to the requirements set forth in this part.

(c) If the department determines that the permittee is in violation of this part or rules promulgated under this part at the mining site involved in the transfer, the permittee has completed the necessary corrective actions or the person acquiring the mining permit has entered into a written consent agreement to correct all of the violations.

(d) The department, after providing public notice of the proposed transfer, approves the transfer.

(5) Pending the transfer of an existing mining permit under subsection (4), the proposed transferee shall not operate the mine.

(6) A mining permit shall be amended as follows:

(a) A mining permit amendment shall be initiated as provided in either of the following:

(*i*) The permittee submits to the department a request to amend the mining permit to address anticipated changes in the mining operation, including, if applicable, amendments to the environmental impact assessment and to the mining, reclamation, and environmental protection plan.

(*ii*) The department requires a mining permit to be amended after determining that the terms and conditions of the mining permit are not providing the intended reasonable protection of the environment, natural resources, or public health and safety.

(b) Within 30 days after receiving a request to amend a mining permit under subdivision (a)(*i*), or upon a determination by the department under subdivision (a)(*ii*) that an amendment is necessary, the department shall determine whether the proposed amendment constitutes a significant change from the conditions of the approved mining permit. In making that determination, the department shall consider whether the change will result in environmental impacts that are materially increased or different from those addressed in the approved mining permit conditions, the mining permit application, or any additional information forming the basis of the approved mining permit conditions.

(c) If the department determines under subdivision (b) that the request constitutes a significant change from the conditions of the approved mining permit, the department shall in its sole discretion do 1 of the following:

(*i*) Submit the request for amendment to the same review process as provided for a new permit application in section 63205(4) to (9).

(*ii*) Within 42 days after the determination that the amendment request constitutes a significant change from the conditions of the approved mining permit, hold a public meeting on the request. The department shall give notice of the public meeting in the same manner provided for in section 63205(6). The department shall accept written public comment on the request for 28 days after the public meeting. Within 14 days after the expiration of the public comment period, the department shall grant or deny the request in writing.

(d) If the department determines under subdivision (b) that the request for amendment does not constitute a significant change from the conditions of the approved mining permit, the department shall provide written notice of the determination to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The department shall also give notice of the determination by publication in a newspaper of local distribution in the area where the proposed mining operation is to be located. The department shall approve the amendment within 14 days after publication of the notice and shall notify the permittee of the approval.

(7) A permittee may submit to the department a written request to relocate, reconfigure, or modify shafts, tunnels, or other subsurface openings or surface facilities, buildings, or equipment, other than a tailings basin or a stockpile, without obtaining an amendment to the permit under subsection (6). Within 30 days after receiving the request, the department shall grant or deny the request and notify the permittee in writing of the department's determination. Subject to subsection (6)(a)(*ii*), the department shall grant the request if all of the following apply:

(a) Any proposed relocation, reconfiguration, or modification of shafts, tunnels, or other subsurface openings will not result in subsidence or other adverse environmental impacts. The permittee's request shall include information demonstrating that the requirements of this subdivision, if applicable, are met.

(b) Any proposed relocation, reconfiguration, or modification of surface facilities, buildings, or equipment, other than a tailings basin or a stockpile, will take place within the permitted mining area.

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History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004;—Am. 2018, Act 162, Eff. Aug. 21, 2018.

Popular name: Act 451

Popular name: NREPA

324.63209 Duties of permittee.

Sec. 63209. (1) A permittee shall comply with all other applicable permit standards under this act.

(2) A permittee shall conduct reclamation activities at a mining area in accordance with the approved mining, reclamation, and environmental protection plan.

(3) If mining operations are suspended for a continuous period exceeding 90 days, the permittee shall take actions to maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the permit.

(4) Subject to subsection (5), a permittee shall begin final reclamation of a mining area within 3 years of the date of cessation of mining operations and shall complete reclamation within the time set forth in the mining, reclamation, and environmental protection plan approved by the department.

(5) Upon written request of a permittee, the department may approve an extension of time to begin or complete final reclamation.

(6) A permittee shall conduct groundwater and surface water monitoring in accordance with the provisions of the permit during mining operations and during the postclosure monitoring period. The postclosure monitoring period shall be 20 years following cessation of mining, subject to the following conditions:

(a) The permittee shall provide to the department a written request to terminate the postclosure monitoring not less than 18 months before the proposed termination date and shall provide the department with technical data and information demonstrating the basis for the termination. The department shall extend the postclosure monitoring period in increments of up to 20 years unless the department determines, approximately 1 year before the end of a postclosure monitoring period or postclosure incremental monitoring period, that there is no significant potential for water contamination resulting from the mining operation.

(b) The department may shorten the postclosure monitoring period at any time upon determining that there is no significant potential for water contamination resulting from the mining operation.

(7) The department may extend or shorten the postclosure monitoring period under subsection (6) only after public notice and opportunity for a public hearing under section 63219(2).

(8) Both the mining area and the affected area shall be reclaimed and remediated to achieve a self-sustaining ecosystem appropriate for the region that does not require perpetual care following closure and with the goal that the affected area shall be returned to the ecological conditions that approximate premining conditions subject to changes caused by nonmining activities or other natural events. Any portion of the mining area owned by the applicant may be used for any legal purposes.

(9) Compliance with the provisions of this part does not relieve a person of the obligation to comply with all other applicable tribal, state, federal, or local statutes, regulations, or ordinances.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63211 Financial assurance.

Sec. 63211. (1) An operator shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and for a postclosure monitoring period as determined under section 63209(6) and (7), except that financial assurance shall be released immediately upon termination of a mining permit under section 63207(2)(a).

(2) The financial assurance required under subsection (1) shall apply to all mining and reclamation operations subject to the mining permit and be sufficient to cover the cost to administer, and to hire a third party to implement, reclamation under the mining, reclamation, and environmental protection plan as well as necessary environmental protection measures, including remediation of any contamination of the air, surface water, or groundwater that is in violation of the mining permit. The financial assurance shall consist of a conformance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other equivalent security, or any combination thereof, covering at least 75% of the total required amount. Financial assurance for the balance of the required total amount, if any, shall consist of a statement of financial responsibility.

(3) Every 3 years, or as the department considers necessary, a permittee shall update the statement of financial responsibility required under subsection (2) and shall adjust the conformance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other security, as applicable, to assure that the financial assurance is sufficient for the purposes of subsection (2).

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(4) The financial assurance mechanism required by this section may be satisfied in whole or in part by financial assurance provisions required by other parts of this act if those provisions address the remediation activities required under this part.

(5) Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of activities at a mining operation, including the removal of metallic product from the site, pursuant to section 63221.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63213 Mining and reclamation report.

Sec. 63213. (1) A permittee shall file with the department a mining and reclamation report on or before March 15 of each year, during the period the mine is operating and during the postclosure monitoring period. The mining and reclamation report shall contain all of the following:

(a) A description of the status of mining and reclamation operations.

(b) An update of the contingency plan. The permittee shall provide a copy of the update to the emergency management coordinator.

(c) A report of monitoring results for the preceding calendar year.

(d) A report of the total tons of material mined from the mining area, and the amount of metallic product by weight, produced from the nonferrous metallic mineral mine for the preceding calendar year.

(e) A list of the reports required under subsection (2) for the preceding calendar year.

(2) A permittee shall promptly notify the department and each emergency management coordinator having jurisdiction over the affected area of any incident, act of nature, or exceedance of a permit standard or condition at a mining operation that has created, or may create, a threat to the environment, natural resources, or public health and safety.

(3) Records upon which the mining and reclamation reports are based shall be preserved by the permittee for 3 years and made available to the department upon request.

(4) Records upon which incident reports under subsection (2) are based shall be preserved by the permittee for 3 years or until the end of the postclosure monitoring period, whichever is later.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63215 Surveillance fee.

Sec. 63215. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, the department shall assess a permittee a nonferrous metallic mineral surveillance fee of not more than 5 cents per ton of material mined from the mining area as reported under section 63213(1)(d), but not less than $5,000.00, for each calendar year the mine is in operation and during the postclosure monitoring period. Surveillance fees collected under this section shall be forwarded to the state treasurer for deposit in the nonferrous metallic mineral surveillance fund created in section 63217. The surveillance fee rate shall be calculated each year as follows:

(a) The department shall determine the total tons of material mined from mining areas in this state in the prior calendar year.

(b) The department shall calculate the adjusted appropriation by deducting any unexpended money in the fund at the close of the prior fiscal year from the amount appropriated for the current fiscal year for surveillance, monitoring, administration, and enforcement of this part.

(c) The fee rate shall be the ratio, to the nearest 1/100 of 1%, of the adjusted appropriation to the total tons of material mined.

(2) The nonferrous metallic mineral surveillance fee described in subsection (1) is due by 30 days after the department sends written notice to the permittee of the amount due.

(3) A penalty equal to 10% of the amount due, or $1,000.00, whichever is greater, shall be assessed against the permittee for a metallic mineral surveillance fee that is not paid when due. The department may file an action in the circuit court for Ingham county to collect the unpaid fee and penalty. The unpaid fee and penalty shall constitute a debt and become the basis of a judgment against the permittee.

(4) Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

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Popular name: Act 451

Popular name: NREPA

324.63217 Nonferrous metallic mineral surveillance fund.

Sec. 63217. (1) The nonferrous metallic mineral surveillance fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Unexpended money in the fund at the close of the fiscal year shall remain in the fund and be carried over to the succeeding fiscal year.

(4) The department shall expend money from the fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63219 Contested case hearing.

Sec. 63219. (1) A person who is aggrieved by an order, action, or inaction of the department or by the issuance, denial, revocation, or amendment of a mining permit under this part may file a petition with the department requesting a contested case hearing, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after an order, action, or inaction of the department or an action on a mining permit may be rejected as being untimely.

(2) Any hearing under this part shall be held pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall provide notice of the hearing and shall mail copies of the notice to the person requesting the hearing and to the city, village, or township and the county where the proposed mining operation is to be located and to all affected federally recognized Indian tribes in this state. The department shall publish notice of the hearing in a newspaper of local distribution in the area of the mining operation at least 10 days before the hearing.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

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324.63221 Violations.

Sec. 63221. (1) If the department determines that an operator has violated this part, a rule promulgated under this part, or a mining permit issued under this part, the department shall require the operator to correct the violation.

(2) If the department determines that a violation under subsection (1) is causing or resulting in an imminent and substantial endangerment to the public health or safety, environment, or natural resources, the department shall take action necessary to abate or eliminate the endangerment. Such action may include 1 or more of the following:

(a) Revoking the mining permit.

(b) Issuing an order to the operator requiring immediate suspension of activities at the mining operation, including the removal of metallic product from the site.

(c) Issuing an order to the operator to undertake such other response actions as may be necessary to abate or eliminate the endangerment.

(3) Before taking action under this section to suspend operations or revoke a mining permit, or to otherwise prevent the continuation of mining operations, the department shall give written notice, in person or by mail, to the operator. Subject to subsection (4), the department shall provide the operator an opportunity for an evidentiary hearing.

(4) If the department finds that emergency action is required to protect the public health, safety, or welfare, or to protect the environment, the department may issue an emergency order without a public hearing to require an operator to suspend operations or to take other corrective actions. An emergency order shall remain in force and effect for not more than 21 days.

(5) If the operator or surety fails or neglects to correct the violation or take corrective actions as specified under an order of the department, the department may, after giving written notice to the operator and surety, enter in or upon the mining area and upon and across any private or public property necessary to reach the mining area and take whatever action is necessary to curtail and remediate any damage to the environment and public health resulting from the violation, and the operator and surety are jointly and severally liable for

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all expenses incurred by the department. The claim shall be paid by the operator or surety within 30 days, and, if the claim is not paid within that time, the department may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction. This part does not limit the department's authority to take whatever response activities it determines necessary to protect the public health, safety, and welfare and the environment.

(6) The revocation of a mining permit or suspension of activities under subsection (2) does not relieve a permittee of the responsibility to complete reclamation, maintain financial assurance required under section 63211, and undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

(7) If the department receives an allegation of improper action under or a violation of this part, a rule promulgated under this part, or a condition of a permit issued under this part, and the person making the allegation provides evidence or corroboration sufficient to support the allegation, as determined by the department, the department shall do all of the following:

(a) Make a record of the allegation.

(b) Conduct an inspection of the mining operation to investigate the allegation not more than 5 business days after receipt of the complaint or allegation. If the complaint or allegation is of a highly serious nature, as determined by the department, the mining operation shall be inspected as quickly as possible. However, an investigation or inspection under this subsection shall comply with the United States constitution, the state constitution of 1963, and this section.

(c) Not more than 15 business days after completing an investigation of the allegation, make a written report of the allegation and the results of the investigation to the operator and the person who made the allegation.

(8) The department shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in its actions under this section.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

324.63223 Civil action; commencement; jurisdiction; relief; fine; violation as felony; penalties; lien.

Sec. 63223. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued or rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not less than $2,500.00, and the court may award reasonable attorney fees and costs to the prevailing party. The maximum fine imposed by the court shall be not more than $25,000.00 per day of violation.

(2) Upon a finding by the court that an operator has violated this part or a provision of a permit or order issued or rule promulgated under this part, and that the violation poses or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the sanctions set forth in subsection (1), a fine of not less than $500,000.00 and not more than $5,000,000.00.

(3) The attorney general may file a civil suit in a court of competent jurisdiction to recover, in addition to a fine, the full value of the injuries done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation.

(4) A person who on or after February 1, 2005 intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit under this part or in a notice or report required by the terms and conditions of a permit issued under this part is guilty of a felony and may be imprisoned for not more than 2 years and shall be fined not less than $2,500.00 or more than $25,000.00 for each violation. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than $25,000.00 per day and not more than $50,000.00 per day of violation. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. Knowledge possessed by a person other than the defendant under this subsection may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(5) Upon a finding by the court that the actions taken by a criminal defendant on or after February 1, 2005 pose or posed a substantial endangerment to the public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsection (2), a sentence of 5 years' imprisonment and a fine of not less

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than $1,000,000.00.

(6) To find a defendant civilly or criminally liable for substantial endangerment under subsection (2) or (5), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:

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

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

(7) A civil fine or other civil award imposed under this section is payable to this state and shall be credited to the general fund. The fine constitutes a lien on any property, of any nature or kind, owned by the defendant.

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

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

(10) If a violation of this part also constitutes a violation of another part of this act, a court may apply a civil fine or penalty for the violation, and each day of continued violation, in accordance with and subject to the penalty limits of the other part.

History: Add. 2004, Act 449, Imd. Eff. Dec. 27, 2004.

Popular name: Act 451

Popular name: NREPA

PART 633

MINING AUTHORIZATION, MULTIPLE OWNERS

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324.63301 Definitions.

Sec. 63301. The following words and terms as used in this part have the meaning ascribed to them in this section:

(a) "Mineral", when employed in a conveyance, includes every inorganic substance that can be extracted from the earth for profit whether it is solid, as rock, fire clay, the various metals, and coal, or fluid, as mineral waters. Mineral does not include oil or gas.

(b) "Person" means any natural person, corporation, association, partnership, receiver, trustee, judiciary or common law trust, guardian, executor, administrator, or fiduciary of any kind.

(c) "Royalty interest" means that share of the product or profit that the owner of the land or mineral rights in the land reserves or is entitled to, whether under a lease or under this part, in consideration of permitting the development of the mineral rights. Royalty interest does not include oil or gas or interests in oil or gas.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63302 Exploration of certain lands for mining purposes.

Sec. 63302. Whenever lands or mineral rights in lands in this state are owned by tenants in common, joint owners, co-tenants, or co-parceners, whether title is derived by purchase, devise, descent, or otherwise, or whether or not any or all of the owners are minors, the tenants in common, joint owners, co-tenants, or co-parceners who hold not less than 3/4 interest in the title to the lands or mineral rights in the lands may explore, drill, mine, develop, and operate the lands for mining purposes, except for oil and gas, and may remove and transport the minerals or mineral products from the lands or store the minerals or mineral products on the lands and sell and dispose of the minerals and mineral products in the manner provided for in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63303 Decree of court to lease land; complaint.

Sec. 63303. The owner or owners of not less than 3/4 in interest desiring to lease land or the mineral rights in the land for mining purposes, except for oil and gas, or desiring to explore, drill, develop, or operate the land for minerals or mineral products and to remove the minerals or mineral products from the land, may file a complaint in a circuit court for the county in which the land or a part of the land is located, to obtain a

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decree of the court authorizing the owner or owners to lease the land or the mineral rights or to explore, drill, mine, develop, and operate the land for mining purposes, except for oil and gas, and remove and transport minerals or mineral products from the land or store the minerals or mineral products on the land of all owners of the land. The complaint shall set forth the relevant facts and the interests of all persons to the extent these are known to the plaintiffs.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63304 Decree of court; distribution of proceeds.

Sec. 63304. If the court finds that the material assertions of the complaint are true and that the plaintiffs do own the required interest in the land or mineral rights as joint tenants, tenants in common, co-tenants, or co-parceners, or that the required proportion in interest of such owners consent to the granting of the relief prayed in the complaint, the court shall enter a decree authorizing the plaintiffs to lease for exploring, drilling, mining, and operating the land for mining purposes, except for oil and gas, and to remove the minerals or mineral products from the land and sell or dispose of the minerals or mineral products so as to realize the full value of the minerals or mineral products for the benefit of all entitled parties. The defendants and minority interest holders, whether owner of fee or royalty interests or their lessees, shall participate in their proportionate share of the proceeds derived from the sale of minerals or mineral products produced from the land. If the court finds that a lease of a royalty interest should be granted, the terms and conditions of the lease shall be fixed by the court in its decree, but the royalty payable to the royalty interest shall not be less than 1/10 of the minerals or mineral products or the value of the minerals or mineral products as produced and severed from the land at the point of production. The court shall provide by decree for the disposition by the plaintiffs of the proportionate part of the proceeds from the sale of the defendants' portion of the minerals or mineral products produced and shall provide for the payment and distribution of the proceeds to the defendants as their respective interests may appear, after deduction of the proportionate costs of the proceedings and those other expenses incurred by the plaintiffs that are approved by the court.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63305 Deposit with clerk of court when defendant is unknown.

Sec. 63305. If the whereabouts of any of the defendants is unknown, the court may require the plaintiffs to deposit those defendants' share of the net proceeds from minerals or mineral products with the clerk of the court, to be held for the defendants, as the court may direct.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63306 Suits by lessees.

Sec. 63306. If a person or persons holding not less than a 3/4 interest in the land has or have executed a mineral lease or leases to any person, the lessee or lessees may institute and maintain or defend any suit provided for by this part, either in the name of the lessee or in the name of his or her lessor.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 634
SMALL NATIVE COPPER MINES

324.63401 Definitions.

Sec. 63401. As used in this part:

(a) "Administratively complete" refers to an application for a mining permit under this part that includes the fee and all of the documents and other information required under this part and any rules promulgated under this part.

(b) "Conformance bond" means a surety bond that has been executed by a surety company authorized to do business in this state, cash, a certificate of deposit, a letter of credit, or other security filed by a person and accepted by the department to ensure compliance with this part or rules promulgated under this part.

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(c) "Department" means the department of environmental quality.

(d) "Fund" means the small native copper mine surveillance fund created in section 63415.

(e) "Life of the mine" means the period from initiation of mining activities through the completion of reclamation.

(f) "Mine" or "mining" means an operation to excavate or remove earth material that generates not less than 10,000 tons and not more than 75,000 tons of waste rock in a calendar year or disturbs not less than 1 acre and not more than 10 acres of land in a calendar year in the regular operation of a business for the primary purpose of extracting native copper by 1 or both of the following:

(*i*) Removing the overburden lying above natural deposits of native copper and excavating directly from the natural deposits thus exposed or by excavating directly from deposits lying exposed in their natural state.

(*ii*) Excavating from below the surface of the ground by means of shafts, tunnels, or other subsurface openings.

(g) "Mining activity" means any of the following activities within a mining area for the purpose of, or associated with, mining:

(*i*) Clearing and grading of land.

(*ii*) Drilling and blasting.

(*iii*) Excavation of earth materials to access or remove ore.

(*iv*) Crushing, grinding, or separation activities.

(*v*) Reclamation.

(*vi*) Transportation of overburden, waste rock, ore, and tailings within the mining area.

(*vii*) Storage, relocation, and disposal of overburden, waste rock, ore, and tailings within a mining area, including backfilling of mined areas.

(*viii*) Construction of water impoundment and drainage features.

(*ix*) Construction of haul roads.

(*x*) Construction of utilities or extension of existing utilities.

(*xi*) Withdrawal, transportation, and discharge of water in connection with mining.

(h) "Mining area" means all of the following:

(*i*) Land from which material is removed by surface or open pit mining methods.

(*ii*) Land on which adits, shafts, or other openings between the land surface and underground mine workings are located.

(*iii*) Land on which material from mining is deposited.

(*iv*) Land on which crushing, grinding, or separation facilities are located.

(*v*) Land on which water reservoirs used in connection with mining are located.

(i) "Mining permit" or "permit" means a permit issued under section 63405 for conducting mining activities.

(j) "Native copper" means copper in its elemental form.

(k) "Operator" means a person that is engaged in or preparing to engage in mining activities, whether individually or jointly, or through agents, employees, or contractors, and that has overall responsibility for the mining activities.

(*l*) "Permittee" means a person that holds a mining permit.

(m) "Waste rock" means earth material that is excavated during mining, from which the economically recoverable native copper has been separated, and that is stored on the surface for 1 year or more. Waste rock does not include earth material from excavation or grading done in preparation for commencement of mining.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63403 Enforcement and administration of part; rules; inspection and investigation by department; regulation by local governmental unit; restrictions.

Sec. 63403. (1) The department shall administer and enforce this part. In addition to other powers granted to it, the department may promulgate rules it considers necessary to carry out its duties under this part.

(2) The department may enter at any reasonable time in or upon a mining area for the purpose of inspecting and investigating conditions relating to mining activities.

(3) Subject to subsections (4) and (5), a local unit of government shall not regulate or control mining or reclamation activities that are subject to this part, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities, and does not have jurisdiction concerning the issuance of permits for those activities.

(4) A local unit of government may enact, maintain, and enforce ordinances or regulations affecting

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mining if the ordinances or regulations do not duplicate, contradict, or conflict with this part and are reasonable in accommodating customary mining activities.

(5) Subsections (3) and (4) do not prohibit a local unit of government from conducting water quality monitoring.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63405 Mining permit; application.

Sec. 63405. (1) A person shall not engage in mining activities except as authorized by a mining permit issued by the department. A separate mining permit is required for each mine.

(2) An application for a mining permit shall be submitted by the operator to the department on a form prescribed by the department. The application shall include all of the following:

(a) A permit application fee of $5,000.00. The department shall forward the permit application fee to the state treasurer for deposit in the fund.

(b) Provisions for a conformance bond as described in section 63409.

(c) A mining and reclamation plan as described in subsection (3) that addresses mining activities proposed in the application.

(3) The mining and reclamation plan required in subsection (2) shall include all of the following:

(a) A map or maps showing the locations and dimensions of the following:

(*i*) Proposed adits, shafts, underground mine workings, and surface pits.

(*ii*) Proposed overburden, waste rock, and ore stockpiles.

(*iii*) Any crushing, grinding, or separation equipment that will be utilized.

(b) A description of the mining methods that will be utilized.

(c) Plans and descriptions of measures that will minimize soil erosion and sedimentation during mining activities.

(d) A map and description of fencing or other techniques to minimize public safety hazards.

(e) Plans and schedules for reclamation of the mining area following cessation of mining activities. The plans and schedules shall address mining activities proposed in the application and provide for grading, revegetation, and stabilization that will do all of the following:

(*i*) Minimize soil erosion and sedimentation.

(*ii*) Protect public safety.

(*iii*) Establish conditions that promote future beneficial use and do not require perpetual care.

(f) Plans and schedules for baseline water quality sampling, which must be conducted before mining commences. Samples shall be collected from the existing water supply wells available for sampling and located within 1,320 feet of the proposed mining area. However, samples are not required from more than 3 such water supply wells. In addition, samples shall be collected from the nearest surface water body located within 1,320 feet of the proposed mining area, if any. The samples shall be analyzed for pH, copper, and nitrate using laboratory methods approved by the United States Environmental Protection Agency.

(4) Within 7 days after receiving an application for a mining permit, the department shall give notice in writing to the county and municipality where the mine is proposed to be located of the specific location of the proposed mine. Within 14 days after receiving an application for a mining permit, the department shall publish notice of the application in a newspaper of local distribution in the area of the proposed mine and shall post a copy of the application on its website.

(5) Subject to subsection (6), effective 14 days after the department receives an application for a mining permit, the application shall be considered to be administratively complete.

(6) If, before the date indicated by subsection (5), the department notifies the applicant that the application is not administratively complete, specifying the information or fee necessary to make the application administratively complete, the running of the 14-day period under subsection (5) is tolled until the applicant submits to the department the specified information or fee.

(7) Subject to subsection (8), the department shall grant or deny a mining permit within 45 days after an application is considered or determined to be administratively complete under subsection (5) or (6). If a mining permit is denied, the reasons shall be stated in a written report to the applicant.

(8) If the department determines that information in the application is insufficient to determine whether a permit may be granted, the department may request additional information or clarification from the applicant. The 45-day period under subsection (7) is tolled until the applicant submits the requested information.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

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Popular name: Act 451

Popular name: NREPA

324.63407 Mining permit; validity; revocation; termination; transfer; amendment.

Sec. 63407. (1) A mining permit is valid for the life of the mine. However, the department may revoke a permit if the permittee has not commenced mining activities covered by the permit within 3 years after the date of issuance of the permit.

(2) The department may terminate a mining permit upon request of the permittee if the department determines that the permittee has complied with all applicable provisions of this part.

(3) A mining permit may be transferred with approval of the department. The person seeking to acquire the permit shall submit a request for transfer of the permit to the department on forms provided by the department. The person acquiring the permit shall accept the conditions of the existing permit and adhere to the requirements set forth in the approved mining and reclamation plan and provide a conformance bond as set forth in section 63409. Pending the transfer of the existing permit, the person seeking to acquire the permit shall not operate the mine.

(4) A mining permit shall not be transferred to a person who has been determined by the department to be in violation of this part, rules promulgated under this part, or a condition of a permit issued under this part, until the person acquiring the permit has corrected the violation or the department has accepted a compliance schedule and the person that will acquire the permit has entered into a written consent agreement to correct the violation.

(5) If the permittee has been notified by the department of a violation of this part, rules promulgated under this part, or a condition of the permit issued under this part at the mining area involved in the transfer, the mining permit shall not be transferred to a person until the permittee has corrected the violation or the person that will acquire the permit has entered into a written consent agreement to correct the violation.

(6) A mining permit may be amended upon submission to the department of a request by the permittee. The department shall determine whether the requested amendment constitutes a significant change to the mining and reclamation plan. If the department determines that the requested amendment constitutes a significant change, the department shall submit the request for amendment to the same review process as provided for a new permit application in section 63405(4) to (8). If the department determines that the requested amendment does not constitute a significant change, the department shall approve the request within 14 days after receiving the request.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63409 Conformance bond; amount; duration; violation.

Sec. 63409. (1) For each mine, an operator shall maintain a conformance bond in the amount of $50,000.00 during mining activities and until the department determines that all reclamation has been completed in compliance with the mining permit.

(2) If an operator violates subsection (1), the department may order immediate suspension of mining activities, including the removal of native copper from the site.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63411 Mine operator; compliance with applicable requirements; duties upon suspension of mining activities; beginning and completing final reclamation of mining area; time period; extension; compliance with other applicable state or federal statutes or regulations.

Sec. 63411. (1) An operator shall comply with all other applicable requirements of this act.

(2) An operator shall conduct mining activities at a mining area in conformance with the approved mining and reclamation plan.

(3) If mining activities are suspended for a continuous period exceeding 240 days, the operator shall maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the mining permit.

(4) Subject to subsection (5), an operator shall begin final reclamation of a mining area within 3 years after the date of cessation of other mining activities and shall complete reclamation within the time set forth in the

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mining and reclamation plan approved by the department under section 63405.

(5) Upon written request of the operator, the department may approve an extension of time to begin or complete final reclamation.

(6) Compliance with this part does not relieve a person of the responsibility to comply with all other applicable state or federal statutes or regulations.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63413 Fees and penalties.

Sec. 63413. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, an operator shall pay the department by February 15 of each year an operating fee of $5,000.00 for each mine where mining activities were ongoing as of December 31 of the previous year. The fee is due each year until the mining activities cease and the department has released the conformance bond.

(2) The department shall assess a penalty equal to 2% of the amount due against the operator for each month or part of a month during which an operating fee has not been paid after the due date.

(3) The department shall forward all annual operating fees and penalties collected under this section to the state treasurer for deposit in the fund.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63415 Small native copper mine surveillance fund; creation; deposit of money or other assets; investment; interest and earnings; money remaining at close of fiscal year; expenditures.

Sec. 63415. (1) The small native copper mine surveillance fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for surveillance, monitoring, administration, and enforcement under this part.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

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324.63417 Failing or neglecting to perform reclamation in conformance with part or rules; notice of determination; service; reclamation to be conducted by department; liability for expenses of department; claim; order to immediately suspend mining activities; findings; duration; extension; action by attorney general.

Sec. 63417. (1) If the department determines that an operator has failed or neglected to perform reclamation in conformance with this part or rules promulgated under this part, the department shall give notice of this determination, in writing, to the operator and to the surety executing the conformance bond under section 63409. The notice of determination shall be served upon the operator and surety in person or by registered mail. If the operator or surety fails or neglects to properly commence the required reclamation within 90 days after the date of personal service or mailing of the notice or fails to proceed with reclamation at a rate that will conclude the reclamation within the period specified in the mining and reclamation plan, the department may enter into and upon any private or public property on which the mining area is located and upon and across any private or public property necessary to reach the mining area and conduct necessary reclamation, and the operator and surety are jointly and severally liable for all expenses incurred by the department. The department shall certify to the operator and surety the claim of this state in writing, listing the items of expense incurred in reclamation. The claim shall be paid by the operator or surety within 30 days. If the claim is not paid within that time, the department may bring suit against the operator or surety, jointly or severally, for the collection of the claim in any court of competent jurisdiction in Ingham County.

(2) The department may order immediate suspension of any mining activities if the department finds that there exists an emergency endangering the public health and safety or an imminent threat to the natural

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resources of this state.

(3) An order suspending mining activities under subsection (2) shall be in effect until the endangerment to the public health and safety or the threat to the natural resources has been eliminated, but not more than 10 days. To extend the suspension beyond 10 days, the department shall issue an emergency order to continue the suspension of mining activities and shall schedule a hearing as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The total duration of the suspension of activities shall not be more than 30 days.

(4) At the request of the department, the attorney general may institute an action in a circuit court of the county in which the mining area is located for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of this part or a rule promulgated under this part.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.63418 Mining of earth material having significant acid-forming or leachable characteristics; exception.

Sec. 63418. Mining of earth material that has significant acid-forming or leachable characteristics is not subject to this part.

History: Add. 2017, Act 40, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

PART 635
SURFACE AND UNDERGROUND COAL MINE RECLAMATION

SUBPART 1
GENERAL PROVISIONS

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324.63501 Meanings of words and phrases defined in MCL 324.63502 and 324.63503.

Sec. 63501. For the purposes of this part, the words and phrases defined in sections 63502 and 63503 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63502 Definitions; A to O.

Sec. 63502. (1) "Agricultural land" includes any of the following as determined by the department of natural resources under this part or part 609 with the concurrence of the department of agriculture and rural development and the United States Department of Agriculture:

(a) Prime farmland, which is land that is determined to have the best combination of physical and chemical characteristics for producing food, feed, forage, and fiber crops and is also available for these uses, including cropland, pastureland, rangeland, forestland, or other land, but not urban built-up land or water. Prime farmland has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. Prime farmland is permeable to water and air. Prime farmland is not excessively erodible or saturated with water for a long period of time, and it either does not flood frequently or is protected from flooding.

(b) Unique farmland, which is land other than prime farmland that is determined to have value for the production of specific high-value food and fiber crops. Unique farmland has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields or both high quality and high yields of a specific crop when treated and managed according to acceptable farming methods. Unique farmland includes those areas containing organic soils producing vegetables and specialty crops; high-lying and relatively frost-free fruit sites; and areas of high water table acid soils especially suited to highbush blueberry culture as well as the areas in the Upper Peninsula copper country that are producing strawberries.

(c) Other farmland, which is land other than prime farmland and unique farmland that is determined to

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have a combination of soils, location, and management characteristics that is producing or can produce in or for a region food, feed, forage, and fiber crops and is land on which agriculture represents the greatest current economic return from the land. Other farmland includes beef cow-calf operations that occur on generally fine-textured, somewhat poorly drained soils well-suited to forage production and grazing. Other farmland includes cropland areas that by their location are especially suited for the production of disease-free seed crops or that offer special opportunities for integrated best management programs.

(2) "Applicant" means a person applying for a permit from the department to conduct surface coal mining activities or underground coal mining activities pursuant to this part.

(3) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(4) "Coal" means all forms of coal including lignite. Coal does not include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(5) "Coal exploration operation" means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

(6) "Department" means the department of environmental quality.

(7) "Eligible land and water" means all land that was mined for coal or was affected by that mining, wastebanks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status under the standards provided in subparts 3 and 4 prior to August 3, 1977, and for which there is not a continuing reclamation responsibility under state or federal law.

(8) "Historic resource" means a district, site, building, structure, or object of historical, architectural, archeological, or cultural significance that meets any of the following requirements:

(a) Is designated as a national historic landmark pursuant to the historic sites, buildings, and antiquities act, 54 USC 102303, 102304, 320101 to 320104, and 320106.

(b) Is listed on the national register of historic places pursuant to the national historic preservation act, 54 USC 300101, 300301 to 300305, 300307 to 300311, 300313 to 300320, 302101 to 302108, 302301 to 302304, 302501 to 302505, 302701 to 302706, 302901 to 302910, 303101 to 303103, 303901 to 303903, 304101 to 304112, 305501 to 305505, 306101 to 306114, 306121, 306122, 306131, and 307101 to 307108, or the state register of historic sites pursuant to the Governor John B. Swainson Michigan historical markers act, 1955 PA 10, MCL 399.151 to 399.160.

(c) Is recognized under a locally established historic district created pursuant to the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(d) Is eligible for listing, designation, or recognition under subdivisions (a) to (c).

(9) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this part in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a reasonable person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(10) "Local unit of government" means a county, city, township, or village; a board, commission, or authority of a county, city, township, or village; or a soil conservation district.

(11) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any 1 location.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2017, Act 186, Eff. Feb. 19, 2018.

Popular name: Act 451

Popular name: NREPA

324.63503 Definitions; P to U.

Sec. 63503. (1) "Permit" means a permit issued by the department to conduct surface coal mining and reclamation operations.

(2) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land is covered by the operator's bond required by section 63529 and is readily identifiable by appropriate markers on the site.

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(3) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities pursuant to this part.

(4) "Reclamation plan" means a plan submitted by an applicant which provides a plan for reclamation of the proposed surface coal mining operations pursuant to section 63518.

(5) "Soil conservation district" means a soil conservation district established and operating pursuant to part 93.

(6) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of those operations conducted in this state after August 3, 1977.

(7) "Surface coal mining operations" means:

(a) Activities conducted in this state on the surface of any land in connection with a surface coal mine or subject to the requirements of section 63532 incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area and any other areas impacted by the surface coal mining operation mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site.

(b) The areas on which activities described in subdivision (a) occur or where those activities disturb the natural land surface, including adjacent land the use of which is incidental to those activities; all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures or facilities; or other property or materials on the surface, resulting from or incident to those activities.

(8) "Surface mining control and reclamation act of 1977" means Public Law 95-87, 91 Stat. 445.

(9) "Title IV of the surface mining control and reclamation act of 1977" means title IV of Public Law 95-87, 30 U.S.C. 1231 to 1243.

(10) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of his or her permit or this part due to indifference, lack of diligence, or lack of reasonable care.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.63504 Assumption by state of exclusive jurisdiction over regulation of surface coal mining and reclamation operations in state; purpose of part.

Sec. 63504. Pursuant to the authority granted in section 503 of title V of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1253, that allows a state to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program that has the capability of implementing and enforcing the provisions and purposes of the surface mining control and reclamation act of 1977, this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in this state. It is the purpose of this part to provide a state plan to implement and enforce the purposes provided in section 102 of title I of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1202.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63505 Exclusive jurisdiction of department over surface coal mining and reclamation operations in state; construction of part.

Sec. 63505. The department has exclusive jurisdiction over all surface coal mining and reclamation operations in this state. This part shall not be construed as preempting a zoning ordinance enacted by a local unit of government or impairing a land use plan adopted pursuant to a law of this state by a local unit of government.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.63506 Powers of department.

Sec. 63506. To implement this part, the department has the following powers:

(a) To promulgate and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this part.

(b) To issue permits pursuant to this part.

(c) To conduct hearings pursuant to this part and the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(d) To issue orders requiring an operator to take actions that are necessary to comply with this part and with rules promulgated under this part.

(e) To issue orders modifying previous orders.

(f) To issue a final order revoking the permit of an operator who has failed to comply with an order of the department requiring the operator to take action required by this part or rules promulgated under this part.

(g) To order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the department finds that the operation or part of the operation creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions.

(h) To enter on and inspect a surface mining operation that is subject to this part to assure compliance with this part.

(i) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise.

(j) To prepare and require permittees to prepare reports.

(k) To accept, receive, and administer grants pursuant to section 407(e) of title IV of the surface mining control and reclamation act of 1977 and accept, receive, and administer grants, gifts, loans, or other funds made available from any other source for the purposes of this part.

(*l*) To take those steps necessary to ensure that the state may participate to the fullest extent practicable in the abandoned land program provided in title IV of the surface mining control and reclamation act of 1977.

(m) To take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in this state under the provisions of this part and the surface mining control and reclamation act of 1977, including, in the event the federal administrative agency disapproves this state's program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the surface mining control and reclamation act of 1977.

(n) To enter into contracts with other state agencies that have pertinent expertise to obtain the professional and technical services necessary to implement this part.

(o) To establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.

(p) To enter into cooperative agreements with the secretary of the United States department of the interior for the regulation of surface coal mining operations on federal land in accordance with the surface mining control and reclamation act of 1977.

(q) To perform any other duties and acts required by and provided for in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63507 Rules.

Sec. 63507. (1) The department shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this part.

(2) A rule promulgated or a permit issued by the department may differ in its terms and provisions as to particular permit conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary if the action taken is consistent with attainment of the general intent and purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63508 Information submitted to department, other state agency, or local unit of

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government as public record; confidential information; rules.

Sec. 63508. Except when confidentiality is provided in this part, information submitted to the department, other state agency, or local unit of government pursuant to this part shall be a public record as provided in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. Information that pertains only to the analysis of the chemical and physical properties of coal, excepting information regarding such mineral or elemental content that is potentially toxic in the environment, or information that pertains to the exact location of archeological sites shall be kept confidential and is not a public record. The department shall promulgate rules establishing a procedure to determine whether information that pertains only to the analysis of the chemical and physical properties of the coal shall be kept confidential.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 2

ABANDONED MINE RECLAMATION

324.63509 Participation in abandoned mines reclamation fund established by title IV of surface mining control and reclamation act of 1977; authorization; action; procedures.

Sec. 63509. The department is authorized to take all action necessary to ensure participation to the fullest extent practicable in the abandoned mines reclamation fund established by title IV of the surface mining control and reclamation act of 1977, and to function as the state's agency for that participation relative to coal mining. Pursuant to this part and title IV of the surface mining control and reclamation act of 1977, the department shall establish procedures for the designation of the land and water eligible for reclamation or abatement expenditures; for the submission of reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of this part and title IV of the surface mining control and reclamation act of 1977; and for the administration of all money received for abandoned mine reclamation or related purposes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63510 State abandoned mine reclamation fund; creation; administration; investment of money; use of interest and earnings; money deposited in fund; carrying over remaining money; expenditures.

Sec. 63510. (1) The state abandoned mine reclamation fund is created in the state treasury and shall be administered by the department. The state treasurer shall direct the investment of money in the fund. The interest and earnings of the fund shall be used exclusively for the purposes specified in subsection (4).

(2) The following money shall be deposited in the fund:

(a) All funds from the application fees imposed under subpart 3, the inspection and reclamation fees imposed under subpart 9, and the civil fines imposed under subpart 8.

(b) All funds made available to the department for the purposes specified in subsection (4) pursuant to title IV of the surface mining control and reclamation act of 1977.

(c) All funds which may be donated to the department for the purposes specified in subsection (4) by any person.

(3) Any money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes specified in subsection (4).

(4) Expenditure of money from the state abandoned mine reclamation fund shall be made as follows:

(a) Money that is deposited in the fund under subsection (2)(b) shall reflect the following priorities in the order stated:

(*i*) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

(*ii*) The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

(*iii*) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil; water, excluding channelization; woodland, fish, and wildlife; recreation resources; and agricultural productivity.

(*iv*) Research and demonstration projects relating to the development of surface mining reclamation and

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water quality control program methods and techniques.

(*v*) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

(*vi*) The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this part for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(b) Money that is deposited in the fund under subsection (2)(a) or (c) for any of the expenditures authorized in subdivision (a) and for any other purpose of this part including the cost of administering this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63511 Entry on private property by department; purposes; conditions; notice; money expended and benefits accruing to property chargeable against land; mitigating or offsetting claim in action by owner for damages; acquisition by department of land adversely affected by past coal mining practices; sale or transfer of acquired land suitable for development; rules; grant; public hearings.

Sec. 63511. (1) The department may, in the manner provided in this section, enter on private property for the purposes of conducting an investigation, inspection, study, or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(2) The department may enter on property as provided in subsection (3) if all of the following conditions exist:

(a) The land or water resources on the property have been adversely affected by past coal mining practices.

(b) The adverse effects to land or water resources on the property are at a stage where, in the public interest, action should be taken to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The department gives notice by certified mail, return receipt requested, to the record owner or owners of the property requesting permission to enter on the property.

(d) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily identifiable; or the owners of the property will not give permission, after receiving notice under subdivision (c), for the state or local unit of government to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(3) After giving notice by certified mail, return receipt requested, to the record owner or owners of the property; posting notice on the property; and advertising for 4 consecutive weeks in a newspaper of general circulation in the county in which the property is located, the department may enter on property adversely affected by the past coal mining practices and any other property necessary to have access to the property to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in an action brought by the owner of any interest in the property for damages by virtue of the entry. This subsection is not intended to create new rights of action or eliminate existing immunities.

(4) The department may acquire land by purchase, donation, or condemnation that is adversely affected by past coal mining practices if the department determines that acquisition of the land is in the public interest, is necessary to successful reclamation, and either subdivision (a) or (b) applies:

(a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Acquisition of coal refuse disposal sites and all coal refuse on the acquired land will serve the purposes of this section or is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(5) The price paid for land acquired pursuant to this section shall reflect the market value of the land taking into consideration its current use and its condition as adversely affected by past coal mining practices.

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(6) If land acquired pursuant to this section is considered suitable for agricultural, industrial, commercial, residential, or recreational development, the state may sell or transfer the land pursuant to rules promulgated by the department and procedures provided by law to ensure that the land is put to proper use consistent with the land use plans of local units of government. If a grant accepted pursuant to section 63506(k) is involved in the acquisition of the land to be sold, the land may be sold only when authorized by the secretary of the United States department of the interior. The department shall hold a public hearing in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, in the county or counties of the state in which land acquired pursuant to this section is located. The hearings shall afford local citizens and local units of government an opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63512 Itemizing money expended to complete project; filing statement of account and appraisal with county clerk; filing of lis pendens with statement of account and appraisal as lien on land; priority; amount; lien not to be filed against certain property; petition for hearing concerning amount of lien; appeal.

Sec. 63512. (1) Within 6 months after the completion of a project to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned property, the department shall itemize the money expended to complete the project and shall file an account of the money expended with the clerk of the county in which the property is located, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The filing of lis pendens with a copy of the statement of account and the appraisal constitutes a lien on the land second in priority only to a lien for delinquent property taxes placed on the property pursuant to section 40 of the general property tax act, Act No. 206 of the Public Acts of 1893, being section 211.40 of the Michigan Compiled Laws. The lien shall not exceed the amount of the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. A lien shall not be filed against the property of a person who was a record owner of the surface rights in the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(2) An affected landowner may petition the department within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal shall be conducted under chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63513 Expenditures from state abandoned mine reclamation fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects; conditions; entry on land where emergency exists as exercise of police power; warrant; action for damages; intent of subsection (2).

Sec. 63513. (1) The department may expend money from the state abandoned mine reclamation fund created by section 63510 for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the department finds that all the following conditions exist:

(a) An emergency exists constituting a danger to the public health, safety, or general welfare.

(b) No other person, state agency, or local unit of government has commenced actions or operations on the eligible land to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(2) The department may enter on any land where the emergency exists and any other land necessary to have access to the land where the emergency exists to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare, if the department has obtained a warrant

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authorizing that entry. Entry pursuant to this subsection is an exercise of the police power and not an act of condemnation or trespass. If the owner of any interest in the property brings an action for damages because of an entry made pursuant to this subsection, the money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in that action. This subsection does not create new rights of action or eliminate existing immunities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 3
PERMITS

324.63514 Conduct of surface coal mining operation without permit.

Sec. 63514. A person shall not conduct a surface coal mining operation in this state except as authorized by a permit issued by the department pursuant to part 13.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63515 Term of permits; continuation of plan by successor in interest; termination of permit; extensions of time to commence operations; conditions.

Sec. 63515. (1) Permits issued pursuant to this part are for a term not to exceed 3 years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and to open the operation, and if the application is full and complete for the specified longer term, the department may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage pursuant to subpart 5 as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(2) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within 2 years after commencement of the period for which the permit is issued. However, upon application by the permittee, the department may grant reasonable extensions of time, not to exceed 6 months each, to commence a surface coal mining operation if the permittee demonstrates either of the following:

(a) The extension is necessary because the commencement of the operation has been enjoined by a court of competent jurisdiction.

(b) The extension is necessary because of conditions beyond the control and without the fault or negligence of the permittee.

For a coal lease issued under chapter 85, 41 Stat. 437, 30 U.S.C. 181 to 184, 185 to 188, 189 to 191, 192, 193, 195, 201, 202 to 203, 205 to 208-2, 209, 211 to 214, 223, 224 to 226, 226-2 to 226-3, 228 to 229a, 241, 251, and 261 to 263, commonly known as the mineral lands leasing act of 1920, the department shall not grant extensions of time that extend beyond the period allowed for diligent development under section 7 of chapter 85, 41 Stat. 439, commonly known as the mineral lands leasing act of 1920, 30 U.S.C. 207.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63516 Permit application; contents; submission of certificate of public liability insurance policy to department; policy provisions; maintenance of policy in full force and effect.

Sec. 63516. (1) The permit application shall be submitted to the department and shall contain all of the following:

(a) The names and addresses of the following persons:

(*i*) The applicant.

(*ii*) All legal owners of record of the property, surface or mineral, to be mined.

(*iii*) The holders of record of any leasehold interest in the property to be mined.

(*iv*) The purchasers of record under a land contract of the property to be mined.

(*v*) The operator if the operator is a person other than the applicant.

(*vi*) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar

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to a director, of the applicant; the name and address of any person owning of record 10% or more of any class of voting stock of the applicant; and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the 5-year period preceding the date of submission of the application.

(b) The names and addresses of the owners of record of all surface and subsurface areas adjacent to the permit area.

(c) A statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application.

(d) Information concerning ownership and management of the applicant or operator required by the department by rule.

(e) A statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has ever held a federal, state, or local mining permit which in the 5-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.

(f) A copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site for 4 consecutive weeks, that indicates the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation may be readily located, and a statement that the application is available for public inspection at the office of the county clerk of each county in which the proposed permit area is located.

(g) A description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used in the mining operation.

(h) The anticipated or actual starting and termination dates of each phase of the mining operation and the number of acres of land to be affected by each phase of the mining operation.

(i) An accurate map or plan, to scale determined by the department by rule, filed by the applicant with the department clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his or her legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.

(j) Identification of the watershed and location of the surface streams, tributaries, groundwaters, and county and intercounty drains into which surface, pit drainage, or other waters from the mining operation will be discharged.

(k) A determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime; quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability. However, the determination of hydrologic consequences is not required until existing hydrologic information regarding the general area prior to mining is made available from the appropriate federal or state agency, except that the permit shall not be approved until the information is available and is incorporated into the permit application.

(*l*) The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, average direction and velocity of prevailing winds, and seasonal temperature ranges.

(m) A statement of the result of test borings or core samplings from the proposed permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic-forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the department with respect to any particular application by a written determination by the department that the information is unnecessary.

(n) A soil survey made or obtained according to standards established by the department of agriculture in order to confirm the exact location of agricultural land, if any, within the proposed permit area. The soil survey shall include the exact location of agricultural land enrolled under part 361.

(o) Accurate maps to scale determined by the department by rule clearly showing both of the following:

(*i*) The land to be affected as of the date of application.

(*ii*) All types of information set forth on topographical maps of the United States geological survey of a scale of 1:24,000 or 1:25,000 or larger, including all human-made features and significant known

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archeological sites existing on the date of application.

The map or plan shall, among other things specified by the department, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas adjacent to the permit area, and the location of all buildings within 1,000 feet of the permit area.

(p) Cross-section maps or plans of the land to be affected to a scale determined by the department by rule, including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan; and other information required by the department by rule that is consistent with the purposes of this part.

(q) A reclamation plan that meets the requirements of this part and the requirements of the zoning ordinances enacted by a local unit of government.

(r) A determination of the impact on historic preservation concerns including all of the following:

(*i*) A statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities due to the potential effect of mining on historic resources or whether the area is under study for a designation of unsuitability in an administrative proceeding.

(*ii*) A description of the historic resources located within the proposed permit area and adjacent areas. The description shall be based on available information, including data in the possession of state and local archeological, historical, and cultural preservation agencies.

(*iii*) A map showing the boundaries of each historic resource within the permit area and adjacent areas.

(*iv*) An evaluation of the potential adverse effect that the proposed surface mining operation will have on historic resources within the proposed permit area and adjacent areas.

(*v*) A statement indicating whether there are feasible and prudent alternatives to the potential adverse effects on historic resources.

(*vi*) A statement of the measures proposed to prevent, minimize, or mitigate potential adverse effects upon historic resources located within the proposed permit area, including a proposal for recording or salvaging the resources if adverse effects cannot be avoided.

The determination required by this subdivision shall include the name, address, and employment position of each person that the applicant consulted in collecting information on historic resources.

(s) An agricultural impact statement that includes all the following:

(*i*) The location and boundaries of the proposed mining operation.

(*ii*) The number of acres to be affected by the proposed mining operation.

(*iii*) The nature and type of agricultural operations to be affected by the proposed mining operation.

(*iv*) The nature and extent of the effect of the proposed mining operation on the agricultural operations, including the number and types of buildings and other facilities that will be affected by the mining operation.

(*v*) The anticipated future effect of the proposed mining operation on adjacent agricultural land that will not be immediately affected by the proposed mining operation.

(*vi*) The anticipated amount of time, in years and months, during which the area affected by the proposed mining operation will be unsuitable for normal agricultural production.

(*vii*) The anticipated amount of time, in years and months, required to restore the area affected by the proposed mining operation to the level of productivity it had before it was affected by the mining operation.

(*viii*) The impact of the proposed mining operation on agriculture generally.

(t) Other data and maps as the department may require by rule that are consistent with the purposes of this part.

(2) An applicant for a surface mining and reclamation permit shall submit to the department as part of its application a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which the permit is sought. The policy shall provide for personal injury and property damage protection

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consistent with the standards established in section 63528 in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63517 Renewal of permit.

Sec. 63517. (1) A permit issued pursuant to this part includes the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and except as provided in subsection (2) the renewal shall be issued.

(2) A permit shall not be renewed if, after a hearing conducted pursuant to section 63523, it is established and the department makes written findings that any of the following conditions exist:

(a) The terms and conditions of the existing permit are not being satisfactorily met by the permittee.

(b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this part and the approved state plan or federal program pursuant to the surface coal mining and reclamation act of 1977.

(c) The renewal requested substantially jeopardizes the operator's continuing responsibility for reclamation established under this part on existing permit areas.

(d) The operator has not provided evidence that the performance bond in effect for the operation or any additional bond the department might require pursuant to section 63529 will continue in full force and effect for the renewal requested in the application.

(e) Additional revised or updated information required by the department by rule has not been provided by the permittee.

(3) Before the renewal of a permit, the department shall provide notice to the appropriate persons, local units of government, and interested parties.

(4) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application that addresses new land areas is subject to the full standards applicable to a new application under this part.

(5) A permit renewal shall be for a term not to exceed the period of the existing permit established by this part. Application for permit renewal shall be made at least 120 days before the expiration of the existing permit.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63518 Reclamation plan; contents.

Sec. 63518. The reclamation plan required to be submitted pursuant to this part as part of a permit application shall include details necessary to demonstrate that reclamation required by this part can be accomplished, and shall include all of the following:

(a) Identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought.

(b) The condition of the land to be covered by the permit prior to any surface coal mining, including:

(*i*) The uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining.

(*ii*) The capability of the land, prior to any surface coal mining, to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to section 63516(1)(n).

(*iii*) The productivity of the land prior to mining, based on the average yield of food, fiber, forage, or wood products consistent with productivity of similar lands in this state under best management practices.

(c) The use proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to applicable land use policies and plans. However, if the use made of the land before mining is agricultural and the use proposed to be made of the land following reclamation is other than that agricultural use, the permit shall not be approved by the department without the approval of the legislative body of each local unit of

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government in which land to be reclaimed is located.

(d) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use.

(e) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment to be used. A plan for the control of surface water drainage and of water accumulation; a plan, if appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation; and a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 63527(2)(g) for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in that section.

(f) The actions to be taken to maximize the utilization and conservation of the solid fuel resource being recovered so that mining and any activities related to mining of the land in the future can be minimized.

(g) An estimated timetable for the accomplishment of each major step in the reclamation plan.

(h) The actions to be taken to make the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs of local units of government.

(i) The actions to be taken to comply with applicable air and water quality laws of this state or the United States, rules and regulations of this state or the United States, or local ordinances and with applicable health and safety standards.

(j) The action to be taken to develop the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions.

(k) The results of test borings that the applicant has made at the proposed permit area or other equivalent information and data in a form satisfactory to the department, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment.

(*l*) An itemized list of land, interests in land, or options on those interests held by the applicant or pending bids by the applicant on interests in land adjacent to the proposed permit area.

(m) A detailed description of the actions to be taken during the mining and reclamation process to assure the protection of all of the following:

(*i*) The quality of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process and the rights of present users to that water.

(*ii*) The quantity of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.63519 Blasting plan; submission by permit applicant.

Sec. 63519. Each applicant for a surface coal mining and reclamation permit shall submit to the department as a part of its application a blasting plan that outlines the procedures and standards by which the operator will meet the requirements of section 63527(2)(o).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63520 Filing copy of application with county and township clerks; exception; information obtained by department available to public with county clerk; confidentiality.

Sec. 63520. (1) An applicant for a surface coal mining and reclamation permit shall file a copy of the application with the county clerk of each county in which the mining is proposed to occur and with the township clerk of each township in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam.

(2) Except when confidentiality is provided for in this part, a record, report, inspection materials, or other information obtained by the department shall be available to the public with the county clerk of each county in which the mining is proposed to occur. The department shall transmit a record, report, inspection material, or other information to each county clerk within 10 days after it is received by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.63521 Application fee.

Sec. 63521. An application for a surface coal mining and reclamation permit shall be accompanied by an initial application fee. The initial application fee is $100.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63522 Determination of probable hydrologic consequences and statement of boring or sampling results; performance; cost.

Sec. 63522. If the department finds that the probable total annual production at all locations of a surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by section 63516, on the written request of the operator, shall be performed by a qualified governmental agency or private consultant designated by the department, and the cost of the preparation of the determination and statement shall be assumed by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63523 Application for permit or renewal; advertisement of ownership, location, and boundaries of land affected; notification of local units of government; written comments; notice to department of history, arts, and libraries; determination; filing objections to proposed application for permit; request for hearing; action by department.

Sec. 63523. (1) When an application for a surface coal mining and reclamation permit or renewal of an existing permit is submitted, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation for 4 consecutive weeks. The department shall notify local units of government in the vicinity of the proposed mining and reclamation area of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse or township office in which a copy of the proposed surface coal mining and reclamation plan may be inspected. A local unit of government may submit written comments within a period established by the department on the mining applications with respect to the effect of the operation proposed by the applicant on the environment that is within its area of responsibility. The comments shall immediately be transmitted to the applicant by the department and shall be made available to the public at the same location as the mining application.

(2) In addition to the notice required in subsection (1), the department shall notify the department of history, arts, and libraries of the operator's intention to conduct a surface mining operation and shall provide the department of history, arts, and libraries with a copy of the permit application. Based on the information required pursuant to section 63516(1)(r), the department of history, arts, and libraries shall determine whether or not the proposed surface mining operation will adversely affect a historic resource. The department of history, arts, and libraries may file written objection to the proposed surface mining operation pursuant to subsection (3).

(3) A person having an interest that is or may be adversely affected by the operation proposed in the application and any federal or state government agency or local unit of government is entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the department not later than 30 days after the last publication of the notice required by subsection (1). Those objections shall immediately be transmitted to the applicant by the department and shall be made available to the public.

(4) Within 45 days after the last publication of the notice provided in subsection (1), the applicant or any person with an interest that is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the expiration of the time allowed for submitting the request.

(5) An action taken by the department with respect to a permit application shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

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For transfer of powers and duties of the state historic preservation office relating to the identification, certification, and preservation of historical sites from the Michigan state housing development authority to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 451

Popular name: NREPA

324.63524 Application for permit or revision of permit; notice; burden; requirements for approval; filing schedule listing notices of violations; issuance of permit; mining on agricultural land; consultation; finding.

Sec. 63524. (1) The applicant for a permit or revision of a permit has the burden of establishing that his or her application is in compliance with all the requirements of this part. Within 3 days after the granting of a permit, but before the permit is issued, the department shall notify the county clerk in each county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) An application for a permit or revision of a permit shall not be approved unless the department finds, in writing, that all the following requirements have been met:

(a) The application is accurate and complete and complies with all of the requirements of this part.

(b) The applicant has demonstrated that reclamation as required by this part can be accomplished under the reclamation plan contained in the application.

(c) An assessment of the probable cumulative impact of all anticipated surface coal mining inside and outside the permit area on the hydrologic balance, including quantitative and qualitative analyses, has been made by the department, and the proposed operation has been designed to prevent material damage to the hydrologic balance inside and outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this part and is not within an area under study for this designation in an administrative proceeding commenced pursuant to this part, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, the applicant has made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(e) If the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the department either the written consent of the surface owner to the extraction of coal by surface mining methods or a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods. However, if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law, except that this part does not authorize the department to adjudicate property rights disputes.

(f) If the department of history, arts, and libraries determines that the proposed surface mining operation will adversely affect a historic resource, the application is approved jointly by the department, by the federal, state, or local agency with jurisdiction over the historic resource, and by the department of history, arts, and libraries.

(3) The applicant shall file, with the application, a schedule listing all notices of violations of this part or other law of this state and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the 3-year period prior to the date of application. The schedule shall include the final resolution of notice of the violation. If the schedule or other information available to the department indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this part or other laws referred to in this subsection, the permit shall not be issued until the applicant submits affidavits that the violation has been corrected or is in the process of being corrected to the satisfaction of the department or the agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant. A permit shall not be issued to an applicant after a finding by the department, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of violations of this part of such nature and duration with such resulting pollution, impairment, or destruction to the environment as to indicate an intent not to comply with this part.

(4) If the area proposed to be mined contains agricultural land, the department shall consult with the director of the department of agriculture and the secretary of the United States department of agriculture and shall not grant a permit to mine on agricultural land unless the department finds in writing that the operator has the technological capability to restore the mined area and any other areas impacted by the surface coal mining operation within a reasonable time to equivalent or higher levels of yield as nonmined agricultural land in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of this part.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of powers and duties of the state historic preservation office relating to the identification, certification, and preservation of historical sites from the Michigan state housing development authority to the Michigan strategic fund, see E.R.O. No. 2019-3, compiled at MCL 125.1998.

Popular name: Act 451

Popular name: NREPA

324.63525 Application for revision of permit; standards; transfer, assignment, or sale of rights; review of outstanding permits; revision or modification of permit provisions; conducting action regarding permit pursuant to MCL 24.271 to 24.292.

Sec. 63525. (1) During the term of a permit, the permittee may submit to the department an application for a revision of the permit, including a revised reclamation plan. An application for a revision of a permit shall not be approved unless the department finds that reclamation as required by this part can be accomplished under the revised reclamation plan. An application for a revision is subject to part 13, except that the department shall establish standards for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

(2) A transfer, assignment, or sale of the rights granted under a permit issued pursuant to this part shall not be made without the written approval of the department.

(3) The department shall, within a time limit prescribed by rule, review outstanding permits. The department may require revision or modification of the permit provisions during the terms of the permit based on a change in technology or a change in circumstances.

(4) All action taken by the department under this section regarding the granting, modification, denial, or revision of a permit shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties of department of history, arts, and libraries or the Michigan historical center relating to the identification, certification, and preservation of historical sites to the Michigan state housing development authority, see E.R.O. No. 2009-26, compiled at MCL 399.752.

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Popular name: Act 451

Popular name: NREPA

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324.63526 Construction of subpart.

Sec. 63526. This subpart does not exempt a permittee from obtaining any other permit, license, or permission to engage in any activity regulated by this part that is required by any other law of this state, any rule promulgated under a law of this state, or a zoning ordinance enacted by a local unit of government.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 4
ENVIRONMENTAL PERFORMANCE STANDARDS

324.63527 Performance standards.

Sec. 63527. (1) A permit issued under this part to conduct surface coal mining operations shall require that the operations meet the performance standards provided in subsection (2).

(2) Except as otherwise provided in this part, all surface coal mining and reclamation operations shall require the operator to do all of the following:

(a) Conduct surface coal mining operations in a manner that maximizes the utilization and conservation of the solid fuel resource being recovered to prevent reaffecting the land in the future through subsequent surface coal mining.

(b) Restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses if priority is given to restoration of agricultural land to agricultural uses, if that use does not present an actual or probable hazard to public health or safety or pose an

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actual or probable threat of water diminution or pollution, and if the declared proposed land use in the permit application following reclamation is not inconsistent with applicable land use policies and plans, does not involve unreasonable delay in implementation, and is and is not in violation of a law of this state or the United States or a local ordinance.

(c) Backfill; compact, where advisable to ensure stability or to prevent leaching of toxic materials; and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this part. However, for surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits is large relative to the volume of the overburden and if the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In addition, in surface coal mining, where the volume of overburden is large relative to the thickness of the coal deposit and if the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In all cases, the overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with a plan for revegetation developed in cooperation with each soil conservation district affected by the surface coal mining operation and the requirements of this part.

(d) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operation and effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer and replace it on the backfill area. Except that, if the topsoil is not utilized immediately, the operator shall be required to segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plant or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic materials, and is in a usable condition for sustaining vegetation when restored during reclamation. However, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements imposed in this subpart and subpart 3, or if other strata can be shown to be more suitable for vegetation requirements imposed in this subpart and subpart 3, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation.

(f) Restore the topsoil or the available subsoil that is best able to support vegetation.

(g) If agricultural land is to be mined and reclaimed, the specifications for soil removal, storage, replacement, and reconstruction shall be established by the department of agriculture in consultation with the secretary of the United States department of agriculture, and the operator is, at a minimum, required to do all of the following:

(*i*) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity. If the A horizon of the natural soil is not utilized immediately, it shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(*ii*) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If the B and C horizons of the natural soil are not utilized immediately, they shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(*iii*) Replace and regrade the root zone material described in subparagraph (*ii*) with proper compaction and uniform depth over the regraded spoil material.

(*iv*) Redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (*i*).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent

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impoundments of water on mining sites as part of reclamation activities but only when all of the following are adequately demonstrated:

(*i*) The size of the impoundment is adequate for its intended purposes.

(*ii*) The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666.

(*iii*) The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established pursuant to applicable federal and state law.

(*iv*) The level of water will be stable.

(*v*) Final grading will provide safety and access for proposed water users.

(*vi*) The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(*vii*) The impoundment is consistent with the laws of this state or the United States; rules and regulations of this state or the United States; or local ordinance.

(i) Conduct an augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage, except where the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety. The department may prohibit augering under standards established by rule if necessary to maximize the utilization, recoverability, or conservation of solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(*i*) Avoiding acid or other toxic mine drainage by preventing or removing water from contact with toxic-producing deposits; treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or casing, sealing, or otherwise managing bore holes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater.

(*ii*) Conducting surface coal mining operations to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, except that contributions shall not be in excess of requirements set by applicable state or federal law.

(*iii*) Constructing any siltation structures pursuant to subparagraph (*ii*) prior to commencement of surface coal mining operations. A siltation structure shall be certified by a qualified registered engineer and shall be constructed as designed and approved in the reclamation plan.

(*iv*) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site in a manner approved by the department.

(*v*) Restoring recharge capacity of the mined area to approximate premining conditions.

(*vi*) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(*vii*) Other actions as the department may prescribe.

(k) Stabilize all waste piles in designated areas with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavation through construction in compacted layers including the use of incombustible and impervious materials, if necessary, and assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this part.

(*l*) Refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent breakthroughs and to protect the health and safety of miners and other persons. However, the department shall allow an operator to mine near, through, or partially through an abandoned underground mine or closer than 500 feet of an active underground mine if the nature, timing, and sequencing of specific surface mine activities with specific underground mine activities are jointly approved by the federal and state agencies and local units of government concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to rules promulgated by the department, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as a dam or embankment.

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(n) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried, compacted, or otherwise disposed of to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion of those materials.

(o) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the department. Rules promulgated by the department shall require the permittee to do all of the following:

(*i*) Publish the schedule of the planned blasting in a newspaper of general circulation in the vicinity, mailing a copy of the proposed blasting schedule to every resident living within 1/2 mile of the proposed blasting site, and providing daily notice in the vicinity prior to any blasting.

(*ii*) Maintain for a period of at least 3 years and make available for public inspection on request during normal business hours a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.

(*iii*) Limit the type of explosives and detonating equipment and the size, timing, and frequency of blasts based upon the physical conditions of the site to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area.

(*iv*) Have all blasting operations conducted pursuant to this part conducted by trained and competent individuals certified by the department.

(*v*) Require the applicant or permittee to conduct a preblasting survey of a structure or dwelling upon the request of a resident or owner of a structure or dwelling within 1/2 mile of the permit area and to submit the survey to the department and a copy of the survey to the resident or owner making the request. The area covered by the survey shall be determined by the department and the survey shall include provisions and shall be conducted pursuant to standards established by rules promulgated by the department.

(p) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. However, if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the department may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation if all the following conditions are met:

(*i*) The department finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.

(B) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface.

(C) The plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and permits necessary for the underground mining operations have been issued by the appropriate authority.

(D) The areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations.

(E) Significant adverse environmental damage, either on site or off site, will not result from the delay in completion of reclamation as required by this part.

(F) Provisions for the off-site storage of spoil will comply with subdivision (v).

(*ii*) The department has promulgated specific rules to govern the granting of the variances in accordance with this subsection.

(*iii*) The variance granted will be reviewed annually by the department.

(*iv*) The liability under the bond filed by the applicant with the department pursuant to section 63529(2) is for the duration of the underground mining operations and until the requirements of sections 63527(2) and 63528 have been fully complied with.

(q) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion, siltation, pollution of water, and damage to fish or wildlife, the habitat of fish or wildlife, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to significantly alter or degrade the normal flow of water.

(s) Establish on regraded areas and all other land affected, in cooperation with each soil conservation district affected by the surface coal mining operation, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in the extent of cover to the natural vegetation of the area. However, introduced species may be used in the revegetation process where desirable and necessary to achieve the approved

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postmining land use plan.

(t) Assume the responsibility for successful revegetation as required by subdivision (s) for a period of 5 years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with subdivision (s). However, in those areas or regions of the state where the annual average precipitation is 26 inches or less, the operator's assumption of responsibility and liability will extend for a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work. If the department approves long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation commences at the date of initial planting for the long-term intensive agricultural postmining land use, except that if the department issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan, the department may grant exception to the provisions of subdivision (s).

(u) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(*i*) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way as to assure mass stability and to prevent mass movement.

(*ii*) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placement.

(*iii*) Appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement.

(*iv*) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent filtration of the water into the spoil pile.

(*v*) If placed on a slope, the spoil is placed on the most moderate slope and is placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement.

(*vi*) If the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(*vii*) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(*viii*) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards.

(*ix*) All other provisions of this part are met.

(w) Meet other criteria necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and, if practicable, achieve enhancement of those resources.

(y) Provide for an undisturbed natural barrier to be retained in place as a barrier to slides and erosion beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the department determines necessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 5
BONDING

324.63528 Certificate of public liability insurance; maintenance of policy in full force and effect; rules.

Sec. 63528. (1) An applicant for a permit shall submit to the department, as part of each permit application, a certificate that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

(2) The department shall promulgate rules establishing standards for adequate public liability insurance coverage consistent with section 63516(2).

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63529 Performance bond; form, coverage, and amount; liability; execution by applicant and corporate surety; election to deposit cash or assets as security; acceptance of bond without separate surety; adjustment of bond or deposit amount and terms of acceptance; rules.

Sec. 63529. (1) After a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the department, on a form prescribed and furnished by the department, a bond for performance payable to the state and conditioned on faithful performance of all requirements of this part and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. Before succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall be determined by the department and shall reflect the reclamation requirements of the approved permit and the probable difficulty of the reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the reclamation had to be performed by the department in the event of forfeiture, and the bond for the entire area under 1 permit shall not be less than $10,000.00.

(2) Liability under the bond is for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. Except as provided in subsection (3), the bond shall be executed by the applicant and a corporate surety licensed to do business in this state.

(3) The applicant may elect to deposit cash or the following types of assets as security for the performance of the applicant's obligation under the bond:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Negotiable certificates of deposit of a state or national bank.

(4) The cash deposit or market value of the assets shall be equal to or greater than the amount of the bond required for the bonded area.

(5) The department may accept the bond of the applicant without separate surety if the applicant demonstrates to the satisfaction of the department the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to bond the amount.

(6) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the department from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(7) The department shall promulgate rules establishing standards for adequate bond coverage consistent with this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63530 Total or partial release of performance bond or deposit; application; notice; publication; contents; inspection and evaluation of reclamation work; notification of decision; reclamation schedule; disapproval of application; notifying county clerk of filed application; written objections; public hearings; notice.

Sec. 63530. (1) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after submission of an application for bond or deposit release to the department, the permittee shall submit a copy of the notice to be published by the department for 4 consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.

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The notice is part of the bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjacent property owners and local units of government notifying them of the application to seek release from the bond.

(2) Within 30 days after the applicant complies with subsection (1), the department shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit based on the criteria in subsection (3) within 60 days from the filing of the request, if a public hearing is not held, and, if a public hearing is held, within 30 days after the hearing.

(3) The department may release the bond or deposit in whole or in part if the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this part according to the following schedule:

(a) If the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60% of the bond or collateral for the applicable permit area.

(b) If revegetation has been established on the regraded mined lands in accordance with the reclamation plan, the department may release an additional portion of the bond or deposit. In determining the amount of the bond or deposit to be released after successful revegetation has been established, the department shall retain the amount of the bond or deposit that is sufficient for a third party to establish revegetation and for the period specified for permittee responsibility in section 63527(2)(t). No part of the bond or deposit shall be released under this subdivision if the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of section 63527(2)(j) or until soil productivity for agricultural land has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 63516(1)(n). If a silt dam is to be retained as a permanent impoundment pursuant to section 63527(2)(h), the portion of bond may be released under this subdivision if provisions for sound future maintenance have been made with the department.

(c) If the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in section 63527(2)(t). However, at least 25% of the bond or deposit shall be retained by the department until all reclamation requirements of this part are fully met.

(4) If the department disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the permittee, in writing, stating the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing opportunity for a public hearing.

(5) When an application for total or partial bond or deposit release is filed with the department, the department shall notify the county clerk of each county in which the surface coal mining operation is located by certified mail within 10 days after the application for the release of all or a portion of the bond or deposit is filed.

(6) A person with a legal interest or other interest that might be adversely affected by release of the bond or deposit or a federal or state agency or local unit of government is entitled to file written objections to the proposed release from bond or deposit with the department within 30 days after the last publication of the notice provided in subsection (1). If written objections are filed, the department shall conduct a public hearing on the objections and inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation within 30 days. Notice of the date, time, and location of the public hearings shall be published by the department in a newspaper of general circulation in the locality for 2 consecutive weeks.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63531 Coal exploration operations; rules; notice of intent to explore; violation of section or rules; penalties; maximum amount of coal removable pursuant to exploration permit.

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Sec. 63531. (1) Coal exploration operations that significantly disturb the natural land surface shall be conducted in accordance with rules promulgated by the department. The rules shall include, at a minimum, the requirement that prior to conducting the exploration a person must file with the department notice of intent to explore. The notice of the intent to explore shall include a description of the exploration area; the period of proposed exploration; provisions for reclamation in accordance with the performance standards in section 63527 of all lands disturbed in exploration, including excavations, roads, and drill holes; and the removal of necessary facilities and equipment.

(2) A person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules promulgated under this section is subject to the penalties provided in section 63537.

(3) An operator shall not remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 6
UNDERGROUND MINING

324.63532 Surface effects of underground mining; rules.

Sec. 63532. The department shall promulgate rules applicable to the surface effects of underground mining that are consistent with the requirements of the surface mining control and reclamation act of 1977, and regulations adopted pursuant to that act by the secretary of interior of the United States relative to coal mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63533 Permit requirements; suspension of underground coal mining; imminent danger; applicability of subparts 3, 4, 5, 7, and 8 to surface operations and surface impacts incident to underground coal mine; modifications; rules.

Sec. 63533. (1) A permit issued pursuant to this part relating to underground coal mining shall require the operator to do all of the following:

(a) Adopt measures consistent with technology currently available to prevent subsidence causing material damage to the extent technologically and economically feasible; maximize mine stability; and maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. This subsection does not prohibit the standard method of room and pillar mining.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials if necessary; assure that the leachate will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law; and assure that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to this section.

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments.

(f) Establish, on regraded areas and all other lands affected, a diverse and permanent vegetative cover that is capable of self-regeneration and plant succession and that is at least equal in extent of cover to the natural vegetation of the area.

(g) Protect off-site areas from damages that may result from underground mining operations.

(h) Eliminate fire hazards and eliminate conditions that constitute a hazard to health and safety of the

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public.

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity of water in surface groundwater systems both during and after coal mining operations and during reclamation by meeting both of the following requirements:

(*i*) Avoiding acid or other toxic mine drainage by such measures as the following:

(A) Preventing or removing water from contact with toxic producing deposits.

(B) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses.

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering surface and groundwaters.

(*ii*) Conducting surface coal mining operations so as to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall such contributions be in excess of requirements set by applicable state or federal law; and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 63527 for those effects that result from surface coal mining operations, except that the department shall make modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground coal mining.

(k) To the extent possible using technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable.

(*l*) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(2) To protect the stability of the land, the department shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the department finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(3) Subparts 3, 4, 5, 7, and 8 are applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The department shall promulgate rules to make those modifications.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 7

INSPECTIONS AND MONITORING

324.63534 Conducting inspections and requiring monitoring and reporting of surface coal mining and reclamation operations; taking necessary actions to administer part and meet program requirements; right of entry and access to records; notice and report of violation; removal or disturbance of strata serving as aquifer; specifications; rules; inspection requirements.

Sec. 63534. (1) The department shall conduct inspections and require monitoring and reporting of surface coal mining and reclamation operations, and shall take all actions necessary to administer, enforce, and evaluate the administration of this part and to meet the state program requirements of the surface mining control and reclamation act of 1977, and for those purposes, the department or an authorized representative of the department, without advance notice and on presentation of appropriate credentials, has a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this part or the rules promulgated under this part.

(2) Each inspector, on detection of each alleged violation of any requirement of this part, shall give written

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notice to the operator of the violation and shall report the violation, in writing, to the department. The notice of violation shall include a warning that the violation may result in a fine or penalty under subpart 8.

(3) If a surface coal mining and reclamation operation removes or disturbs strata that serve as an aquifer that significantly ensures the hydrologic balance of water use either on or off the mining site, the department shall specify:

(a) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence.

(b) Monitoring sites to record level, amount, and samples of groundwater and aquifers that are affected or potentially affected by the mining and also directly below the lowermost, deepest coal seam to be mined.

(c) Records of well logs and boreholes data to be maintained.

(d) Monitoring sites to record precipitation.

(4) The department shall promulgate rules that provide for informing the operator of an alleged violation detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this part and the rules promulgated under this part.

(5) Inspections by the department shall comply with all of the following requirements:

(a) Occur on an irregular basis averaging not less than 1 partial inspection per month and 1 complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit.

(b) Occur without prior notice to the permittee or agents or employees of the permittee except for necessary on-site meetings with the permittee.

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63535 Sign.

Sec. 63535. Each permittee shall conspicuously maintain at the entrances or visible areas of access to the surface coal mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63536 Information obtained under article available to public with county clerk.

Sec. 63536. Copies of any records, reports, inspection materials, or information obtained under this subpart by the department shall be made available to the public with the county clerk of each county in the area of mining within 10 days after they are received by the department so that they are conveniently available to residents in the areas of mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

SUBPART 8
FINES AND PENALTIES

324.63537 Fines and imprisonment.

Sec. 63537. (1) The department may impose an administrative fine against a permittee or other person who violates a permit condition or a provision of this part. If the department issues a cease and desist order with respect to a violation, an administrative fine shall be assessed. An administrative fine shall not exceed $5,000.00 for each violation, except that each day a violation continues may be considered a separate violation. In determining the amount of the administrative fine, the department shall consider the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any pollution, impairment, or destruction to the environment and any hazard to the health or safety of the public; whether the permittee or person was indifferent or lacked diligence or reasonable care; and the demonstrated good faith of the permittee or person charged in attempting to achieve compliance after notification of the violation.

(2) An administrative fine shall be assessed only after the person charged with a violation described under

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subsection (1) has been given an opportunity for a public hearing. A hearing conducted under this section shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The department shall inform the permittee and any other person charged within 30 days after the issuance of a notice or order charging that a violation of this part has occurred of the proposed amount of the administrative fine. The person charged with the violation then has 30 days to pay the proposed fine in full or, if the person wishes to contest either the amount of the fine or the fact of the violation, forward the proposed amount to the department for placement in an escrow account. If, through administrative or judicial review of the proposed fine, it is determined that a violation did not occur or that the amount of the fine should be reduced, the department, within 30 days, shall remit the appropriate amount to the person with interest at 12% per year. Failure to forward the money to the department within 30 days after the issuance of the notice or order will result in a waiver of all legal rights to contest the violation or the amount of the fine.

(4) An administrative fine imposed under this part may be recovered in a civil action brought by the attorney general at the request of the department.

(5) A person who willfully and knowingly violates a condition of a permit issued pursuant to this part or fails or refuses to comply with an order issued under this part, or an order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2) or section 63541, shall be punished by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both.

(6) A permittee or person who fails to correct a violation for which a notice or order has been issued under subsection (1) within the period permitted for its correction, which period shall not end until the entry of a final order by the department, in the case of any review proceedings initiated by the permittee in which the department orders the suspension of the abatement requirements of the notice or order after determining that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil fine of not less than $750.00 for each day during which the failure or violation continues.

(7) If a corporate permittee or person violates a condition of a permit issued pursuant to a state program under section 63524 or fails or refuses to comply with any order issued under section 63539, or any order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2), then a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal is subject to the same fines and imprisonment that may be imposed on a person under subsections (1) and (5).

(8) A person who knowingly makes a false statement, representation, or certification, or who knowingly fails to make a statement, representation, or certification in an application, record, report, or other document filed or required to be maintained pursuant to a state program or this part or any order of decision issued by the department under this part, shall be punished by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63538 Commencement of civil action; notice of intent to commence civil action; rule; notice of violation; effect of action by state; intervention by department or federal regulatory agency; costs of litigation; filing of security if temporary restraining order or preliminary injunction sought; construction of section.

Sec. 63538. (1) Except as provided in subsections (2) and (3), a person having an interest that is or may be adversely affected by an operation not in compliance with a permit or this part may commence a civil action in circuit court or federal district court, whichever has jurisdiction, on his or her own behalf to compel compliance against any of the following:

(a) The department or other state agency if there is alleged a failure of the department or other state agency to perform any act or duty under this part that is not discretionary with the department or other state regulatory authority.

(b) Any governmental instrumentality or agency of the United States that is alleged to be in violation of this part or of any rule, order, or permit issued pursuant to this part or any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this part.

(2) An action shall not be commenced under subsection (1)(a) until 20 days after the person intending to

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bring the action has given notice in writing of the intent to commence a civil action to the department or other state regulatory authority in the manner as the department shall by rule prescribe, except that the action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) An action shall not be commenced under subsection (1)(b) until 20 days after the person intending to bring the action has given notice in writing of the violation to the department and to any alleged violator. However, if this state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with the provisions of this part, or any rule, order, or permit issued pursuant to this part, an action shall not be commenced pursuant to subsection (1)(b). In a civil action brought under this section, the department or federal regulatory agency, if not a party, may intervene as a matter of right.

(4) The circuit court, in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees to a party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(5) This section shall not be construed to restrict any right that a person or class of persons has under any statute or common law to seek enforcement of this part and the rules promulgated under this part, or to seek any other relief, including relief against the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63539 Notices and orders; application for review; investigation; public hearing; findings of fact; written decision; temporary relief from notice or order; conditions; requirements; suspension or revocation of permit; order to show cause; costs and expenses; civil action instituted by attorney general; certified mail.

Sec. 63539. (1) If the department determines, on the basis of an inspection, that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this part or a permit condition required by this part and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the condition, practice, or violation. The cessation order shall remain in effect until the department determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the department pursuant to subsection (8). If the department finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the pollution, impairment, or destruction to land, air, or water resources, the department shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take those actions the department considers necessary to abate the imminent danger or the pollution, impairment, or destruction.

(2) If the department determines, on the basis of an inspection, that a permittee is in violation of a requirement of this part or a permit condition required by this part, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended for good cause shown, and on written finding of the department, the department finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the violation. The cessation order shall remain in effect until the department determines that the violation has been abated or until modified, vacated, or terminated by the department under subsection (9). In the order of cessation issued by the department under this subsection, the department shall specify the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(3) A permittee issued notice or order by the department pursuant to subsections (1) and (2), or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the department for review of the notice or order within 30 days of issuance of the notice or order or within 30 days of its modification, vacation, or termination. On receipt of the application, the department shall conduct an investigation. The investigation shall provide an

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opportunity for a public hearing, at the request of the applicant or the person having an interest that is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. A hearing conducted under this subsection shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(4) On receiving the report of the investigation, the department shall make findings of fact and shall issue a written decision incorporating in the decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. If the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to subsection (1) or (2), the department shall issue the written decision within 30 days of the receipt of the application for review unless temporary relief has been granted by the department under subsection (5).

(5) Pending completion of the investigation and hearing required by this section, the applicant may file with the department a written request that the department grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The department shall issue an order or decision granting or denying the relief, except that if the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under subsection (3) or (4), the order or decision on the request shall be issued within 5 days of its receipt. The department may grant the relief, under conditions it may prescribe, if all of the following requirements are met:

(a) A hearing has been held in the locality of the permit area on the request for temporary relief in which interested parties were given an opportunity to be heard.

(b) The applicant shows that there is a substantial likelihood that the findings of the department will be favorable to the applicant.

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(6) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the department shall hold a public hearing after giving written notice of the time, place, and date of the hearing. The hearing shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws. If the department revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the department, or the department shall declare as forfeited the performance bonds for the operation.

(7) If an order is issued under this section, or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the department to have been reasonably incurred by the person for or in connection with his or her participation in the proceedings, may be assessed against either party as the department considers proper, or as the court, for costs and attorneys' fees resulting from judicial review, considers proper.

(8) If the department has reason to believe, on the basis of an inspection, that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed, and if the department or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this part or any permit conditions, or that the violations are willfully caused by the permittee, the department shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, to be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, and the department shall inform all interested parties of the hearing. If the permittee fails to show cause why the permit should not be suspended or revoked, the department shall promptly suspend or revoke the permit.

(9) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or an agent of the permittee by the department. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the department. A notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be

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conducted during the course of the public hearing.

(10) The department may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee does any of the following:

(a) Violates or fails or refuses to comply with an order or decision issued by the department under this part.

(b) Interferes with, hinders, or delays the department or its authorized representative in carrying out the provisions of this section.

(c) Refuses to admit to the mine an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(d) Refuses to permit inspection of the mine by an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(e) Refuses to furnish information or a report requested by the department under the department's rules.

(f) Refuses to permit access to and copying of records the department determines reasonably necessary to carry out this part.

(11) All notices or orders required by this subpart shall be sent by certified mail, return receipt requested.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63540 Financial interest of department employee in coal mining operation prohibited; violation; penalty.

Sec. 63540. An employee of the department performing any function or duty under this part shall not have a direct or indirect financial interest in an underground or surface coal mining operation. A person who knowingly violates this subsection shall, on conviction, be punished by imprisonment for not more than 1 year, or a fine of not more than $2,500.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63541 Prohibited acts; violation; penalty.

Sec. 63541. Except as permitted by a law of this state or the United States, a person shall not willfully resist, prevent, impede, or interfere with the department or any of its agents in the performance of duties pursuant to this part. A person who violates this section shall be punished by imprisonment for not more than 1 year, or a fine of not more than $5,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBPART 9
INSPECTION AND RECLAMATION FEE

324.63542 Inspection and reclamation fee; amount; rule; quarterly reports; contents; notice of fee due; payment and disposition of fees.

Sec. 63542. (1) For the purposes of inspections and monitoring, and the administration and enforcement of this part, an operator is assessed an inspection and reclamation fee of not more than 25 cents per ton of coal mined, as determined by the department. The department shall establish, by rule, criteria for determining the amount of the inspection and reclamation fee. In making the determination of the amount of the inspection and reclamation fee, the department shall take into account funds made available to the department pursuant to the surface mining control and reclamation act of 1977, and funds from any other source for the purposes specified in this subsection. The total inspection and reclamation fees assessed annually shall not exceed the total amount appropriated to the department for the purposes specified in this subsection.

(2) An operator shall file quarterly reports with the department on a calendar year basis. The report shall include all of the following:

(a) The location of the mining operation and the areas mined during the quarter.

(b) A description of the progress of restoration and reclamation activities of the operator for the preceding quarter.

(c) The number of tons of coal mined during the quarter.

(3) Based on the information reported pursuant to subsection (2)(c), the department shall send the operator

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written notice of the amount of the fee due for the quarter. The operator shall pay the fee to the department within 30 days after receipt of the notice.

(4) The department shall deposit the inspection and reclamation fee in the state abandoned mine reclamation fund created by section 63510.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63543 Failure to submit quarterly report as grounds for revocation of permit; penalty; unpaid fee and penalty as debt; confidentiality of fee and reports; disclosure.

Sec. 63543. (1) Failure to submit a quarterly report constitutes grounds for revocation of a permit. An action taken by the department under this subsection shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws.

(2) A penalty equal to 12% of the amount due, or $1,000.00, whichever is greater, shall be assessed against the operator for a fee not properly or promptly paid pursuant to section 63542. An unpaid fee and penalty shall constitute a debt and become the basis of a civil action against the operator to compel the payment of the debt.

(3) The inspection and reclamation fee and quarterly reports required by this subpart shall be confidential and shall not be subject to the disclosure requirements of the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, except that disclosure may be made with the written consent of the operator filing the fee and report or pursuant to a court order.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63544 Prohibited acts; penalty.

Sec. 63544. Any person, corporate officer, agent, or director, on behalf of an operator, who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification regarding a report required in this subpart, shall be punished by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBPART 10
MISCELLANEOUS PROVISIONS

324.63545 Designating areas unsuitable for surface coal mining; rules; determination; petition by interested person; public hearing; written decision; statement; certain surface coal mining operation prohibited; consultation.

Sec. 63545. (1) The department shall promulgate rules establishing a process for designating areas unsuitable for surface coal mining. The rules shall include all of the following:

(a) Surface coal mining land review.

(b) Development of a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations.

(c) Development, by rule, of a method for implementing land use planning decisions concerning surface coal mining operations.

(d) Development, by rule, of proper notice provisions and opportunity for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.

(e) Procedures for determining whether an area proposed for surface coal mining contains historic resources. These rules shall be developed with the concurrence of the department of history, arts, and libraries and the department of natural resources.

(2) On a petition submitted pursuant to subsection (3), the department shall designate an area as unsuitable for all or certain types of surface coal mining operations if the department determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible. A surface area may be designated unsuitable for certain types of surface coal mining operations if those operations do any of the following:

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(a) Are incompatible with existing state or local land use plans or programs.

(b) Affect fragile land or historic resources resulting in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.

(c) Affect renewable resource land, including aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.

(d) Affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, substantially endangering life and property.

(e) Affect agricultural land by diminishing the productivity of the land after reclamation to less than the productivity before the site was mined.

(f) Adversely affect an agricultural operation, including planting, harvesting, transportation, processing, or other activity included in the agricultural impact statement required by section 63516(1)(s).

(3) Determinations of the unsuitability of land for surface coal mining shall be integrated with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section do not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to former 1982 PA 303, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(4) A person having an interest that is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for surface coal mining operations or to have that designation terminated. The petition shall contain allegations of facts with supporting evidence. Within 30 days after receipt of the petition, the department shall hold a public hearing in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision with reasons for the decision. In the event that all the parties stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(5) Before designating land areas as unsuitable for surface coal mining operations, the department shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(6) After October 12, 1982, and subject to valid existing rights, surface coal mining operations, except those that existed on August 3, 1977, shall not be permitted that do any of the following:

(a) Adversely affect a publicly owned park or historic resource unless approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic resource and by the department of history, arts, and libraries.

(b) Are within 100 feet of the outside right-of-way line of a public road, except where mine access roads or haulage roads join the right-of-way lines and except that the department may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) Are within 300 feet of an occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, or public park, or within 300 feet of a cemetery.

(7) The department shall designate areas protected by part 351 as unsuitable for surface coal mining.

(8) In administering this section, the department shall consult with the department of natural resources.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Popular name: Act 451

Popular name: NREPA

324.63546 Government agency, unit, or instrumentality proposed to engage in surface coal mining operations; compliance with part.

Sec. 63546. An agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this part shall comply with all provisions of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.63547 Part inapplicable to certain activities.

Sec. 63547. This part does not apply to any of the following:

(a) The extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under rules established by the department.

(b) The extraction of coal incidental to the extraction of other minerals if the amount of coal does not exceed 50 tons or 16-2/3% of the total tonnage of other minerals removed annually for purposes of commercial use or sale, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63548 Departures from environmental protection performance standards; authorization.

Sec. 63548. To encourage advances in mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the department may, with approval by the secretary of the United States department of the interior, authorize departures in individual cases and on an experimental basis from the environmental protection performance standards of this part. These departures may be authorized if the experimental practices are potentially at least as environmentally protective, during and after mining operations, as those required by this part; if the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and if the experimental practices do not reduce the protection afforded public health and safety below that provided by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63549 Right to enforce or protect interest in natural resource affected by operation; replacement of water supply.

Sec. 63549. (1) This part shall not be construed as affecting the right of any person to enforce or protect, under applicable law, his or her interest in water or any other natural resource affected by a surface coal mining operation.

(2) The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 637
SAND DUNE MINING

324.63701 Definitions.

Sec. 63701. As used in this part:

(a) "Active cell-unit" means a cell-unit set forth in the approved progressive cell-unit mining and reclamation plan provided for in section 63706(1), in which vegetation and topsoil have been removed in preparation for sand dune mining or sand removal has been initiated after the date of issuance of the sand dune mining permit. Vegetation removal does not preclude the removal of marketable forest products from a cell-unit, if the removal maintains the ground cover and topsoil within the cell-unit in stable condition.

(b) "Administratively complete" means an application for a sand dune mining permit that is determined by the department to satisfy all of the conditions of this part and rules promulgated under this part.

(c) "Barrier dune" means the first landward sand dune formation along the shoreline of a Great Lake or a sand dune formation designated by the department.

(d) "Beneficiation" means to process sand for any of the following purposes, but does not include the drying process:

(*i*) Regulating the grain size of the desired product.

(*ii*) Removing unwanted constituents.

(*iii*) Improving the quality and purity of the desired product.

(e) "Cell-unit" means a subunit of the total sand dune mining project as determined in size and location by

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the operator. A cell-unit shall not exceed 10 acres in size for sand dune mining operations that commence operation after March 31, 1977 or for the expansion of sand dune mining operations that existed before March 31, 1977. A cell-unit shall not exceed 30 acres in size for operations that existed before March 31, 1977.

(f) "Conformance bond" means a surety bond that is executed by a surety company authorized to do business in this state, cash, certificates of deposit, letters of credit, or other securities that are filed by an operator to ensure compliance with this part, rules promulgated under this part, or conditions of a sand dune mining permit.

(g) "Environmental elements" means the biological, physical, and chemical characteristics of the environment, including but not limited to the following:

(*i*) Watersheds.

(*ii*) Water bodies.

(*iii*) Forests.

(*iv*) Existing areas maintained for public recreation.

(*v*) Shorelands.

(*vi*) Habitat areas.

(h) "Great Lakes" means any of the Great Lakes that have a shoreline within this state.

(i) "Interim cell-unit status" means a cell-unit as set forth in an approved progressive cell-unit mining and reclamation plan provided for in section 63706(1), in which all sand dune mining and reclamation within the cell-unit has been completed, but the vegetation has not sustained itself through 1 full growing season. A cell-unit placed in interim cell-unit status is required to retain the conformance bond provided in section 63712 until reclassification by the department as provided in section 63712(5). Each sand dune mining activity shall be limited to no more than 3 cell-units in interim cell-unit status at any 1 time.

(j) "Operator" means an owner or lessee of mineral rights or any other person engaged in or preparing to engage in sand dune mining activities with respect to mineral rights within a sand dune area.

(k) "Sand dune area" means that area designated by the department that includes those geomorphic features composed primarily of sand, whether windblown or of other origin and that lies within 2 miles of the ordinary high-water mark on a Great Lake as defined in section 32502, and includes critical dune areas as defined in part 353.

(*l*) "Sand dune mining" means the removal of sand from sand dune areas for commercial or industrial purposes, or both. The removal of sand from sand dune areas in volumes of less than 3,000 tons is not sand dune mining if the removal is a 1-time occurrence and the reason the sand is removed is not for the direct use for an industrial or commercial purpose. However, the removal of any volume of sand that is not sand dune mining within a critical dune area as defined in part 353 is subject to the critical dune protection provisions of part 353. The department may authorize in writing the removal of more than 3,000 tons of sand without a sand dune mining permit issued pursuant to section 63704 for a purpose related to protecting an occupied dwelling or other structure from property damage related to the migration of sand or the instability of sand. This removal may be for more than 1 occurrence, but a written authorization from the department is required for each removal.

(m) "Water table" means the surface in an unconfined aquifer at which the pressure is atmospheric. The water table is found at the level at which water stands in wells that penetrate the aquifer.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63702 Sand dune mining permit within critical dune area; “adjacent” defined.

Sec. 63702. (1) Notwithstanding any other provision of this part, the department shall not issue a sand dune mining permit within a critical dune area as defined in part 353 after July 5, 1989, except under either of the following circumstances:

(a) The operator seeks to renew or amend a sand dune mining permit that was issued prior to July 5, 1989, subject to the criteria and standards applicable to a renewal or amendatory application.

(b) The operator holds a sand dune mining permit issued pursuant to section 63704 and is seeking to amend the mining permit to include land that is adjacent to property the operator is permitted to mine, and prior to July 5, 1989 the operator owned the land or owned rights to mine dune sand in the land for which the operator seeks an amended permit.

(2) As used in this section, "adjacent" means land that is contiguous with the land for which the operator holds a sand dune mining permit issued pursuant to section 63704, provided no land or space, including a highway or road right-of-way, exists between the property on which sand dune mining is authorized and the adjacent land.

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History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63703 Great Lakes sand dune areas; comprehensive study and inventory.

Sec. 63703. The department, by July 1, 1977, shall make or cause to be made a comprehensive study and inventory of Great Lakes sand dune areas in the state. The study and inventory shall include all of the following:

(a) An economic study of the current and projected sand dune mining practices in the state, showing where the sand is marketed, its uses, and the amount of sand reserves.

(b) A geologic study of sand areas within this state, other than Great Lakes sand dune areas, that would contain sufficient reserves and have properties suitable for use as foundry core and molding sands or for other uses of sand.

(c) Sand dune areas or portions of sand dune areas that, for environmental or other reasons, should be protected through purchase by the state or other persons or interests, or easements including the acquisition of mineral rights by the state, and a priority list of sand dune areas to be acquired by the department.

(d) An identification and designation of barrier dunes along the shoreline, showing their effect on aesthetic, environmental, economic, industrial, and agricultural interests in this state.

(e) Methods for recycling or reusing sand for industrial and commercial purposes, along with alternatives to the use of dune sand and its economic impact.

(f) Recommendations for the protection and management of sand dune areas for uses other than sand mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63704 Sand dune mining; permit; requirements.

Sec. 63704. (1) A person shall not engage in sand dune mining within Great Lakes sand dune areas except as authorized by a permit issued by the department pursuant to part 13.

(2) Prior to receiving a permit from the department, a person shall submit all of the following:

(a) A permit application on a form provided by the department.

(b) An environmental impact statement of the proposed mining activity as prescribed by section 63705.

(c) A progressive cell-unit mining and reclamation plan for the proposed mining activity as prescribed by section 63706.

(d) A 15-year mining plan as prescribed by section 63707.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63705 Environmental impact statement.

Sec. 63705. The environmental impact statement submitted to the department shall comply with the requirements of the department and shall include, but is not limited to, the following:

(a) The compatibility of the proposed sand dune mining activity with adjacent existing land uses or land use plans.

(b) The impact of the proposed sand dune mining activity on flora, fauna, or wildlife habitats.

(c) The economic impact of the proposed sand dune mining activity on the surrounding area.

(d) The effects of the proposed sand dune mining activity on groundwater supply, level, quality, and flow on site and within 1,000 feet of the proposed sand dune mining activity.

(e) The effects of the proposed sand dune mining activity on adjacent surface resources.

(f) The effect of the proposed sand dune mining activity on air quality within 1,000 feet of the proposed sand dune mining activity.

(g) Whether the proposed sand dune mining activity is located within any of the following:

(*i*) 1,000 feet of a residence.

(*ii*) 2,000 feet of a school.

(*iii*) 500 feet of a commercial development.

(h) Alternatives, if any, to the location of the proposed sand dune mining activity and the reasons for the choice of the location of the proposed sand dune mining activity over those alternatives.

(i) A description of the environment as it exists prior to commencement of sand dune mining activity of

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area of the proposed sand dune mining activity. The environmental impact statement shall provide the greatest detail of the areas and the environmental elements that receive the major impacts from the proposed activity, but also shall include areas that may be impacted as an indirect result of the project.

(j) An inventory of the physical environmental elements of the proposed site. The inventory shall be conducted at a time or at different times of the year that will provide the most complete information regarding the existing conditions of the area that will be impacted directly or indirectly by the proposed activity.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63706 Progressive cell-unit mining and reclamation plan; sand dune mining permit; requirements.

Sec. 63706. (1) The progressive cell-unit mining and reclamation plan, for both the total project and each cell-unit, shall include all of the following:

(a) The method and direction of mining.

(b) Surface overburden stripping plans.

(c) The depth of grade level over the entire site from which the sand will be removed.

(d) Provisions for grading, revegetation, and stabilization that will minimize shore and soil erosion, sedimentation, and public safety problems.

(e) The location of buildings, equipment, stockpiles, roads, or other features necessary to the mining activity and provisions for their removal and restoration of the area at the project termination.

(f) Provisions for buffer areas, landscaping, and screening.

(g) The interim use or uses of reclaimed cell-units before the cessation of the entire mining operation.

(h) Maps and other supporting documents required by the department.

(2) The department shall not issue a sand dune mining permit for any of the following:

(a) A sand dune mining operation that existed before March 31, 1977, if the progressive cell-unit mining and reclamation plan includes more than 3 30-acre cell-units.

(b) A sand dune mining operation that commenced after March 31, 1977, if the progressive cell-unit mining and reclamation plan includes any cell-unit having an area exceeding 10 acres.

(c) The expansion of an existing sand dune mining operation if that expansion includes any cell-unit having an area exceeding 10 acres.

(3) The progressive cell-unit mining and reclamation plan for sand dune mining permits issued 30 days or more after June 23, 1994 shall meet the following requirements:

(a) All upland reclamation grades for sand dune mining operations shall have a slope not steeper than 1-foot vertical rise in a 3-foot horizontal plane, except that the department may approve plans that allow steeper reclaimed slopes in order to provide a smoother transition to undisturbed topographic features or the protection of existing environmental features.

(b) All submerged grades established by the excavation of material below the water table and the creation of a water body shall have underwater slopes as follows:

(*i*) For water bodies with a surface area less than 5 acres, the submerged grades shall be 1-foot vertical rise in a 3-foot horizontal plane, or flatter, to a depth of 6 feet.

(*ii*) For water bodies with a surface area 5 acres or greater, the submerged grades shall be 1-foot vertical rise in a 6-foot horizontal plane, or flatter, to a depth of 6 feet.

(*iii*) For all water bodies where the progressive cell-unit mining and reclamation plan designates a final use after sand dune mining as public access, the area designated for public access shall have submerged grades of 1-foot vertical rise in a 10-foot horizontal plane, or flatter, to a depth of 6 feet.

(c) A 200-foot minimum setback distance from the property line to the cell-unit boundary line shall be provided on all cell-unit mining and reclamation plans, except the department may approve plans with less than 200-foot minimum setback distances if the department determines that the sand dune mining activity is compatible with the adjacent existing land use.

(d) A 500-foot minimum setback distance from the ordinary high-water mark of the Great Lakes shall be provided on all cell-unit mining and reclamation plans. As used in this subdivision, ordinary high-water mark means for the lands bordering or adjacent to waters or land affected by levels of the Great Lakes landward of the ordinary high-water mark as defined by section 32502, and those lands between the ordinary high-water mark and the water's edge.

(e) All cell-unit mining and reclamation plans shall include fencing or other techniques to minimize trespass or unauthorized access to the sand dune mining activity.

(f) If the proposed sand dune mining activity proposes to mine below the water table, the department may

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require a hydrogeological survey of the surrounding area.

(g) If threatened or endangered species are identified within the cell-unit boundaries, the cell-unit mining and reclamation plan shall indicate how the threatened or endangered species shall be protected or, if not protected, what mitigation measures shall be performed.

(h) If the proposed sand dune mining activity includes beneficiation or treatment of the sand, the application documents shall include specific plans depicting the methods, techniques, and manufacturer's material safety data sheets on all chemicals, or other additives that are not natural to the site, that will be utilized in the process. The operator shall also obtain all applicable state and federal permits prior to beginning the beneficiation process.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63707 Fifteen-year mining plan; submission of duplicate copy of cell-unit mining and reclamation plan.

Sec. 63707. (1) The 15-year mining plan shall include the following:

(a) The location and acreage of sand dune areas presently being mined and the amount of sand being mined.

(b) The location and acreage of sand dune areas not presently being mined but planned for that purpose and the amount of sand planned to be mined.

(c) A schedule indicating when the mining activity will begin in each sand dune area and the probable termination date of mining activities in each area.

(d) Additional information requested by the department.

(2) A duplicate copy of the cell-unit mining and reclamation plan shall be submitted to the soil conservation district in the county where the mining activity is proposed to occur. The soil conservation district shall have 30 days after receipt of the plan to review the proposal and submit written comments to the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63708 Sand dune mining permit; duration; renewal; contents; reasons for permitting removal of barrier dune; list of pending applications.

Sec. 63708. (1) A sand dune mining permit issued by the department is valid for not more than 5 years. A sand dune mining permit shall be renewed if the sand dune mining activities have been carried out in compliance with this part, the rules promulgated under this part, and the conditions of the sand dune mining permit issued by the department.

(2) The sand dune mining permit shall state any conditions, limitations, or other restrictions determined by the department, including any setback from the ordinary high-water mark of a Great Lake for the protection of the barrier dune.

(3) In granting a sand dune mining permit, if the department allows for the removal of all or a portion of the barrier dune pursuant to this part, it shall submit to the commission written reasons for permitting the removal.

(4) The department shall provide a list of all pending sand dune mining applications upon a request from a person. The list shall give the name and address of each applicant, the legal description of the lands included in the project, and a summary statement of the purpose of the application.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.63709 Denial of sand dune mining permit.

Sec. 63709. The department shall deny a sand dune mining permit if, upon review of the environmental impact statement, it determines that the proposed sand dune mining activity is likely to pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources, as provided by part 17.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.63710 Extraction of sand or other minerals by state.

Sec. 63710. The state or an instrumentality of the state shall not engage in the extraction of sand or other minerals from a sand dune area, except as required in the interest of public health and safety in an emergency situation resulting from a disaster as defined in section 2 of the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being section 30.402 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63711 Assessment of fee for surveillance, monitoring, administration, and enforcement of part; disposition of unexpended fees; annual report of operator; confidentiality; failure to submit annual report; penalty for unpaid fee; records; annual report of department.

Sec. 63711. (1) For purposes of surveillance, monitoring, administration, and enforcement of this part, an operator is assessed a fee of not more than 10 cents per ton of sand mined from a sand dune area for the calendar year reported as described in subsection (2). Funds collected by the assessment of the fee shall not exceed the actual costs to the department of implementing the sections of this part that pertain to sand dune mining. Any fees collected under this subsection that are unexpended at the end of a fiscal year shall be credited to a separate fund of the department, carried over to the succeeding fiscal year, and deducted from the amount appropriated for that year for surveillance, monitoring, administration, and enforcement of this part for purposes of computing the fee to be assessed for that year.

(2) An operator shall file an annual report on or before January 31 of each year. The report shall show the areas mined and describe the progress of restoration and reclamation activities of the operator for the preceding calendar year. The report shall contain both of the following:

(a) The number of tons of sand mined from a sand dune area.

(b) Location of the sand dune area.

(3) The fee described in subsection (1) shall be due not more than 30 days after the department sends written notice to the operator of the amount due.

(4) The surveillance fee and annual report required by this section is confidential and shall not be available for public inspection without the written consent of the person filing the fee and report, except in accordance with judicial order.

(5) Failure to submit an annual report in compliance with rules promulgated by the department constitutes grounds for revocation of a permit.

(6) A penalty equal to 10% of the amount due, or $1,000.00, whichever is greater, shall be assessed against the operator for a fee that is not paid when due. An unpaid fee and penalty shall constitute a debt and become the basis of a judgment against the operator. Penalties paid pursuant to this section shall be used for the implementation, administration, and enforcement of this part.

(7) Records upon which the annual report is based shall be preserved for 3 years and are subject to audit by the department.

(8) The department shall annually prepare and submit to the house of representatives and senate standing committees with jurisdiction over subject areas related to natural resources and the environment a report on the sand mining surveillance activities undertaken by the department for the immediately preceding year and the cost of those activities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63712 Conformance bond; reclassification of active cell-unit to interim cell-unit; notice of completion or acceptance of reclamation activity; compliance or approval required for mining or extraction; violation as grounds for revocation of permit.

Sec. 63712. (1) Prior to the initiation of a disturbance of land, the holder of a sand dune mining permit shall file with the department a conformance bond in favor of the state.

(2) The conformance bonds shall be filed for a maximum of 3 active cell-units and 3 cell-units in interim cell-unit status within the sand dune mining permit and shall be for an amount equal to $10,000.00 per cell-unit or $1,000.00 per each acre in the cell-units, whichever is greater, for cell-units bonded prior to June 23, 1994. For all cell-units that are bonded after June 23, 1994, the conformance bond shall be for an amount equal to $20,000.00 per cell-unit or $2,000.00 per each acre in the cell-units, whichever is greater. The bond for a cell-unit bonded prior to June 23, 1994 shall remain in effect until the cell-unit is released from the

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requirements of the conformance bond as provided in subsection (4) or the cell-unit boundary is revised as approved by the department. If an existing cell-unit boundary is revised, the conformance bond for the cell-unit shall be increased to the amounts provided for cell-units bonded after June 23, 1994.

(3) The conformance bonds shall be transferable to other cell-units contained within the sand dune mining permit upon faithful conformance with the approved reclamation plan as provided in section 63706.

(4) The conformance bond shall be conditioned upon the faithful performance of the requirements set forth in the approved reclamation plan as provided in section 63706. Liability under the conformance bond shall be maintained as long as the reclamation is not completed in compliance with the approved plan. The conformance bond shall remain in full force until the release of the cell-unit from the conformance bond requirements, including the period of time the cell-unit may have been placed in interim cell-unit status.

(5) The department shall not reclassify a cell-unit from active to interim cell-unit status until the following minimum conditions or requirements have been met:

(a) All permitted sand dune mining activities within the cell-unit have been completed.

(b) All extraction or processing equipment has been removed from the cell-unit, except that a roadway, conveyor, or slurry pipeline corridor may be maintained through a cell-unit and the cell-unit still may be reclassified to interim cell-unit status. This roadway, conveyor, or slurry pipeline corridor shall be considered part of the plant site and shall be removed and revegetated as provided by section 63706(1)(e).

(c) All upland areas within the cell-unit that were disturbed by sand dune mining have been regraded as provided in section 63706(3)(a).

(d) All submerged grades within the cell-unit established by sand dune mining have been regraded as provided in section 63706(3)(b).

(e) All upland areas within the cell-unit that were disturbed by sand dune mining have been revegetated utilizing native or indigenous species or other plant material pursuant to the approved progressive cell-unit mining and reclamation plan as provided in section 63706(1). The vegetation that has been planted shall have germinated or taken root and cover a minimum of 80% of the upland areas disturbed by sand dune mining, and no single area exposed to the elements shall be greater than 25 square feet.

(f) The operator shall provide proper measures to aid in the establishment of growth of the planted vegetation until adequate root systems have developed to provide sustained growth.

(6) The department may reclassify an active cell-unit to interim cell-unit status upon receipt of a written request by the operator. The department shall conduct an on-site inspection of the reclamation activities that have been completed and determine if the completed reclamation activities are adequate to reclassify the active cell-unit to interim cell-unit status. The department shall schedule the on-site inspection within 45 days of the written request. The department shall notify the operator within 30 days following the date of the inspection of the department's decision to grant or deny the request for interim cell-unit status. If the department determines the reclamation activities conducted within the cell-unit do not meet the conditions and requirements for interim cell-unit status, the notification shall include information detailing the reasons for denial.

(7) If the department determines the status of an active cell-unit does not meet the conditions or requirements for reclassification to interim cell-unit status, the operator may not reapply for reclassification of the same active cell-unit until 1 year from the previous request.

(8) Notification shall be given to the operator upon completion or acceptance by the department of the reclamation activity. The notification constitutes the release of the cell-unit from the conformance bond requirements if:

(a) All permitted sand dune mining activities within the cell-unit have been completed.

(b) All extraction or processing equipment has been removed from the cell-unit, except a roadway, conveyor, or slurry pipeline corridor may be maintained through a cell-unit and the cell-unit still released from bond. This roadway, conveyor, or slurry pipeline corridor shall be considered part of the plant site and shall be removed and revegetated as provided by section 63706(1)(e).

(c) All upland areas within the cell-unit that were disturbed by sand dune mining have been regraded as provided in section 63706(3)(a).

(d) All submerged grades within the cell-unit established by sand dune mining have been regraded as provided in section 63706(3)(b).

(e) All upland areas within the cell-unit that were disturbed by sand dune mining have been revegetated utilizing native or indigenous species or other plant material pursuant to the approved reclamation plan as provided in section 63706(1).

(f) There are no areas within the revegetated portions of the cell-unit where a 10-foot by 10-foot test plot can be measured with less than 80% survival of the planted vegetation.

(g) The plant material shall be required to sustain itself through 1 full growing season.

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(h) There are no areas within the revegetated portion of the cell-unit with ongoing erosion, except some wind erosion shall be allowed if the wind erosion that is occurring does not threaten the stability of the regraded slopes or the ability of the plant material to accommodate the accretion of sand.

(9) Mining or extraction of sand dune minerals from any other cell-unit contained within the sand dune mining permit is prohibited until compliance or approval is attained from the department.

(10) A violation of this section constitutes grounds for revocation of the sand dune mining permit.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63713 Rules.

Sec. 63713. The department shall promulgate rules to implement and administer this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.63714 Suspension or revocation of permit; restraining order, injunction, or other appropriate remedy; violation as misdemeanor; penalty.

Sec. 63714. (1) If the department finds that an operator is not in compliance with this part, the rules promulgated under this part, or a permit issued under this part, the department may suspend or revoke the permit.

(2) At the request of the department, the attorney general may institute an action in the circuit court for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of this part, a permit issued under this part, or the rules promulgated under this part. This shall be in addition to the rights provided in part 17.

(3) A person who violates this part or a permit issued under this part is guilty of a misdemeanor, punishable by a fine of not more than $5,000.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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SUBCHAPTER 5
PEAT EXTRACTION FROM STATE OWNED LANDS

PART 641
PEAT EXTRACTION FROM STATE OWNED LANDS

324.64101 “Peat” defined.

Sec. 64101. As used in this part, "peat" means a deposit of unconsolidated, naturally occurring soil material consisting of decomposed and partially decomposed mosses, sedges, trees, and other wetland plants, having 12% or greater organic carbon content on a dry weight basis.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64102 Contracts for taking of peat from state-owned lands.

Sec. 64102. Subject to the requirements of this part, the department may make contracts with persons for the taking of peat from state owned lands upon terms consistent with this part, if not less than 10% of the surface area of all eligible and potentially leasable parcels of state owned land containing peat is set aside and preserved in its original natural state as a unique, irreplaceable natural resource of significant historical value.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64103 Inventory and preliminary evaluation; classification of peat lands; public notice; public comments; public hearings; reclassification of lands.

Sec. 64103. (1) Beginning immediately after July 9, 1984, the department shall conduct an inventory of state owned land to determine the surface areas of peat present on those lands and to make a preliminary

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evaluation of the nature of the peat lands and the relationship of the peat resource to the surrounding wetlands and watershed. The preliminary evaluation shall consist of an analysis of the following data obtained from aerial photographs, a field check of surface features, and any information currently available:

(a) The importance of the peat land for flood and storm control by the hydrologic absorption and storage capacity of the peat land.

(b) The importance of the peat land for wildlife habitat including migratory waterfowl and rare, threatened, or endangered species.

(c) The presence of rare, threatened, or endangered plant species.

(d) The importance of the peat land for its natural pollution treatment capacity.

(e) The importance of the peat land for erosion control as a sedimentation area filtering basin.

(f) The potential impact on water quality for adjacent fish habitat and nursery grounds.

(g) The presence of historical or archeological features in or adjacent to the peat lands.

(h) The importance of the peat land for recreational, environmental, ecological, and educational purposes and any other purpose not covered in subdivisions (a) through (g).

(2) Based upon the inventory and preliminary evaluation described in subsection (1), the department shall classify the peat lands as either potentially leasable or not leasable according to the following:

(a) If the preliminary evaluation shows that a significant adverse impact is not likely to occur if the peat land is leased and the peat is taken, the peat land shall be classified as potentially leasable. A significant adverse impact may include an impact limited to the peat land.

(b) A peat land not classified as potentially leasable under subdivision (a) shall be classified as not leasable.

(3) The department shall provide a public notice of the completion of the inventory and classification required by subsections (1) and (2) including, but not limited to, publication in the agenda of the commission. The department shall accept public comment on the inventory and classifications for not less than 60 days from the date of notice. The department shall consider all pertinent public comments before finalizing the inventory and classifications. Public hearings may be held on the inventory and classification at the department's discretion. The department may reclassify lands upon receipt of further information if the public notice and the opportunity for public comment described in this subsection are provided.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.64104 Nomination of parcel; fee; direct lease contract.

Sec. 64104. (1) Except as provided in subsection (4), contracting for the taking of peat from state owned lands shall be initiated by the nomination of a parcel of land as provided in this section.

(2) Upon completion of the inventory and classification described in section 64103, a private party or the department may nominate a parcel classified as leasable for the taking of peat.

(3) A nomination by a private party shall be accompanied by a fee established by the department. The fee established shall be a nominal sum to assist in defraying the cost to the state of holding public auctions as described in section 64105. The fee shall be deposited in the fund created in section 64108.

(4) The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable under section 64103 upon obtaining from the direct lease applicant the same information described in section 64105(4) and upon consideration of the direct lease contract in the same manner as required by this part for a contract for the taking of peat from a nominated parcel. The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable only under either of the following circumstances:

(a) For the completion of an extraction operation area.

(b) For the consolidation of fractional interests owned or controlled by the applicant for the direct lease contract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64105 Public auction; exclusive opportunity to pursue contract; information required from highest bidder.

Sec. 64105. (1) On the basis of the inventory and the classification described in section 64103, the department shall determine whether to offer at a public auction the exclusive opportunity to pursue a contract for the taking of peat from a nominated parcel.

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(2) The exclusive opportunity to pursue a contract for the taking of peat from a specified parcel of state owned land shall be awarded to the highest bidder at a public auction by sealed or oral bid.

(3) An exclusive opportunity to pursue a contract awarded under this section guarantees that, if the department decides to enter into a contract for the taking of peat from the nominated parcel as provided in section 64106, a contract shall be entered into with the highest bidder.

(4) Within 2 years after being awarded an exclusive opportunity to pursue a contract, the highest bidder shall provide to the department the following information:

(a) The quantity and quality of the peat that the bidder proposes to take from the nominated parcel.

(b) The capacity of the production facility that the bidder proposes to operate on the parcel.

(c) The date on which the bidder projects that the taking of peat will commence and the projected duration of the activity.

(d) An environmental assessment of the impact of the taking of the peat, including an analysis of the factors described in section 64106(2).

(e) Any other information the department determines to be reasonably necessary for the department to make the determination described in section 64106(2).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64106 Public hearing; determination; criteria; statement of reasons.

Sec. 64106. (1) After the submission of the information required by section 64105(4), and after review and evaluation of that information by the department, the department shall hold a public hearing to hear comments from the public on whether the department should enter into a contract for the taking of peat from a nominated parcel. This hearing may be consolidated with other legally required hearings related to the taking of peat from the nominated parcel.

(2) After completion of the public hearing required by subsection (1), the department shall decide whether to enter into a contract with the highest bidder based upon a determination that the taking of the peat from the parcel of nominated land would be in the public interest and would not unacceptably disrupt or destroy the aquatic or other resources of the peat land or the surrounding area. In making this determination, the department shall balance the benefit that reasonably may be expected to accrue from the taking of the peat against the reasonably foreseeable detriment of the taking, and, to that end, shall consider the following criteria:

(a) The relative extent of the public and private need for the taking of the peat.

(b) The availability of feasible and prudent alternative locations and methods for attaining the expected benefits of the taking of the peat.

(c) The extent and permanence of the beneficial or detrimental effects which the taking of the peat may have on the public and private uses to which the area is suited.

(d) The probable impact of the taking of peat in relation to the cumulative effect created by other existing and anticipated activities in the watershed where the peat is located.

(e) The probable impact of the taking of the peat on recognized historic, cultural, scenic, ecological, educational, or recreational values, and on the public health, or fish or wildlife.

(f) The size of the peat surface area in relation to the size of the parcel of state owned land.

(g) The impact of the taking of the peat on subsurface water resources, recharging groundwater supplies and adjacent watersheds, and surface water bodies.

(h) The economic value, both public and private, of the taking of peat to the general area.

(3) The department shall state its reasons for deciding to enter or not to enter into a contract with the highest bidder for the taking of peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64107 Terms of contract.

Sec. 64107. A contract entered into under this part for the taking of peat from state owned lands shall contain the following terms:

(a) A requirement that the lessee obtain worker's compensation insurance, liability insurance, and any other insurance reasonably required by the department.

(b) A requirement that the lessee hold the department harmless against all claims, demands, or judgments for loss, damage, death, or injury arising out of the lessee's activities or operations.

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(c) A requirement that the lessee obtain and maintain public liability insurance in amounts reasonably required by the department.

(d) A prohibition against assignment of the contract or rights under the contract without the written approval of the department.

(e) A requirement that the lessee pay all taxes and assessments.

(f) A requirement that the lessee maintain the premises in a manner that safeguards the public health and safety.

(g) A provision that the term of the lease not exceed 10 years, with extension of that period in the discretion of the department.

(h) A requirement that the lessee pay rentals and minimum royalties established on a per acre basis or production royalties established by the department.

(i) A requirement that the lessee file a performance bond, an escrow account, or both, conditioned on the faithful performance of the agreements in the lease, including any agreements relating to the reclamation.

(j) A provision setting forth the department's rights as lessor.

(k) A provision setting forth the lessee's rights.

(*l*) A provision regarding the department's rights in the event of the default of the lessee.

(m) A requirement that the lessee's rights under the lease are conditioned on operation in accordance with the extraction and reclamation plan as approved by the department.

(n) A requirement that the lessee have an extraction and reclamation plan, subject to the approval of the department, that ensures, to the extent practicable, the extraction operations do not have significant adverse impacts on water quality, air quality, wildlife, or fishing resources of the state; that waste areas and product storage and conditioning areas are located, designed, and utilized to minimize aesthetic unattractiveness and fire hazards and to promote reclamation; that extraction is conducted in a manner that will prevent or mitigate hazardous conditions that will result from acidic drainage and blowing dust; and that the parcel is reclaimed in an acceptable manner given the following factors: the original state, condition, and appearance of the land including suitability for original flora and fauna, the uses of adjacent land, the necessary disruption caused by extraction operations, reclamation techniques, the public trust in the natural resources, and applicable statutes and ordinances.

(o) A requirement that the lessee have a plan for monitoring groundwater changes and surface water quality and flow rates.

(p) Any other term reasonably required by the department to protect the state's interest in the land, to protect the surrounding environment, or to assure the optimum economic return to the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.64108 Peat resource conservation and development fund; creation; deposits.

Sec. 64108. (1) The peat resource conservation and development fund is created in the state treasury.

(2) Subject to subsections (3) and (4), the following shall be deposited in the peat resource conservation and development fund:

(a) Money received by the state under contracts for the taking of peat.

(b) The fees imposed under this part.

(3) Money received by the state under contracts for taking of peat from state owned lands acquired with game and fish protection funds shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(4) If the money in the fund exceeds $250,000.00 at the end of a state fiscal year, the excess shall be deposited in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963 and provided for in section 1902 or as otherwise provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.64109 Expenditures; purposes.

Sec. 64109. The department shall expend the money in the fund and the interest and earnings on the money in the fund for the following purposes:

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(a) To administer a peat resource conservation, development, and regulatory program consistent with this part.

(b) To perform the inventory of state lands described in section 64103, to fund further study of the state owned lands classified as not leasable under section 64103, and to provide for the reclassification of parcels consistent with the provisions of section 64103 based on the development of information unavailable during the classification required by section 64103(2).

(c) To fund research necessary for the further development of appropriate techniques for environmental monitoring of peat extraction sites, for development and protection of the state's peat resources, and for reclamation of lands following the extraction of peat.

(d) To pay for the costs to the state of personnel services, printing, postage, advertising, contractual services, and the rental of facilities associated with the offering of state owned lands for the purpose of taking peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64110 Applicability of MCL 324.64103 to 324.64106; responsibility of meeting legal requirements.

Sec. 64110. The requirements of sections 64103 through 64106 do not apply to proposals for the taking of peat from state owned lands that have been the subject of department action prior to July 9, 1984. This provision does not relieve the department or any of the entities listed in section 64102 from the responsibility of meeting legal requirements applicable to the leasing of state lands for peat development that might otherwise be imposed by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.64111 Rules.

Sec. 64111. The department may promulgate rules for the implementation of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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CHAPTER 4
RECREATION

SUBCHAPTER 1
RECREATION

ADMINISTRATION

PART 701
RECREATION AND CULTURAL ARTS

324.70101 Recreation and cultural arts section; establishment.

Sec. 70101. There is established a state recreation and cultural arts section in the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70102 Head of section; qualifications.

Sec. 70102. The head of the state recreation and cultural arts section shall be a person widely experienced in community recreation and shall be directly responsible to a deputy director.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70103 Technical advice and guidance; duty to collect and disseminate data and

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information; other duties.

Sec. 70103. The state recreation and cultural arts section shall provide technical advice and guidance to the political subdivisions of this state and other interested groups and agencies in the planning and development of recreation programs, areas, and facilities including but not limited to creative and cultural activities, and programs for senior citizens, persons with disabilities, and the culturally deprived. The section shall collect and disseminate necessary data and information relating to its duties and shall maintain a cooperative relationship with the tourist, resort, and educational extension services of the universities, the Michigan travel commission, Michigan's 4 regional tourist associations, and the various federal agencies.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998.

Popular name: Act 451

Popular name: NREPA

324.70104 Representation of citizen interest, need, and participation.

Sec. 70104. The department shall provide continual representation of citizen interest, need, and participation in a wide variety of leisure-time pursuits.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70105 Existing employees; reassignment.

Sec. 70105. The department may reassign existing employees of the department of natural resources or employ staff necessary to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70106 Rules.

Sec. 70106. The department shall promulgate rules necessary for the establishment and implementation of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 703
OUTDOOR RECREATION

324.70301 Outdoor recreation; comprehensive plan.

Sec. 70301. The department is authorized to prepare, maintain, and keep up-to-date a comprehensive plan for the development of the outdoor recreation resources of the state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70302 Federal aid programs.

Sec. 70302. The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation. The department may enter into contracts and agreements with the United States or any appropriate agency of the United States, keep financial and other records relating to those contracts and agreements, and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable the officials and agencies to perform their duties under the programs. In connection with obtaining the benefits of any such program, the department shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development, and maintenance of outdoor recreation resources and facilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70303 Federal aid programs; federal land and water conservation fund; disposition and

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apportionment of funds.

Sec. 70303. Grants-in-aid received from the land and water conservation fund act of 1965, Public Law 88-578, 78 Stat. 897, shall be deposited in the state treasury and disbursed to agencies and subdivisions of the state upon authorization of the department. In the apportionment of funds to subdivisions of the state, the department shall give special consideration to those subdivisions where population density and land and facility needs are greatest.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70304 Federal land programs; appropriations; agreements on behalf of state subdivisions.

Sec. 70304. The department shall not make a commitment or enter into an agreement pursuant to an exercise of authority under this part until the legislature has appropriated sufficient funds to it for meeting the state's share, if any, of project costs. It is the legislative intent that, to the extent necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under this part, those areas and facilities shall be publicly maintained for outdoor recreation purposes. The department may enter into and administer agreements with the United States or any appropriate agency of the United States for planning, acquisition, and development projects involving participating federal-aid funds on behalf of any subdivision of this state, if the subdivision gives necessary assurances to the department that it has available sufficient funds to meet its share, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the subdivision's expense for public outdoor recreation use.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.70305 State assistance to subdivisions; guidelines and limits on state payments.

Sec. 70305. The department is authorized to disburse state appropriated grants-in-aid to political subdivisions of the state to be used in conjunction with the land and water conservation fund act of 1965, Public Law 88-578, 78 Stat. 897, which provides financial assistance for outdoor recreation. The criteria for project approval established for federal cost-sharing under the various federal grants-in-aid programs shall be used as guidelines in allocating state grants-in-aid to political subdivisions of the state. The state's share of the cost of a particular project shall not exceed 25% of the total cost. Total state grants-in-aid under this part during any fiscal year shall not exceed the amount specifically appropriated for that purpose by the legislature.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 711

RECREATION IMPROVEMENT ACCOUNT

324.71101 Definitions.

Sec. 71101. As used in this part:

(a) "Associated facilities" means restrooms, shelters, campgrounds, and parking lots directly related to trails or waterways projects.

(b) "Off-road vehicle" means ORV as it is defined in part 811, which is required to be registered under part 811.

(c) "Off-road vehicle account" means the off-road vehicle account of the Michigan conservation and recreation legacy fund provided for in section 2015.

(d) "Recreation improvement account" means the recreation improvement account of the Michigan conservation and recreation legacy fund provided for in section 2020.

(e) "Recreational projects" means, in addition to the activities provided for in this part, the construction, maintenance, and operation of trails and associated facilities that may be used by off-road vehicles, cross-country skiers, horseback riders, and hikers, and inland lake cleanup grants as provided by part 309.

(f) "Snowmobile account" means the snowmobile account of the Michigan conservation and recreation legacy fund provided for in section 2025.

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(g) "Vessel" means all watercraft except the following:

(*i*) Watercraft used for commercial fishing.

(*ii*) Watercraft used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship.

(*iii*) Watercraft owned by this state, any political subdivision of this state, or the federal government.

(*iv*) Watercraft when used in interstate or foreign commerce and watercraft used or owned by any railroad company or railroad car ferry company.

(*v*) Watercraft when used in trade, including watercraft when used in connection with an activity that constitutes a person's chief business or means of livelihood.

(h) "Watercraft" means any contrivance that is used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat, but does not include watercraft used or owned by the United States.

(i) "Waterways account" means the waterways account of the Michigan conservation and recreation legacy fund provided for in section 2035.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.71102 Privilege tax; imposition; payment; inapplicable to liquefied petroleum gas.

Sec. 71102. (1) There is a privilege tax imposed on all gasoline and diesel fuel sold in this state that is used to generate power for the operation or propulsion of vessels on the waterways of this state, of off-road vehicles, and of snowmobiles.

(2) The privilege tax imposed on gasoline and undyed diesel fuel shall be paid to the department of treasury in the same manner, at the same time, and at the same rate per gallon as the tax levied under the motor fuel tax act. The privilege tax imposed on dyed diesel fuel shall be paid to the department of treasury by the retail distributor or other person who sells the dyed diesel fuel to a person who uses the fuel to generate power for the operation or propulsion of vessels on the waterways of this state, of off-road vehicles, and of snowmobiles. The privilege tax imposed by this section shall not apply to liquefied petroleum gas.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2000, Act 405, Imd. Eff. Jan. 8, 2001.

Popular name: Act 451

Popular name: NREPA

324.71103 Legislative finding; joint report.

Sec. 71103. (1) The legislature finds that 2.0% of all of the gasoline sold in this state for consumption in internal combustion engines is used to generate power for the operation or propulsion of vessels on the waterways of this state, of off-road vehicles, and of snowmobiles.

(2) The department and the state transportation department shall prepare a joint report to the legislature by January 1, 1992, providing their estimate of actual gasoline and diesel fuel usage based on any data collected from March 30, 1988 to January 1, 1991 and their observation of the historical trends of gasoline and diesel fuel usage in this state for the following categories:

(a) Off-road vehicles.

(b) Watercraft.

(c) Snowmobiles.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71104 Tax refund; claim; invoice; payment; false statement; forfeiture; misdemeanor.

Sec. 71104. (1) The purchaser of gasoline or diesel fuel for the operation of vessels excepted by section 71101 is entitled to a refund of tax paid on that gasoline or diesel fuel, upon filing a sworn claim with the department of treasury, upon forms prescribed and furnished by it, within 6 months from the date of purchase, as shown by the invoice. The retail distributor shall furnish a purchaser with an invoice showing the amount of gasoline or diesel fuel purchased, the date of the purchase, and the total amount of tax paid on the purchase. Each dealer or distributor shall keep a copy of the invoices issued for a period of 2 years subject to

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examination by the department of treasury. Each claim for refund shall have attached to the claim the original invoice received by the purchaser and, when approved by the department of treasury, the claims shall be paid out of the state waterways fund upon warrant of the department of treasury.

(2) A person who makes a false statement in a claim or invoice presented to the department of treasury, or who presents to the department of treasury a claim or invoice containing a false statement, or who collects or causes to be paid to the person or any other person a refund without being entitled to the refund, shall forfeit the full amount of the claim and is guilty of a misdemeanor.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 585, Eff. Mar. 1, 1997.

Popular name: Act 451

Popular name: NREPA

324.71105 Repealed. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: The repealed section pertained to creation of recreation improvement fund.

Popular name: Act 451

Popular name: NREPA

324.71106 Total of taxes collected; determining revenue derived.

Sec. 71106. The department of treasury shall annually present to the department an accurate total of all the gasoline taxes collected and shall determine the amount of revenue derived from them. The department of treasury shall determine the portion of these revenues derived from the sale of gasoline as described in section 71102 by multiplying the total by 2.0% and shall credit this amount to the recreation improvement account, less a deduction for collection costs and refunds.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.71107 Repealed. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: The repealed section pertained to carrying over money remaining in recreation improvement fund.

Popular name: Act 451

Popular name: NREPA

324.71108 Annual review and recommendations; distribution and use of account.

Sec. 71108. (1) The state treasurer shall annually review and make recommendations to the legislature on the distributions of the recreation improvement account, including recreational projects and geographic locations.

(2) Money in the recreation improvement account shall be distributed as follows:

(a) Eighty percent of the money shall be annually transferred to the waterways account.

(b) Fourteen percent of the money shall be annually transferred to the snowmobile account.

(c) The remainder of the money that is not transferred under subdivisions (a) and (b) shall be used, upon appropriation, for recreation projects and for the administration of the recreation improvement account. Of the money credited to recreational projects in a fiscal year, not less than 25% shall be expended on projects to repair damages as a result of pollution, impairment, or destruction of air, water, or other natural resources, or the public trust in air, water, or other natural resources, as a result of the use of off-road vehicles.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

PART 713
RECREATION BOND AUTHORIZATION

324.71301 Bonds; authorization; limitation; purpose.

Sec. 71301. The state shall borrow a sum not to exceed $140,000,000.00 and issue the general obligation

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bonds of this state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance state and local public recreation projects.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71302 Bonds; conditions, methods, and procedures.

Sec.71302. Bonds shall be issued in accordance with conditions, methods, and procedures established by law.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71303 Bonds; disposition of proceeds and interest.

Sec. 71303. The proceeds of the sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be deposited in the state treasury and credited to the recreation bond fund created in part 715 and shall be disbursed from that fund only for the purposes for which the bonds have been authorized, including the expense of issuing the bonds. The proceeds of the sale of the bonds or any series of the bonds, any premium and accrued interest received on the delivery of the bonds, and any interest earned on the proceeds of the bonds shall be expended for the purposes set forth in this part in a manner as provided by law.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71304 Submission of question to electors.

Sec. 71304. The question of borrowing a sum not to exceed $140,000,000.00 and the issuance of the general obligation bonds of the state for the purposes set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963, at the next general election following September 9, 1988. The question submitted to the electors shall be substantially as follows:

"Shall the state of Michigan borrow a sum not to exceed $140,000,000.00 and issue general obligation bonds of the state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, to finance state and local public recreation projects, the method of repayment of the bonds to be from the general fund of this state?

Yes.....

No..... .".

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71305 Duties of secretary of state.

Sec. 71305. The secretary of state shall perform all acts necessary to properly submit the question prescribed by section 71304 to the electors of this state qualified to vote on the question at the next general November election following September 9, 1988.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71306 Appropriation; purpose; executive budget recommendations.

Sec. 71306. (1) After the issuance of the bonds authorized by this part, there shall be appropriated from the general fund of the state each fiscal year a sufficient amount to pay promptly, when due, the principal of and interest on all outstanding bonds authorized by this part and the costs incidental to the payment of the bonds.

(2) The governor shall include the appropriation provided in subsection (1) in his or her annual executive budget recommendations to the legislature.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.71307 Majority vote of electors required.

Sec. 71307. Bonds shall not be issued unless the question set forth in section 71304 is approved by a majority vote of the qualified electors voting on the question.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 715
RECREATION BOND IMPLEMENTATION

324.71501 Definitions.

Sec. 71501. As used in this part:

(a) "Bonds" means the bonds issued under part 713 or former Act No. 327 of the Public Acts of 1988.

(b) "Fund" means the recreation bond fund created in section 71506.

(c) "Local public recreation project" means capital improvement projects including, but not limited to, the construction, expansion, development, or rehabilitation of recreational facilities, and the restoration of the natural environment. Local public recreation project does not include the operation, maintenance, or administration of those facilities, wages, or administration of projects or purchase of facilities already dedicated to public recreational purposes.

(d) "Local unit of government" means a county, city, township, village, school district, the Huron-Clinton metropolitan authority, or any authority composed of counties, cities, townships, villages, or school districts, or any combination of those entities, which authority is legally constituted to provide public recreation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71502 Legislative finding and declaration.

Sec. 71502. The legislature finds and declares that the construction, expansion, development, and rehabilitation of state and local recreational facilities and the restoration of the natural environment under this part are a public purpose in the interest of the health, safety, and general welfare of the citizens of this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71503 Bonds; requirements generally.

Sec. 71503. (1) The bonds issued under part 713 shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities that may be either serial, term, or term and serial, to bear interest at a rate or rates, to be subject or not subject to prior redemption and, if subject to prior redemption, with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board, and to be subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax-exempt status. The state administrative board shall rotate legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds to partly refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued under this section shall not be counted against the limitation on principal amount imposed by the vote of the people on November 8, 1988. Further, refunding bonds issued under this section shall not be subject to the restrictions of section 71507.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this act.

(4) The state administrative board may authorize the state treasurer, but only within limitations that are contained in the authorizing resolution of the board, to do 1 or more of the following:

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(a) Sell and deliver and receive payment of the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy bonds so issued at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The bonds or any series of the bonds shall be sold at a price and at a publicly advertised sale or a competitively negotiated sale as determined by the state administrative board. If bonds are issued at a competitively negotiated sale, the state administrative board shall use its best efforts to include firms based in this state in the sale of the bonds.

(7) Except as provided in subsection (8), the bonds shall be sold in accordance with the following schedule, beginning during the first year after December 1, 1988:

(a) Not more than 34% shall be sold during the first year.

(b) Not more than 33% shall be sold during the second year.

(c) Not more than 33% shall be sold during the third year.

(d) After the third year any remaining bonds may be sold at the discretion of the state administrative board.

(8) The state administrative board may alter the schedule for issuance of the bonds provided in subsection (7) if amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

(9) The issuance of bonds and notes under this section is subject to the agency financing reporting act.

(10) For the purpose of more effectively managing its debt service, the state administrative board may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the state administrative board.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1995, Act 72, Imd. Eff. June 6, 1995;—Am. 2002, Act 388, Imd. Eff. May 30, 2002.

Popular name: Act 451

Popular name: NREPA

324.71504 Bonds negotiable; tax exemption.

Sec. 71504. Bonds issued under part 713 shall be fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71505 Bonds as securities.

Sec. 71505. Bonds issued under part 713 are made securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71506 Recreation bond fund; creation; composition; restricted subaccounts.

Sec. 71506. (1) The recreation bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

(a) The proceeds of sales of general obligation bonds issued pursuant to part 713 and any premium and

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accrued interest received on the delivery of the bonds.

(b) Any interest or earnings generated by the proceeds described in subdivision (a).

(c) Any repayments of principal and interest made under a loan program authorized for in this part.

(d) Any federal funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71507 Disposition of bond proceeds; investment of fund; allocation of interest and earnings; crediting and use of repayments of principal and interest; disposition of unencumbered balance; submission and contents of list of projects; appropriations.

Sec. 71507. (1) The proceeds of the bonds issued under part 713 shall be deposited into the fund.

(2) The state treasurer shall direct the investment of the fund. Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

(3) Except as otherwise may be required by the resolution authorizing the issuance of the bonds in order to maintain the exclusion from gross income of the interest paid on the bonds or to comply with state or federal law, all repayments of principal and interest earned under a loan program provided in this part shall be credited to the appropriate restricted subaccounts of the fund and used for the purposes authorized for the use of bond proceeds deposited in that subaccount or to pay debt service on any obligation issued which pledges the loan repayments and the proceeds of which are deposited in that subaccount.

(4) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(5) The department shall annually submit to the governor, the committees of the house of representatives and the senate with jurisdiction pertaining primarily to natural resources and the environment, and the appropriations committees of the house of representatives and the senate a list of all projects that are recommended to be funded under this part. This list shall be submitted to the legislature not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. The list shall include the name, address, and telephone number of the eligible recipient or participant; the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the department. The estimated cost of eligible local public recreation projects on the list for each year in which there is a limitation on borrowing under section 71503(7) shall not exceed 1/3 of the amount authorized for local public recreation projects under section 71508(1)(b).

(6) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.71508 Use of fund generally.

Sec. 71508. (1) Except as otherwise provided in this section, money in the fund shall be used as follows:

(a) $70,000,000.00 of the bond revenues shall be used to construct, expand, and develop recreational facilities at state parks pursuant to the "5 year capital outlay program" published by the department and approved by the commission, and for other state recreation facilities for which matching funds are available. The department may deviate from the uses of the bond revenues provided in this subdivision only upon recommendation of the commission and approval of the legislature.

(b) $65,000,000.00 of the bond revenues shall be used to provide grants and loans to local units of government for local public recreation projects pursuant to this part.

(c) $5,000,000.00 of the bond revenues shall be used to provide grants and loans to local units of government for the purpose of discouraging development of open space and undeveloped lands that on December 1, 1988 are not zoned for industrial use. Grants and loans made under this subdivision shall be used

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to redevelop and reuse vacant manufacturing facilities or abandoned industrial sites for recreational facilities.

(2) Money in the fund that is allocated for local public recreation projects under subsection (1)(b) shall be used for any of the following:

(a) Public recreation infrastructure improvements that involve the replacement of or structural improvements relating specifically to existing public recreation facilities, including, but not limited to, recreation centers, sports fields, beaches, trails, historical structures, playgrounds, and restoration of the natural environment.

(b) The development of public recreation facilities on waterfront sites for the purpose of increasing recreation opportunities that encourage further private investments in the area. Public recreation facilities on waterfront sites shall include, but shall not be limited to, shoreline stabilization and beautification, breakwaters, bulkheads, fishing piers, amphitheaters, shoreline walkways, and pedestrian bridges.

(c) The construction of community public recreation facilities for the purpose of addressing the recreational needs of local residents, including, but not limited to, playgrounds, sports fields and courts, community and senior centers, and fishing sites.

(d) The development of public recreation improvements that will attract tourists or otherwise increase tourism, where such developments are reasonably expected to have a substantial positive impact, relative to cost, on the local, regional, or state economy, including, but not limited to, campgrounds, beaches, historical sites, fishing access sites, and recreational development of abandoned railroad rights-of-way.

(e) Intermediate school districts for environmental education capital outlay projects that are consistent with the long-term recreation and parks plan for the local unit or units of government which the intermediate school district serves.

(3) Money in the fund for other state recreation purposes shall be used for infrastructure projects for fisheries, wildlife, recreational boating, or state forest campgrounds, for which not less than 50% of the cost of the project is available from any combination of federal, private, or restricted funds.

(4) Money in the fund shall not be used for land acquisition.

(5) Money in the fund shall not be expended for sports facilities, arenas, or stadiums intended as the primary home of a professional sports team, for commercial theme parks, or for any purpose that may result in the siting of casino gambling in this state.

(6) Money in the fund may be used by the department of treasury to pay for the cost of issuing bonds under part 713 and by the department to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in this section shall be available for appropriation to the department to pay department costs directly associated with the completion of a project described in subsection (1)(a), (b), or (c) for which bonds are issued as provided under this part. Bond proceeds shall not be available to pay indirect, administrative overhead costs incurred by any organizational unit of the department not directly responsible for the completion of a project. Department costs shall be deducted proportionately from the amounts stated in subsection (1). It is the intent of the legislature that general fund appropriations to the department shall not be reduced as a result of department costs funded pursuant to this subsection.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71509 Making and allocating grants and loans to local units of government; division of state into regions; match by local unit; rules; sale, disposal, or use of facility.

Sec. 71509. (1) Grants and loans made to local units of government under section 71508(1)(b) shall be made by the department and allocated as follows:

(a) Each region provided for in subsection (2) shall receive $6.50 per capita based upon the 1985 census figures in the document entitled "estimated state spending by county fiscal year 1985-86" published by the senate fiscal agency, dated October, 1987.

(b) The balance of the money remaining after the distribution under subdivision (a) shall be used for local public recreation projects that are regional parks as defined by rules promulgated by the department. An application under this subdivision shall not preclude an application under subdivision (a).

(2) For purposes of the distribution of grants and loans for local public recreation projects under section 71508(1)(b), the state is divided into the following 3 regions:

(a) Region 1—all of the counties of the Upper Peninsula.

(b) Region 2—Emmet, Charlevoix, Cheboygan, Presque Isle, Leelanau, Antrim, Otsego, Montmorency, Alpena, Benzie, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Manistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Mason, Lake, Osceola, Clare, Gladwin, Arenac, Isabella, Midland, Bay, Huron, Saginaw, Tuscola, and Sanilac counties.

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(c) Region 3—Oceana, Newaygo, Mecosta, Muskegon, Montcalm, Gratiot, Ottawa, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer, St. Clair, Allegan, Barry, Eaton, Ingham, Livingston, Oakland, Macomb, Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw, Wayne, Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee, and Monroe counties.

(3) A grant made under this part to a local unit of government shall require a 25% match by the local unit of government. Not more than 50% of the local unit of government's contribution under this subsection may be in the form of goods and services directly rendered to the construction of the project, or federal funds, or both. A local unit of government shall establish to the satisfaction of the department the cost or fair market value, whichever is less as of the date of the notice of approval by the department, of any of the above items with which it seeks to meet its local unit portion.

(4) The department shall promulgate rules that establish criteria for grants and loans made under this part, an application process, the definition of regional parks, and a process for disbursement of grants and loans to local units of government.

(5) A facility funded under this section shall not be sold, disposed of, or converted to a use not specified in the application for the grant or loan without express approval of the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71510 Grant or loan program; rules; maximum participation; considerations in determining appropriateness of grant or loan program; considerations in making grant or loan.

Sec. 71510. (1) The department shall assure maximum participation by local units of government by promulgating rules that provide for a grant or loan program, where appropriate. In determining whether a grant or a loan program is appropriate, the department shall consider whether the project is likely to be undertaken without state assistance; the availability of state funds from other sources; the degree of private sector participation in the type of project under consideration; the extent of the need for the project as a demonstration project; and other factors considered important by the department.

(2) Prior to making a grant or loan authorized by this part, the department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71511 Application for grant or loan; form; information.

Sec. 71511. An application for a grant or a loan authorized under this part shall be made on a form prescribed by the department. The department may require the applicant to provide any information reasonably necessary to allow the department to make determinations required by this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71512 Conditions to making grant or loan.

Sec. 71512. The department shall not make a grant or a loan under this part unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules.

(b) The applicant demonstrates to the department the capability to implement the proposed project.

(c) The applicant provides the department with evidence that a licensed professional engineer has approved the plans and specifications for the project, if appropriate.

(d) The applicant demonstrates to the department that there is an identifiable source of funds for the maintenance and operation of the proposed project.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71513 Recipient of grant or loan; duties; noncompliance; recovery of grant; withholding

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grant or loan.

Sec. 71513. (1) A recipient of a grant or a loan made under this part shall be subject to all of the following:

(a) A recipient shall keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) A recipient shall obtain authorization from the department before implementing a change that significantly alters the proposed project or facility.

(2) The department may revoke a grant or a loan made by it under this part or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan or with the requirements of this part or the rules promulgated under this part.

(3) The department may recover a grant if the project for which the grant was made never operates.

(4) The department may withhold a grant or a loan until the department determines that the recipient is able to proceed with the proposed project or facility.

(5) To assure timely completion of a project, the department may withhold 10% of the grant or loan amount until the project is complete.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.71514 Rules generally.

Sec. 71514. The department shall promulgate rules as are necessary or required to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 716

LOCAL RECREATION GRANTS

324.71601 Definitions.

Sec. 71601. As used in this part:

(a) "Community recreation plan" means a 5-year, comprehensive recreation plan for a given local unit of government, approval of which is required by the department for participation in the land and water conservation fund program pursuant to the land and water conservation fund act of 1965, public law 88-578, 78 Stat. 897, and the Michigan natural resources trust fund grant program under part 19.

(b) "Department" means the department of natural resources.

(c) "Director" means the director of the department.

(d) "Grant" means a local recreation grant under this part.

(e) "Infrastructure improvement" means restoration of the natural environment or the renovation, repair, replacement, upgrading, or structural improvement of an existing facility that is not less than 15 years old, including any of the following:

(*i*) Recreation centers.

(*ii*) Sports fields.

(*iii*) Beaches.

(*iv*) Trails.

(*v*) Playgrounds.

(f) "Local recreation project" means capital improvement projects including, but not limited to, the construction, expansion, development, or rehabilitation of recreational facilities. Local recreation project does not include the operation, maintenance, or administration of those facilities, wages, or administration of projects or purchase of facilities already dedicated to public recreational purposes.

(g) "Local unit of government" means a county, city, township, village, the Huron-Clinton metropolitan authority, or any authority composed of counties, cities, townships, villages, or any combination of those entities, which authority is legally constituted to provide public recreation.

(h) "Regional park" means a public recreation site that is under the applicant's control and that is in compliance with all of the following requirements as determined by the department:

(*i*) The site does now, or will, attract not less than 25% of its users from areas in the region that are 30 minutes or more driving time from the site.

(*ii*) The site provides passive, water-based, and active recreation opportunities.

(*iii*) The site is contiguous to, or encompasses, a natural resource feature.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

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Popular name: Act 451

Popular name: NREPA

324.71602 Local recreation grant program; establishment; provisions; prohibitions.

Sec. 71602. (1) The department shall establish a local recreation grant program. The grant program shall provide grants to local units of government for local recreation projects that provide for 1 or more of the following:

(a) Public recreation infrastructure improvements that involve the replacement of or structural improvements relating specifically to existing public recreation facilities, including, but not limited to, recreation centers, sports fields, beaches, trails, playgrounds, skating rinks, toboggan runs, sledding hills, and park support facilities.

(b) The construction of community public recreation facilities for the purpose of addressing the recreational needs of local residents, including, but not limited to, playgrounds, sports fields and courts, community and senior centers, picnic facilities, nature centers, nonmotorized trails and walkways, amphitheaters, and fishing piers and fishing access sites.

(c) The development of public recreation improvements that will attract tourists or otherwise increase tourism, where such developments are reasonably expected to have a substantial positive impact, relative to cost, on the local, regional, or state economy, including, but not limited to, campgrounds, beaches, and fishing access sites.

(2) A grant shall not be provided under this part for land acquisition or a commercial theme park.

(3) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.71603 Allocations to local units of government; zones; purposes; matching requirements; sale, disposal, or conversion of facility.

Sec. 71603. (1) Subject to amounts appropriated to the department under section 19608(5), the total amount of grants made to local units of government under this part shall be allocated as follows:

(a) Local recreation projects within zone 1	3.6%
(b) Local recreation projects within zone 2	14.4%
(c) Local recreation projects within zone 3	72%
(d) Local recreation projects at regional parks	10%

(2) For purposes of the distribution of grants for local recreation projects under this part, the state is divided into the following 3 zones:

(a) Zone 1—all of the counties of the Upper Peninsula.

(b) Zone 2—Emmet, Charlevoix, Cheboygan, Presque Isle, Leelanau, Antrim, Otsego, Montmorency, Alpena, Benzie, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Manistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Mason, Lake, Osceola, Clare, Gladwin, Arenac, Isabella, Midland, Bay, Huron, Saginaw, Tuscola, and Sanilac counties.

(c) Zone 3—Oceana, Newaygo, Mecosta, Muskegon, Montcalm, Gratiot, Ottawa, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer, St. Clair, Allegan, Barry, Eaton, Ingham, Livingston, Oakland, Macomb, Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw, Wayne, Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee, and Monroe counties.

(3) A grant made under this part to a local unit of government shall require a 25% match by the local unit of government. Not more than 50% of the local unit of government's contribution under this subsection may be in the form of goods and services directly rendered to the construction of the project, or federal funds, or both. A local unit of government shall establish to the satisfaction of the department the cost or fair market value, whichever is less as of the date of the notice of approval by the department, of any such goods and services with which the local unit of government seeks to meet the match requirement.

(4) A facility funded under this section shall not be sold, disposed of, or converted to a use not specified in the application for the grant without express approval of the department.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

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Popular name: Act 451

Popular name: NREPA

324.71604 Project funding; conditions.

Sec. 71604. The department shall consider a project application for funding under this part if it is in compliance with all of the following conditions:

(a) The application is submitted by the deadline established by the department.

(b) The application is complete and submitted on the form required by the department.

(c) The application includes the following information:

(*i*) An 8-1/2-inch by 11-inch project location map.

(*ii*) An 8-1/2-inch by 11-inch preliminary site development plan.

(*iii*) Preliminary floor plans and elevation drawings for any building construction.

(*iv*) A certified resolution from the governing body of the local unit of government stating that the proposal will be undertaken if a grant is awarded and designating an authorized project representative.

(*v*) Evidence and results of a preannounced public meeting on the application proposal.

(*vi*) A brief description of the project proposal.

(*vii*) The total cost of the project proposal and the amount of grant requested.

(*viii*) Sources of the local match.

(*ix*) A breakdown of development items and their projected costs.

(*x*) A narrative, limited to 1 page, of what the proposal is and why it is needed.

(*xi*) Attestation, by signature of an authorized project representative, that all statements on the application form are true, complete, and accurate to the best of the representative's knowledge.

(*xii*) Other information as determined by the department.

(d) The local unit of government has an approved community recreation plan on file with the department. Department-approved plans are valid through December 31 of the fifth full calendar year after adoption by the local unit's governing body.

(e) The project for which funding assistance is sought is listed and justified in the local unit of government's recreation plan.

(f) The local unit of government has submitted notice of the project application to the regional planning agency for review.

(g) The local unit of government has fee title or a legal instrument that demonstrates property control for not less than 15 years from the date of application. If control is evidenced by less than fee title, the length of control shall be commensurate with the value of the proposed project.

(h) The local unit of government's grant request is not more than $750,000.00 and not less than $15,000.00. An applicant may receive more than 1 grant in a funding cycle.

(i) The proposed project addresses at least 1 of the following purposes as described in section 71602:

(*i*) Infrastructure improvement.

(*ii*) Community recreation.

(*iii*) Tourist attraction.

(j) The proposed project is not for the purpose of meeting the physical education and athletic program requirements of a school. Facilities funded under this program on school grounds shall not restrict public use to less than 50% of operating hours. A schedule of when such sites are open to the public may be requested by the department.

(k) The proposed project does not unfairly compete with the private sector. Projects that would create an unfairly competitive situation with private enterprises are not eligible for funding. In situations where privately managed facilities are providing identical or similar recreation opportunities, the local unit of government shall provide written justification of the need for the proposed facility in light of the private sector's presence.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.71605 Final grant awards; determination; factors; ratings; priority; upgrade of drinking water systems or rest room facilities.

Sec. 71605. (1) Final grant awards will be determined by the director.

(2) The department shall use the 3 factors listed in subsection (3)(a), (b), and (c) to evaluate projects. All factors are of equal importance in the evaluation of a project.

(3) Each of the 3 factors listed in subdivisions (a), (b), and (c) shall be rated exceptional, good, or fair. An

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exceptional rating is equal to a score of 80; a good rating is equal to a score of 60; and a fair rating is equal to a score of 10. The factors are as follows:

(a) The need for the project as determined by an overall assessment of the following:

(*i*) The merits of the project relative to cost in addressing 1 of the following program priorities as designated by the applicant:

(A) Infrastructure improvement.

(B) Community recreation.

(C) Tourism.

(*ii*) How well the project meets the following priorities:

(A) Proximity to urban areas.

(B) Attention, beyond the requirements of law, to the needs of special populations, such as minorities, senior citizens, low income individuals, and the handicapped.

(C) Impact on county and regional recreation opportunity deficiencies or identified local recreation deficiencies documented in the community recreation plan.

(b) The capability of the local unit of government to complete the project and to operate and maintain it once completed. Capability will be determined by an overall assessment of all of the following criteria:

(*i*) Demonstrated satisfactory performance of the local unit of government in other department grant programs.

(*ii*) Demonstrated ability to operate and maintain existing recreation facilities.

(*iii*) Assurance of funds for the maintenance and operation of the proposed project.

(*iv*) Demonstrated commitment to public recreation through recreation staffing and the existence of a citizen recreation board or commission.

(c) The quality of the site and project design. Quality will be determined by an overall assessment of all of the following criteria:

(*i*) The appropriateness of the site for the intended uses.

(*ii*) Clarity and detail of the development plans and the quality of the project design in terms of orientation, spacing of facilities, traffic flow, and effective use of site features.

(*iii*) The quality of any existing development.

(*iv*) The adequacy of safety and health considerations.

(*v*) Evaluation of the impact of proposed development on the natural environment.

(4) If the score on 2 or more projects is the same and does not determine which project should be recommended within available dollars, the department shall consider the following factors to determine priority:

(a) The amount of local recreation grants funds previously received by a local unit of government under this part.

(b) A local unit of government's need for financial assistance. Financial need will be determined by the local unit of government's rank on the distressed communities list.

(c) A local unit of government's commitment to provide more than the required 25% match.

(d) The amount of Michigan natural resources trust fund development grants and land and water conservation grants previously received by the local unit of government.

(5) If a project is determined to be eligible for a grant and the needs at the location of the project include the upgrade of drinking water systems or rest room facilities, the grant award for the project shall first be used for such upgrades at that project location.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.71606 Administration of grants; compliance with requirements of part 196.

Sec. 71606. Grants made under this part are subject to the applicable requirements of part 196. The department shall administer this part in compliance with the applicable requirements of part 196, including the reporting requirements to the legislature of the grants provided under this part.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.71607 Rules.

Sec. 71607. The department may promulgate rules to implement this part.

History: Add. 1998, Act 286, Eff. Dec. 1, 1998.

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Popular name: Act 451

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TRAILWAYS

PART 721
MICHIGAN TRAILWAYS

324.72101 Definitions.

Sec. 72101. As used in this part:

(a) "Advisory council" means the Michigan trails advisory council created in section 72110.

(b) "Council" means a trail management council established pursuant to section 72106.

(c) "Department" means the department of natural resources.

(d) "Director" means the director of the department or his or her designee.

(e) "Equine access locations" means open access roads, management roads, forestry access roads, 2-track and single-track trails that are not wildlife paths, staging areas for pack and saddle animals to be dropped off or picked up, and associated wilderness campsites.

(f) "Forest road" means that term as defined in section 81101.

(g) "Fund" means the Pure Michigan Trails fund created in section 72109.

(h) "Governmental agency" means the federal government, a county, city, village, or township, or a combination of any of these entities.

(i) "Pack and saddle trails" means trails and equine access locations that may be used by pack and saddle animals.

(j) "Pure Michigan Trail" means a trail designated as a "Pure Michigan Trail" under section 72103.

(k) "Pure Michigan Water Trail" means a water trail designated as a "Pure Michigan Water Trail" under section 72103.

(*l*) "Pure Michigan Trail Town" means a "Pure Michigan Trail Town" designated under section 72104.

(m) "Rail-trail" means a former railroad bed that is in public ownership and used as a trail.

(n) "Statewide trail network" means the statewide trail network established in section 72114.

(o) "Trail" means a right-of-way adapted to foot, horseback, motorized, or other nonmotorized travel. Trail also includes a water trail.

(p) "Water trail" means a designated route on a body of water.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 129, Imd. Eff. Nov. 5, 1997;—Am. 2010, Act 46, Imd. Eff. Apr. 2, 2010;—Am. 2014, Act 211, Eff. Sept. 25, 2014;—Am. 2016, Act 288, Imd. Eff. Sept. 28, 2016.

Popular name: Act 451

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324.72102 Legislative findings.

Sec. 72102. The legislature finds that a statewide system of trails will provide for public enjoyment, health, and fitness; encourage constructive leisure-time activities; protect open space, cultural and historical resources, and habitat for wildlife and plants; enhance the local and state economies; link communities, parks, and natural resources; create opportunities for rural-urban exchange, agricultural education, and the marketing of farm products; and preserve corridors for possible future use for other public purposes. Therefore, the planning, acquisition, development, operation, and maintenance of trails are in the best interest of this state and are a public purpose.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2010, Act 46, Imd. Eff. Apr. 2, 2010;—Am. 2014, Act 211, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72103 Designation as "Pure Michigan Trail" or "Pure Michigan Water Trail"; requirements; public hearing; revocation of designation.

Sec. 72103. (1) The director may designate a trail in this state located on land as a "Pure Michigan Trail". A person may request that the director designate a trail as a Pure Michigan Trail. The director shall not designate a trail as a Pure Michigan Trail unless it meets, or will meet when completed, all of the following requirements:

(a) The trail is a model trail for its designated uses and the designation of the trail as a Pure Michigan Trail contributes to a statewide trail network that promotes healthy lifestyles, economic development, recreation, and conservation of the natural and cultural resources of this state.

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(b) The land on which the trail is located is owned by this state or a governmental agency or otherwise is under the long-term control of this state or a governmental agency through a lease, easement, or other arrangement. If the land is owned by a governmental agency, the director shall obtain the consent of the governmental agency before designating the land as part of a Pure Michigan Trail.

(c) The design and maintenance of the trail and its related facilities meet generally accepted standards of public safety.

(d) The trail meets appropriate standards for its designated recreation uses.

(e) The trail is available for designated recreation uses on a nondiscriminatory basis.

(f) The trail is, or has potential to be, a segment of a statewide network of trails, or it attracts a substantial share of its users from beyond the local area.

(g) The trail is marked with an official Pure Michigan Trail sign and logo at major access points.

(h) Where feasible, the trail offers adequate support facilities for the public, including parking, sanitary facilities, and emergency telephones, that are accessible to people with disabilities and are at reasonable frequency along the trail. The trail may include amenities related to trail usage such as connectors and access to rest areas, lodging, and eating facilities, as well as park benches and signage. Support facilities and trail amenities described in this subdivision are public goods.

(i) Potential negative impacts of trail development on owners or residents of adjacent property are minimized through all of the following:

(*i*) Adequate enforcement of trail rules and regulations.

(*ii*) Continuation of access for trail crossings for agricultural and other purposes.

(*iii*) Construction and maintenance of fencing, where necessary, by the owner or operator of the trail.

(*iv*) Other means as considered appropriate by the director.

(j) A trademark license is obtained by the department from the Michigan economic development corporation for use of the words "Pure Michigan".

(k) Other conditions required by the director.

(2) In designating trails as Pure Michigan Trails under subsection (1), the director shall consider all forms of permissible recreation uses equally in order to develop a Pure Michigan Trails network that is representative of the various trail uses.

(3) The director may designate a water trail as a "Pure Michigan Water Trail". A person may request that the director designate a trail as a Pure Michigan Water Trail. The director shall not designate a trail as a Pure Michigan Water Trail unless it meets, or will meet when completed, all of the following requirements:

(a) The trail and its access points are open to public use and are designed, constructed, and maintained according to best management practices.

(b) The trail is located on a contiguous waterway or a series of waterways that are contiguous or are connected by portages.

(c) The trail is consistent with applicable land use plans and environmental laws.

(d) The trail meets the criteria of subsection (1)(a), (c), (d), (e), (f), (g), (h), (i)(*i*) and (*iv*), and (k).

(e) A trademark license is obtained by the department from the Michigan economic development corporation for use of the words "Pure Michigan".

(4) Prior to designating a Pure Michigan Trail under subsection (1) or a Pure Michigan Water Trail under subsection (3), the director shall refer the proposed designation to the natural resources commission, which shall hold a public hearing on the proposed designation. Within 90 days after receiving the referral under this subsection, the natural resources commission shall provide the director with its recommendation regarding the designation.

(5) The director may revoke a Pure Michigan Trail or a Pure Michigan Water Trail designation if he or she determines that a trail fails to meet the requirements of this section. Before revoking a Pure Michigan Trail or a Pure Michigan Water Trail designation, the director shall provide notice to all entities involved in the management of the trail. If the trail is brought into compliance with this section within 90 days after providing this notice, the director shall not revoke the designation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 210, Eff. Sept. 25, 2014;—Am. 2018, Act 69, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

324.72103a Researching and providing historical, cultural, or natural resource information; recommendations; means.

Sec. 72103a. The department may develop recommendations for local trail managers on researching and providing historical, cultural, or natural resource information related to the area that a trail traverses using

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interpretive signage, online material, or other appropriate means.

History: Add. 2018, Act 69, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

324.72104 Designation as "Pure Michigan Trail Town"; sign and logo; revocation of designation.

Sec. 72104.

(1) The director, upon petition by a person, may designate a city, village, or township as a "Pure Michigan Trail Town" if the director determines that the following conditions have been met:

(a) The city, village, or township is easily accessible to users of a Pure Michigan Trail or a Pure Michigan Water Trail.

(b) The city, village, or township has adopted a resolution in support of the designation.

(c) The city, village, or township has adopted a plan for providing support services to trail users such as parking, sanitary facilities, restaurants, accommodations, grocery stores, bike shops, boat docks, or other services that may be needed or desired by trail users.

(d) The petitioner demonstrates at least 3 of the following:

(*i*) There is community support for the designation as evidenced by creation of an advisory committee.

(*ii*) There has been an annual trail-related project or event within the city, village, or township.

(*iii*) A school board within the city, village, or township has endorsed a trail-based service learning educational component within its schools.

(*iv*) Land use plans, planning tools, ordinances, or guidelines are in place that recognize the relationship between the trail and other community assets, or that there is support to amend, change, or add these provisions.

(e) A trademark license is obtained by the department from the Michigan economic development corporation for use of the words "Pure Michigan".

(2) Upon designation of a city, village, or township as a Pure Michigan Trail Town, the city, village, or township may erect and maintain along the Pure Michigan Trail or Pure Michigan Water Trail at a junction with the city, village, or township an official Pure Michigan Trail Town sign and logo designed by the department. The department shall only provide for the erection and maintenance of an official Pure Michigan Trail Town sign and logo when sufficient private contributions are received to pay for the cost of erecting and maintaining the sign and logo.

(3) The director may revoke a Pure Michigan Trail Town designation if he or she determines that the city, village, or township has failed to meet the requirements of this section. Before revoking a Pure Michigan Trail Town designation, the director shall provide notice to the city, village, or township. If the city, village, or township is brought into compliance with this section within 90 days after providing this notice, the director shall not revoke the designation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 210, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72105 Operating and maintaining trail; agreement; provisions; operation of electric bicycle; requirements; exception; definitions.

Sec. 72105. (1) The department may operate and maintain a trail that is located on state owned land or may enter into an agreement with a council or 1 or more governmental agencies to provide for the operation and maintenance of the trail. An agreement entered into under this subsection may include provisions for any of the following:

(a) Construction, maintenance, and operation of the trail, including amenities related to trail usage such as connectors and access to rest areas, lodging, and eating facilities, as well as park benches and signage.

(b) Enforcement of trail rules and regulations including permitted uses of the trail.

(c) Other provisions consistent with this part.

(2) All of the following apply to the operation of an electric bicycle on a trail subject to this part:

(a) An individual may operate a class 1 electric bicycle on a linear trail that has an asphalt, crushed limestone, or similar surface, or a rail trail. A local authority or agency of this state having jurisdiction over a trail described in this subdivision may regulate or prohibit the operation of a class 1 electric bicycle on that trail.

(b) An individual may operate a class 2 or class 3 electric bicycle on a linear trail that has an asphalt,

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crushed limestone, or similar surface, or a rail trail if authorized by the local authority or agency of this state having jurisdiction over the trail.

(c) Except as otherwise provided in this subdivision, an individual shall not operate an electric bicycle on a trail that is specifically designated as nonmotorized and that has a natural surface tread that is made by clearing and grading the native soil with no added surfacing materials. A local authority or agency of this state having jurisdiction over a trail described in this subdivision may allow the operation of an electric bicycle on that trail.

(3) Subsection (2) does not apply to the use of electric bicycles on a congressionally authorized public trail system.

(4) As used in this section, "electric bicycle", "class 1 electric bicycle", "class 2 electric bicycle", and "class 3 electric bicycle" mean those terms as defined in section 13e of the Michigan vehicle code, 1949 PA 300, MCL 257.13e.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 212, Eff. Sept. 25, 2014;—Am. 2017, Act 138, Eff. Jan. 28, 2018;—Am. 2018, Act 69, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

324.72105a Adopt-a-trail program.

Sec. 72105a. (1) The department shall establish an "adopt-a-trail" program that will allow volunteer groups to assist in maintaining and enhancing trails on state owned land.

(2) Subject to subsection (3), volunteer groups in the adopt-a-trail program may adopt any available trail or trail segment and may choose any 1 or more of the following volunteer activities:

(a) Spring cleanups.

(b) Environmental activities.

(c) Accessibility projects.

(d) Special events.

(e) Trail maintenance, enhancement, and development.

(f) Public information and assistance.

(g) Training.

(3) The department shall designate the activities to be performed by a volunteer group in the adopt-a-trail program. The department may provide for more than 1 volunteer group to adopt an eligible trail or trail segment. If the department operates other programs in the vicinity of the trail that allows volunteers to adopt a park or other resource, the department shall coordinate these programs to provide for efficient and effective volunteer programs in the area.

(4) A volunteer group that wishes to participate in the adopt-a-trail program shall submit an application to the department on a form provided by the department. Additionally, volunteer groups shall agree to the following:

(a) Volunteer groups shall participate in the program for at least a 2-year period.

(b) Volunteer groups shall consist of at least 6 people who are 18 years of age or older, unless the volunteer group is a school or scout organization, in which case the volunteers may be under 18 years of age.

(c) Volunteer groups shall contribute a total of at least 400 service hours over a 2-year period.

(d) Volunteer groups shall comply with other reasonable requirements of the department.

(5) A state park manager or a district forest manager may issue to volunteers who are actively working on adopt-a-trail projects that last more than 1 day free camping permits if campsites are available. A state park manager or a district forest manager may waive state park entry fees for volunteers entering state parks to work on adopt-a-trail projects.

(6) While a volunteer is working on an adopt-a-trail project, the volunteer has the same immunity from civil liability as a department employee and shall be treated in the same manner as an employee under section 8 of 1964 PA 170, MCL 691.1408.

(7) The department shall design and erect near the entrance of each adopted trail or trail segment an adopt-a-trail program sign with the name of the volunteer group's sponsoring organization listed for each volunteer group that has contributed at least 100 service hours by volunteers.

History: Add. 1997, Act 129, Imd. Eff. Nov. 5, 1997;—Am. 2010, Act 46, Imd. Eff. Apr. 2, 2010;—Am. 2014, Act 212, Eff. Sept. 25, 2014.

Popular name: Act 451

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324.72106 Trail management council; establishment; purpose; adopting operating

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procedures and electing officers; powers; public hearings; dissolution.

Sec. 72106. (1) Two or more governmental agencies may establish a trail management council for the development and management of a trail pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(2) Upon formation, a council shall adopt operating procedures and shall elect officers as the council considers appropriate.

(3) A council may do 1 or more of the following as authorized in an interlocal agreement entered into pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512:

(a) Operate and maintain that portion of 1 or more trails that are owned or under the control of the governmental agencies establishing the council.

(b) Pursuant to an agreement under section 72105, operate and maintain that portion of 1 or more trails that are located on state owned land.

(c) Review and consider current and potential permitted uses of each trail and trail segment and provide an easily understood plan for trail users.

(d) Establish protocols for the development and management of a trail, which may include any of the following:

(*i*) Signage.

(*ii*) Trail etiquette and safety guidance.

(*iii*) A historical and cultural interpretive plan.

(*iv*) A formula for sharing costs of maintenance.

(*v*) A plan for linking the trail to nearby water trails, where appropriate.

(*vi*) A plan for providing transit-based access for trail users in order to enhance access for those who may not reside in the vicinity of the trail.

(e) Coordinate the enforcement of trail rules and regulations and other applicable laws and ordinances, including permitted uses of the trail on trails owned or under the control of the governmental agencies establishing the council or, pursuant to an agreement under section 72105, trails that are located on state owned land.

(f) Receive any grant made from the fund or other funding related to that portion of a trail within its jurisdiction.

(g) Acquire or hold real property for the purpose of operating a trail.

(h) Perform other functions consistent with this part.

(4) A council may hold 1 or more public hearings to receive input and provide information on the development and management of a trail.

(5) A council may be dissolved by the governmental agencies that participated in creating the council. However, if a council has entered into an agreement with the department under section 72105, the agreement shall specify how the council may be dissolved.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 212, Eff. Sept. 25, 2014;—Am. 2018, Act 69, Eff. June 17, 2018.

Popular name: Act 451

Popular name: NREPA

324.72107 Closure during pesticide application.

Sec. 72107. In agricultural areas, a trail may be temporarily closed by the entity operating the trail to allow pesticide application on lands adjoining the trail. The entity operating the trail shall post the closure of the trail or arrange with a landowner or other person for the posting of signs and the closure of the trail during pesticide application and appropriate reentry periods.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 214, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72108 Department; powers; acquisition of land as Pure Michigan Trail; transfer or use of railroad right-of-way; assumption of liability; "fair value" defined.

Sec. 72108. (1) The department may do any of the following:

(a) Grant easements or, pursuant to part 13, use permits or lease land owned by this state that is being used for a Pure Michigan Trail for a use that is compatible with the use of the Pure Michigan Trail.

(b) Enter into contracts for concessions along a state owned Pure Michigan Trail.

(c) Lease land adjacent to a state owned Pure Michigan Trail for the operation of concessions.

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(2) If the department acquires land, the director may state that the specified land is acquired for use as a Pure Michigan Trail. Following acquisition of land that the director states is acquired for use as a Pure Michigan Trail, any revenue derived from the land under subsection (1), except as otherwise provided by law, must be deposited into the fund.

(3) If the department enters into negotiations with a railroad for the department to become a trail sponsor under 16 USC 1247(d), the department shall comply with 49 CFR 1152.29(a)(2)(ii). The department shall assume full responsibility for any potential legal liability arising out of the transfer or use of the railroad right-of-way. In exchange for the department's assumption of liability, the railroad shall provide the department with the fair value of the department's assumption of liability. As used in this subsection, "fair value" means the value that the department and the railroad mutually agree accurately reflects the risk of liability assumed by the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 215, Eff. Sept. 25, 2014;—Am. 2017, Act 39, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.72109 Pure Michigan Trails fund.

Sec. 72109. (1) The Pure Michigan Trails fund is created within the state treasury.

(2) Except as otherwise provided by law, the state treasurer may receive money or other assets from any of the following for deposit into the fund:

(a) Payments to the state for easements, use permits, leases, or other use of state owned Pure Michigan Trail property.

(b) Payments to the state for concessions operated by private vendors on state owned property located on or adjacent to a Pure Michigan Trail.

(c) Federal funds.

(d) Gifts or bequests.

(e) State appropriations.

(f) Money or assets from other sources as provided by law.

(3) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(4) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(5) Money in the fund may be expended for any of the following purposes:

(a) The expenses of the department in operating and maintaining the Pure Michigan Trail system and enforcing Pure Michigan Trail rules and regulations.

(b) Grants to or contracts with councils, nonprofit organizations, private sector entities, or governmental agencies to operate and maintain segments of Pure Michigan Trails and to enforce Pure Michigan Trail rules and regulations.

(c) Funding Pure Michigan Trail construction and improvements.

(d) Acquisition of land or rights in land.

(e) Publications and promotions of the Pure Michigan Trails system.

(6) The department shall submit a report to the legislature on or before December 1 of each year describing the use of money appropriated from the fund in the previous fiscal year.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 214, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72110 Michigan trails advisory council; creation; duties; membership; terms; vacancy; qualifications; chairperson; vice-chairperson; staffing; procedures; quorum; meetings; powers; workgroups; compensation; contracts; donations; additional responsibilities.

Sec. 72110. (1) The Michigan trails advisory council is created within the department.

(2) The advisory council shall advise the director and the governor on the creation, development, operation, and maintenance of motorized and nonmotorized trails in this state, including, but not limited to, snowmobile, biking, equestrian, hiking, off-road vehicle, skiing trails, and water trails. In advising the director and the governor on the creation and development of motorized and nonmotorized trails in this state, the advisory council shall seek to have the trails linked wherever possible. The advisory council may perform additional related duties as provided by this part, other law, or as requested by the director or the governor.

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(3) The advisory council shall consist of 11 members appointed by the governor. Subject to subsection (4), a member of the advisory council shall be appointed for a term of 4 years.

(4) All of the following apply to the first advisory council appointed after the effective date of the amendatory act that added this subsection:

(a) 2 members shall serve for 1 year.

(b) 3 members shall serve for 2 years.

(c) 3 members shall serve for 3 years.

(d) 3 members, not fewer than 2 of whom shall be members of the equine trailways subcommittee created under section 72110a, shall serve for 4 years.

(5) A vacancy on the advisory council occurring other than by expiration of a term shall be filled by the governor in the same manner as the original appointment for the balance of the unexpired term. A vacancy does not affect the power of the remaining members to exercise the duties of the advisory council.

(6) At least 5 members of the advisory council shall be an owner of an ORV licensed as required under section 81116 or an owner of a snowmobile registered under section 82105. At least 3 members of the advisory council shall be owners of a snowmobile registered under section 82105. At least 1 member of the advisory council shall possess experience as an instructor in a snowmobile safety education and training program or an ORV safety education course. At least 2 members of the advisory council shall be residents of the Upper Peninsula of this state. At least 2 members of the advisory council shall be members of the equine trailways subcommittee created in section 72110a.

(7) The governor shall designate a member of the advisory council to serve as the chairperson of the advisory council at the pleasure of the governor. The advisory council may select a member of the advisory council to serve as vice-chairperson of the advisory council.

(8) The advisory council shall be staffed and assisted by personnel from the department, subject to available funding. Any budgeting, procurement, or related management functions of the advisory council shall be performed under the direction and supervision of the director.

(9) The advisory council shall adopt procedures consistent with this section and other applicable state law governing its organization and operations.

(10) A majority of the members of the advisory council serving constitute a quorum for the transaction of the advisory council's business. The advisory council shall act by a majority vote of its serving members.

(11) The advisory council shall meet at the call of the chairperson and as may be provided in procedures adopted by the advisory council.

(12) The advisory council may, as appropriate, make inquiries, conduct studies and investigations, hold hearings, and receive comments from the public. The advisory council may also consult with outside experts in order to perform its duties, including, but not limited to, experts in the private sector, government agencies, and institutions of higher education. The advisory council shall consult with organizations involved with expanding trail access for persons with disabilities.

(13) The advisory council may establish advisory workgroups, including, but not limited to, an advisory workgroup on snowmobiles, as considered necessary by the advisory council to assist the advisory council in performing the duties and responsibilities of the advisory council. In addition, the equine trailways subcommittee created in section 72110a as a subcommittee of the advisory council shall advise the advisory council.

(14) Members of the advisory council shall serve without compensation. Members of the advisory council may receive reimbursement for necessary travel and expenses consistent with relevant statutes and the rules and procedures of the civil service commission and the department of technology, management, and budget, subject to available funding.

(15) The advisory council may hire or retain contractors, subcontractors, advisors, consultants, and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the advisory council and the performance of its duties as the director considers advisable and necessary in accordance with this part, other applicable law, and the rules and procedures of the civil service commission and the department of technology, management, and budget, subject to available funding.

(16) The advisory council may accept donations of labor, services, or other things of value from any public or private agency or person.

(17) Members of the advisory council shall refer all legal, legislative, and media contacts to the department.

(18) In addition to the responsibilities provided in this section and otherwise provided by law, the advisory council shall do both of the following:

(a) Make recommendations to the director on the expenditure of money in the fund.

(b) Advise the director on the implementation of this part and the establishment and operation of Pure

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Michigan Trails and Pure Michigan Water Trails.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2010, Act 46, Imd. Eff. Apr. 2, 2010;—Am. 2013, Act 248, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 213, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72110a Equine trails subcommittee; creation; staffing; funding; membership; appointments; terms; vacancy; removal; meetings; quorum; business conducted at public meetings; writings subject to freedom of information act; compensation; duties.

Sec. 72110a. (1) The equine trails subcommittee is created as a subcommittee of the advisory council. The department may provide staffing and administrative support to the equine trails subcommittee. The equine trails subcommittee may also be staffed and funded by user groups and other interested persons.

(2) Subject to subsection (3), the equine trails subcommittee shall consist of the following members appointed by the director:

(a) One individual representing the state's tourism industry.

(b) Five individuals representing the equine industry as follows:

(*i*) One individual from the Upper Peninsula.

(*ii*) One individual from the northern Lower Peninsula.

(*iii*) One individual from the central Lower Peninsula.

(*iv*) One individual from the southeastern Lower Peninsula.

(*v*) One individual from the southwestern Lower Peninsula.

(3) The senate majority leader and the speaker of the house of representatives shall each submit a list of 3 persons to the director. The director shall appoint at least 1 person from each of those lists to the equine trails subcommittee.

(4) Members of the equine trails subcommittee shall serve for terms of 4 years or until a successor is appointed, whichever is later, except that of the members first appointed 2 shall serve for 2 years, 2 shall serve for 3 years, and 2 shall serve for 4 years.

(5) If a vacancy occurs on the equine trails subcommittee, an appointment for the unexpired term shall be made in the same manner as the original appointment.

(6) A member of the equine trails subcommittee may be removed for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(7) The first meeting of the equine trails subcommittee shall be called by the department within 30 days after the appointments have been made. At the first meeting, the equine trails subcommittee shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the equine trails subcommittee shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 3 or more members.

(8) A majority of the members of the equine trails subcommittee constitute a quorum for the transaction of business at a meeting of the equine trails subcommittee. A majority of the members present and serving are required for official action of the equine trails subcommittee.

(9) The business that the equine trails subcommittee may perform shall be conducted at a public meeting of the equine trails subcommittee held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or retained by the equine trails subcommittee in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) Members of the equine trails subcommittee shall serve without compensation. However, subject to the availability of funding, members of the equine trails subcommittee may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the equine trails subcommittee.

(12) The equine trails subcommittee shall do all of the following:

(a) Prepare and submit to the advisory council a recommended plan for a statewide network of pack and saddle trails. The recommended plan for a statewide pack and saddle trails network shall include both of the following:

(*i*) All pack and saddle trails on state owned land that have previously been open for use by pack and saddle animals at any time and that the equine trails subcommittee determines are appropriate for pack and saddle trails.

(*ii*) All additional state lands that the equine trails subcommittee determines would be appropriate for pack

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and saddle animals and would contribute to a statewide network of pack and saddle trails.

(b) Advise the advisory council and the department on the development and use of the pack and saddle trails network.

(c) Advise the advisory council and the department on other matters related to the promotion of the state's equine industry.

(d) Advise the advisory council and the department on funding to conduct pack and saddle trail reviews under section 72115 and to provide for the reopening of previously closed pack and saddle trails, the preservation of existing pack and saddle trails, and the development of new pack and saddle trails across this state.

History: Add. 2010, Act 46, Imd. Eff. Apr. 2, 2010;—Am. 2014, Act 213, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72111 State agencies; duties.

Sec. 72111. All state agencies shall cooperate with the commission and the department in the implementation of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.72112 Rules.

Sec. 72112. The department may promulgate rules as it considers necessary to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 210, Eff. Sept. 25, 2014.

Popular name: Act 451

Popular name: NREPA

324.72113 Repealed. 2014, Act 210, Eff. Sept. 25, 2014.

Compiler's note: The repealed section pertained to Michigan heritage water trail program.

Popular name: Act 451

Popular name: NREPA

324.72114 Statewide trail network; establishment; modification to include additional trails or uses; signage; availability on department's website; recommendations from equine trails subcommittee and other trails users; database of trail maps.

Sec. 72114. (1) The department shall establish a statewide trail network that includes Pure Michigan Trails, Pure Michigan Water Trails, and other recreational use trails. The statewide trail network shall be designed to accommodate a variety of public recreation uses and shall specify the types of uses that are allowed on each trail segment. The statewide trail network shall be in conformance with section 72115 and the determinations made under section 72115. Prior to the department establishing the statewide trail network, the department shall hold a public meeting to receive testimony from the general public.

(2) After the statewide trail network is established, if the department is informed that additional trails should be added to the statewide trail network or that uses on particular trail segments should be modified, the department shall modify the statewide trail network to include additional trails or to modify the uses on particular trails as the department determines appropriate. However, any modifications shall be in conformance with section 72115 and determinations made under section 72115.

(3) The department may provide signage and recognition of places significant to the history of Native Americans, including places significant to that history along trails in the statewide trail network, as provided for in section 72117.

(4) Upon establishment of the statewide trail network, the department shall make the statewide trail network available on the department's website. If the department modifies the statewide trail network, the department shall make the updated statewide trail network available on the department's website.

(5) Within 1 year after receiving recommendations from the equine trails subcommittee under section 72110a, the advisory council shall review recommendations from the equine trails subcommittee as well as other interested trail users and shall make recommendations to the department for the establishment of the statewide trail network.

(6) The department shall work in cooperation with interested parties to facilitate the creation and maintenance of a current database of trail maps for all trails within the statewide trail network on the

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department's internet website. The database of trail maps shall specifically designate which of the trails are Pure Michigan Trails or Pure Michigan Water Trails. The database of trail maps shall allow trail users to download or print trail maps. In addition, the department shall work in cooperation with interested parties to facilitate the development and maintenance of a mobile software application of trail maps and other information related to specific trails that may be downloaded onto smartphones, tablet computers, and other portable electronic devices. The department shall work in cooperation with these interested parties to assure that the software application is updated to reflect current information from the database of trail maps.

History: Add. 2010, Act 45, Imd. Eff. Apr. 2, 2010;—Am. 2014, Act 210, Eff. Sept. 25, 2014;—Am. 2016, Act 247, Eff. Sept. 22, 2016.

Popular name: Act 451

Popular name: NREPA

324.72115 Pack and saddle animals; access to pack and saddle trails on public land; restrictions.

Sec. 72115. (1) Subject to subsections (2) and (3), pack and saddle animals shall be allowed to access pack and saddle trails on public land managed by the department as follows:

(a) Access on land of the state forest system is allowed unless restricted by statute, deed restriction, land use order, or other legal mechanism, in effect on April 2, 2010.

(b) Access on land of the state park system or state game area system is prohibited unless authorized by land use order or other legal mechanism in effect on April 2, 2010.

(c) Access on other land managed by the department is allowed according to the specific authorization or restriction applicable to the land.

(2) Access by pack and saddle animals may only be restricted on lands described in subsection (1) after April 2, 2010 if conditions are not suitable for pack and saddle animals because of public safety concerns, necessary maintenance, or for reasons related to the mission of the department. Restrictions related to the mission of the department shall be supported, to the greatest extent practicable, by a written science-based rationale that is supported with documentation that is made available to the public. Prior to determining that access by pack and saddle animals be restricted, the department shall make every effort to resolve any public safety or maintenance concerns. Subject to subsection (3), the department shall not restrict pack and saddle animals from lands described in subsection (1) unless all of the following conditions are met:

(a) The department holds a public meeting on a proposal to restrict access by pack and saddle animals on pack and saddle trails to receive testimony from the general public. The department shall invite the advisory council and the equine trails subcommittee created in section 72110a to attend the meeting.

(b) The department, after considering testimony at the meeting under subdivision (a), provides a specific rationale for its determination to restrict access by pack and saddle animals.

(c) Any decision by the department to restrict access by pack and saddle animals shall not take effect for a period of time set by the department, but not less than 60 days. However, if the director determines that a restriction must be imposed because of user conflicts or due to an imminent threat to public health, safety, welfare, or to natural resources or the environment, the director may issue a temporary order restricting access by pack and saddle animals for 30 days or until the threat or user conflict is abated. A temporary order under this subdivision may be reissued if the threat or user conflict persists.

(d) A written statement shall be posted at the trailhead in which the restriction is imposed stating the cause and estimated duration of the closure.

(e) A list of pack and saddle trails on which the department has restricted access for pack and saddle animals, including temporary orders, shall be posted on the department's website and notification shall be provided to the equine trails subcommittee created in section 72110a.

(3) Any restrictions described in subsection (1) on access by pack and saddle animals that were in effect on April 2, 2010 shall remain in effect until those restrictions are reviewed using the process under subsection (2).

(4) An individual shall not use pack and saddle animals on state-owned land except on pack and saddle trails that are open for access by pack and saddle animals. However, an individual may use a pack and saddle animal in an area in which public hunting is permitted to retrieve legally harvested deer, bear, or elk using the most direct route that does not enter a stream, river, or wetland except over a bridge, culvert, or similar structure.

History: Add. 2010, Act 45, Imd. Eff. Apr. 2, 2010;—Am. 2014, Act 213, Eff. Sept. 25, 2014;—Am. 2016, Act 288, Imd. Eff. Sept. 28, 2016.

Popular name: Act 451

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Popular name: NREPA

324.72116 Installation of telecommunication facilities on rail-trail; authorization; deposit of use fees; expenditures; preexisting arrangements or agreements; definitions.

Sec. 72116. (1) If the state owns the land on which a rail-trail is located or if the land is under the long-term control of the state or a state governmental agency through a lease, easement, or other arrangement, the department shall, upon application of a telecommunication provider and payment of not more than $500.00 in application fees, authorize the installation of telecommunication facilities on that land unless the installation is inconsistent with or prohibited by the lease, easement, or other arrangement. The authorization granted under this subsection shall be granted within 45 days and shall require all of the following:

(a) All telecommunication facilities shall be installed underground or shall be attached to existing aboveground structures consistent with subdivision (c).

(b) The telecommunication provider shall notify the department, in writing, of the installation of the facilities and the anticipated completion date of the installation not less than 30 days prior to beginning the installation. Within 5 days after its receipt of the notification, the department shall notify the telecommunication provider, in writing, of any use of the rail-trail for which a permit has been issued by the department.

(c) The use of the land for telecommunication facilities and the installation of the facilities or any repairs to the facilities shall not unreasonably interfere with the use or uses of the rail-trail.

(d) Following installation of the telecommunication facilities or any repairs to the facilities, the land shall be reasonably restored to its condition prior to the installation or repair.

(e) The telecommunication provider shall pay to the department a 1-time use fee of 5 cents per longitudinal linear foot of the space to be occupied by the telecommunication facilities. The fee required under this subdivision shall not be required beginning 6 years after the effective date of the amendatory act that added this section. At no time during or after this 6-year time period shall a telecommunications provider that pays the fee be charged with any additional fee for the use of the land for telecommunication facilities.

(2) The department shall forward use fees collected under this section to the state treasurer for deposit as follows:

(a) If the land or rights in land on which the telecommunications facilities are installed was purchased with money from the Michigan natural resources trust fund, money received under subsection (1)(e) shall be deposited into the Michigan natural resources trust fund.

(b) All money not described in subdivision (a) shall be deposited into the fund.

(3) Notwithstanding any other provision of this part, money from the fund that is collected under this section shall be expended, upon appropriation, as follows:

(a) Money collected from application fees under subsection (1) shall be used by the department for the administrative costs of implementing this section.

(b) In each county in which money is collected under subsection (1)(e) for the installation of telecommunication facilities on rail-trails that are used for motorized use, the department shall expend the money for grants to organizations operating in that county that are involved with the motorized use of rail-trails if such organizations exist. Money provided under this subdivision to organizations involved with the motorized use of rail-trails shall be used for the development and maintenance of rail-trails located within the county for motorized recreational uses.

(c) In each county in which money is collected under subsection (1)(e) for the installation of telecommunication facilities, but which is not expended pursuant to subdivision (b), the department shall expend the money for grants to local units of government or other organizations operating in that county that are involved with the use of rail-trails. Money provided under this subdivision to local units of government or organizations involved with the use of rail-trails shall be used for the development and maintenance of rail-trails located within the county for motorized and nonmotorized recreational uses.

(4) This section does not affect the rights and duties set forth in any arrangements or agreements for the installation of telecommunication facilities in a rail-trail described in subsection (1) between the department and a telecommunication provider entered before the effective date of the amendatory act that added this section. This section does not create a right for either the department or a telecommunication provider to terminate any preexisting arrangements or agreements.

(5) As used in this section:

(a) "Michigan natural resources trust fund" means the Michigan natural resources trust fund established in section 35 of article IX of the state constitution of 1963, and provided for in part 19.

(b) "Telecommunication facilities" means either or both of the following:

(*i*) Telecommunication facilities as defined in section 2 of the metropolitan extension telecommunications

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rights-of-way oversight act, 2002 PA 48, MCL 484.3102.

(*ii*) Facilities used by a video service provider as defined in section 1 of the uniform video services local franchise act, 2006 PA 480, MCL 484.3301.

(c) "Telecommunication provider" means either or both of the following:

(*i*) A telecommunication provider as defined in section 2 of the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3102.

(*ii*) A video service provider as defined in section 1 of the uniform video services local franchise act, 2006 PA 480, MCL 484.3301.

History: Add. 2012, Act 138, Imd. Eff. May 22, 2012.

Popular name: Act 451

Popular name: NREPA

324.72117 Preservation and promotion of history of Native Americans; collaboration with certain entities; report.

Sec. 72117. (1) The department shall work collaboratively with tribal governments, educators, universities, the state transportation department, the council for the arts and cultural affairs, Travel Michigan, the state historic preservation office, the state archaeologist, the Michigan historical commission, historic preservation organizations, and historical societies to do all of the following:

(a) Review, plan, and implement a master plan to promote and preserve the history of Native Americans in this state. The master plan shall include a central compilation of information about places significant to the history of Native Americans in this state. The master plan shall also provide for the dissemination of such information to the public through websites, brochures, or other means.

(b) In conjunction with state and federal authorities, sponsor commemorations, linkages, seminars, and public forums on Native American history in this state and neighboring states.

(c) Assist and promote the making of applications for inclusion in the National Register of Historic Places and for Michigan historical markers for places significant to the history of Native Americans in this state.

(d) Assist and develop partnerships to seek public and private funds to carry out activities to protect, preserve, and promote the awareness of Native American cultural heritage in this state.

(e) Promote the signage and recognition of places significant to the history of Native Americans, including places significant to that history along the statewide trail network described in section 72114.

(2) The department shall annually report to the governor and both houses of the legislature on its activities under this section in the prior calendar year.

History: Add. 2016, Act 247, Eff. Sept. 22, 2016.

Popular name: Act 451

Popular name: NREPA

324.72118 Forest roads; inventory; applicable provisions; posting on website.

Sec. 72118. (1) The department shall make a comprehensive inventory of forest roads that are state roads. The department shall divide the state into 5 regions and complete the inventory in regional phases. The Upper Peninsula shall be a separate region or regions. The department shall inventory the 2 most northerly regions in the Lower Peninsula by December 31, 2017. The department shall inventory the remaining regions by December 31, 2018. The inventory shall meet both of the following requirements:

(a) Identify the location, condition, and development level of the forest roads.

(b) Determine types of motorized and nonmotorized use currently restricted on each forest road segment and the seasons during which those uses are currently restricted.

(2) Beginning when the inventory for a region is completed or required to be completed, whichever occurs first, all of the following apply:

(a) The forest roads within that region are open to motorized use by the public unless designated otherwise by an order of the department under section 504. However, forest roads in the Upper Peninsula are open to motorized use by the public unless designated otherwise by an order of the department under section 504.

(b) If a timber harvest is planned for a particular area in that region, the department shall evaluate whether the timber harvest activity offers the opportunity to connect existing forest roads and trails in that area.

(c) The department shall not newly restrict a road or trail in that region from being used to access public land unless the department has provided each local unit of government in which the public land is located written notice that includes the reason for the restriction. This subdivision does not apply to a restriction imposed to protect public health or safety in an emergency situation.

(3) The department shall annually post to its website the total miles of forest roads open to motorized use in all inventoried regions and a map or maps of those forest roads.

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History: Add. 2016, Act 288, Imd. Eff. Sept. 28, 2016;—Am. 2018, Act 237, Eff. Sept. 25, 2018;—Am. 2018, Act 240, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

PART 723
TRAILS

324.72301 "Trail" defined.

Sec. 72301. As used in this part, "trail" means a right-of-way adapted to foot or horseback travel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.72302 State system of trails; master plan; development and maintenance of trails with facilities.

Sec. 72302. Within legislative appropriations, the department shall make a survey and prepare a master plan for a state system of trails with campsites and necessary facilities that takes into account points of historical interest and scenic beauty. Revisions of the plan may be made from time to time. On those parts of the trail that are not public roads, the department may prohibit motor equipment. The department may provide, develop, and maintain a system of trails with campsites and necessary facilities for the use of the public, within the appropriations made for those purposes by the legislature.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.72303 Trails; gifts; grants of property interests; prison labor.

Sec. 72303. The department may accept gifts or grants of land, rights-of-way and other property. The department may use state timber, timber materials, equipment, and prison labor on lands that are under lease or use permit to it.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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RECREATIONAL TRESPASS

PART 731
RECREATIONAL TRESPASS

324.73101 Definitions; F to P.

Sec. 73101. As used in this part:

(a) "Farm product" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(b) "Farm property" means land used in the production of a farm product and all lands contained within the farm.

(c) "Fish" means game fish or nongame fish as those terms are defined in section 48701.

(d) "Fur-bearing animal" means that term as defined in section 43503.

(e) "Game" means that term as defined in section 40103.

(f) "Hunting dog" means a dog allowed to range freely to engage in or aid in hunting on the day the dog enters the property of another person.

(g) "License" means a hunting, fishing, or fur harvester's license or, in the discretion of the court, any combination of such licenses. License does not mean a certificate, license, or permit under part 445 or 473.

(h) "Protected animal" means that term as defined in section 40103.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 546, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73102 Entering or remaining on property of another; consent; exceptions.

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Sec. 73102. (1) Except as provided in subsection (4), a person shall not enter or remain upon the property of another person, other than farm property or a wooded area connected to farm property, to engage in any recreational activity or trapping on that property without the consent of the owner or his or her lessee or agent, if either of the following circumstances exists:

(a) The property is fenced or enclosed and is maintained in such a manner as to exclude intruders.

(b) The property is posted in a conspicuous manner against entry. The minimum letter height on the posting signs shall be 1 inch. Each posting sign shall be not less than 50 square inches, and the signs shall be spaced to enable a person to observe not less than 1 sign at any point of entry upon the property.

(2) Except as provided in subsection (4), a person shall not enter or remain upon farm property or a wooded area connected to farm property for any recreational activity or trapping without the consent of the owner or his or her lessee or agent, whether or not the farm property or wooded area connected to farm property is fenced, enclosed, or posted.

(3) On fenced or posted property or farm property, a fisherman wading or floating a navigable public stream may, without written or oral consent, enter upon property within the clearly defined banks of the stream or, without damaging farm products, walk a route as closely proximate to the clearly defined bank as possible when necessary to avoid a natural or artificial hazard or obstruction, including, but not limited to, a dam, deep hole, or a fence or other exercise of ownership by the riparian owner.

(4) A person other than a person possessing a firearm may, unless previously prohibited in writing or orally by the property owner or his or her lessee or agent, enter on foot upon the property of another person for the sole purpose of retrieving a hunting dog. The person shall not remain on the property beyond the reasonable time necessary to retrieve the dog. In an action under section 73109 or 73110, the burden of showing that the property owner or his or her lessee or agent previously prohibited entry under this subsection is on the plaintiff or prosecuting attorney, respectively.

(5) Consent to enter or remain upon the property of another person pursuant to this section may be given orally or in writing. The consent may establish conditions for entering or remaining upon that property. Unless prohibited in the written consent, a written consent may be amended or revoked orally. If the owner or his or her lessee or agent requires all persons entering or remaining upon the property to have written consent, the presence of the person on the property without written consent is prima facie evidence of unlawful entry.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 546, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73103 Discharging firearm within right-of-way of public highway abutting certain property; consent; "public highway" defined.

Sec. 73103. (1) A person shall not discharge a firearm within the right-of-way of a public highway adjoining or abutting any platted property, fenced, enclosed, or posted property, farm property, or a wooded area connected to farm property without the consent of the owner of the abutting property or his or her lessee or agent.

(2) As used in this section, "public highway" means a road or highway under the jurisdiction of the state transportation department, the road commission of a county, or of a local unit of government.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73104 Removing, defacing, or destroying sign or poster.

Sec. 73104. A person shall not remove, deface, or destroy a sign or poster that has been posted pursuant to this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73105 Posting or enclosing property.

Sec. 73105. A person shall not post a sign on property owned by another person or enclose the property of another person to prohibit hunting, fishing, trapping, or other recreational activities on that property without

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the written permission of the owner of that property or his or her lessee or agent.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73106 Prosecution generally; seizure and enforcement by peace officer.

Sec. 73106. (1) A prosecution under this part shall be in the name of the people of the state, shall be brought before a district court of competent jurisdiction in the county in which the offense was committed, and shall be brought within 1 year from the time the offense charged was committed.

(2) A peace officer may seize property and otherwise enforce this part upon complaint of the landowner or his or her lessee or agent.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73107 Action for injury to person on property of another; exception.

Sec. 73107. (1) Except as provided in subsection (2), a cause of action shall not arise against the owner, tenant, or lessee of property for an injury to a person who is on that property with oral or written consent but who has not paid the owner, tenant, or lessee of that property valuable consideration for the recreational or trapping use of the property, unless the injury was caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) A cause of action shall not arise against the owner, tenant, or lessee of property for an injury to a person who is on that property with oral or written consent and has paid the owner, tenant, or lessee valuable consideration for fishing, trapping, or hunting on that property, unless that person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

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324.73108 Enforcement and prosecution.

Sec. 73108. The prosecuting attorney for a county shall enforce this part and prosecute all persons charged with violating this part in that county. The attorney representing a municipality may enforce this part in that municipality and prosecute all persons charged with violating this part in that municipality.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73109 Violation of part; cause of action by property owner.

Sec. 73109. The owner of property on which a violation of this part is committed, or his or her lessee, may bring a cause of action against an individual who violates this part for $750.00 or actual property damages, whichever is greater, and actual and reasonable attorney fees.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 546, Eff. Mar. 23, 1999;—Am. 2013, Act 176, Eff. Feb. 25, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

324.73110 Violation as misdemeanor; penalties; restitution.

Sec. 73110. (1) Except as provided in subsection (2) or (3), an individual who violates this part is guilty of

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a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $100.00 or more than $500.00, or both.

(2) An individual who kills any protected animal, game, or fish while violating this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $250.00 or more than $750.00, or both.

(3) An individual convicted of a second or subsequent violation of this part occurring within 3 years of a previous violation of this part shall be punished by imprisonment for not more than 90 days or a fine of not less than $250.00 or more than $1,000.00, or both. In addition, the court shall order the individual's license revoked if the individual is licensed to hunt, fish, or trap in this state, and shall order the individual not to seek or possess a license for the remainder of the calendar year in which the individual is convicted and during at least 1 succeeding calendar year. This subsection does not apply after September 30, 2001.

(4) This subsection applies beginning October 1, 2001. An individual convicted of a second or subsequent violation of this part occurring within 3 years of a previous violation of this part shall be punished by imprisonment for not more than 90 days or a fine of not less than $500.00 or more than $1,500.00, or both. In addition, the court may order the individual's license revoked if the individual is licensed to hunt, fish, or trap in this state, and may order the individual not to seek or possess a license for not more than 3 succeeding calendar years.

(5) The court may order an individual convicted of violating this part to pay the costs of prosecution.

(6) The following may be seized and forfeited in the same manner as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709:

(a) A protected animal, a fur-bearing animal, game, or fish taken while committing any violation of this part.

(b) Property in the possession of the defendant while committing a second or subsequent violation of this part occurring within 3 years of a previous violation of this part. This subdivision does not apply to either of the following:

(*i*) Electronic hunting-dog-retrieval equipment.

(*ii*) A living or dead animal of any kind not described in subdivision (a).

(7) The court shall order an individual convicted of violating this part to make restitution for any damage arising out of the violation, including, but not limited to, reimbursing this state for the value of any protected animal, fur-bearing animal, game, or fish taken while violating this part as provided in section 40119. However, the value of fish shall be determined as provided in section 48740.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 546, Eff. Mar. 23, 1999;—Am. 2013, Act 176, Eff. Feb. 25, 2014.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

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324.73111 Adoption of part as ordinance; effect of contradicting or conflicting ordinance, regulation, or resolution.

Sec. 73111. (1) A local unit of government may adopt this part as an ordinance, except that a penalty imposed for a violation of that ordinance shall not exceed the penalty authorized by law for the violation of an ordinance enacted by that local unit of government.

(2) A local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Recreational Trespass Act

PART 733
LIABILITY OF LANDOWNERS

324.73301 Liability of landowner, tenant, or lessee for injuries to persons on property for purpose of outdoor recreation or trail use, using Michigan trailway or other public trail, gleaning agricultural or farm products, fishing or hunting, or picking and purchasing agricultural or farm products at farm or "u-pick" operation; definition.

Sec. 73301. (1) Except as otherwise provided in this section, a cause of action does not arise for injuries to

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a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) A cause of action does not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of entering or exiting from or using a Michigan trailway as designated under part 721 or other public trail, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. For purposes of this subsection, a Michigan trailway or public trail may be located on land of any size including, but not limited to, urban, suburban, subdivided, and rural land.

(3) A cause of action does not arise, for injuries to a person, against a person, other than a for-profit legal entity, with whom the owner, tenant, or lessee of land contracts to construct, maintain, or operate a trail or other land improvement used by the injured person as described in subsections (1) and (2), unless the injuries were caused by the gross negligence or willful and wanton misconduct of the person, other than a for-profit legal entity, with whom the owner, tenant, or lessee contracts.

(4) A cause of action does not arise against the owner, tenant, or lessee of land or premises for injuries to a person who is on that land or premises for the purpose of gleaning agricultural or farm products, unless that person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(5) A cause of action does not arise against the owner, tenant, or lessee of a farm used in the production of agricultural goods as defined by section 35(1)(h) of the former single business tax act, 1975 PA 228, or by section 207(1)(d) of the Michigan business tax act, 2007 PA 36, MCL 208.1207, for injuries to a person who is on that farm and has paid the owner, tenant, or lessee valuable consideration for the purpose of fishing or hunting, unless that person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

(6) A cause of action does not arise against the owner, tenant, or lessee of land or premises for injuries to a person, other than an employee or contractor of the owner, tenant, or lessee, who is on the land or premises for the purpose of picking and purchasing agricultural or farm products at a farm or "u-pick" operation, unless the person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

(7) As used in this section, "agricultural or farm products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary, including, but not limited to, trees and firewood.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007;—Am. 2017, Act 39, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

324.73302 Injuries to person on right-of-way; cause of action against railroad.

Sec. 73302. (1) A cause of action does not arise against a railroad that owns or formerly owned or operated a right-of-way of a rail line that has been dedicated for interim trail use and rail banking under 16 USC 1247(d) for injuries to a person who is on the right-of-way that occur after the Surface Transportation Board approves the dedication of the right-of-way under 16 USC 1247(d) and before the right-of-way is reactivated for return to rail service.

(2) A cause of action does not arise against a railroad that owns or formerly owned or operated a right-of-way of a rail line that has been set apart for interim trail use and rail banking under the state transportation preservation act of 1976, 1976 PA 295, MCL 474.51 to 474.70, for injuries to a person who is on the right-of-way that occur after the dedication of the right-of-way under the state transportation preservation act of 1976, 1976 PA 295, MCL 474.51 to 474.70, and before the right-of-way is reactivated for

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return to rail service.

History: Add. 2017, Act 39, Eff. Aug. 21, 2017.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 2
PARKS

PARKS

PART 741
STATE PARKS SYSTEM

324.74101 Definitions.

Sec. 74101. As used in this part:

(a) "Commercial motor vehicle" means a commercial vehicle as defined in section 7 of the Michigan vehicle code, 1949 PA 300, MCL 257.7.

(b) "Endowment fund" means the Michigan state parks endowment fund established in section 35a of article IX of the state constitution of 1963 and provided for in section 74119.

(c) "Improvement program" means the construction, reconstruction, development, improvement, bettering, operating, maintaining, and extending a facility at a state park, including a site improvement, impoundment, road and parking lot, toilet building, concession building, shelter building, bathhouse, utility, outdoor center, visitor service facility, ski area, ski tow, ski shelter, and administration unit.

(d) "Motor vehicle" means a vehicle that is self-propelled.

(e) "Nonresident motor vehicle" means a motor vehicle other than a commercial motor vehicle that is not registered as a motor vehicle in this state.

(f) "Recreation passport fee" means that term as defined in section 2001.

(g) "Resident motor vehicle" means a motor vehicle other than a commercial motor vehicle that is registered as a motor vehicle in this state.

(h) "State park" means a state park or state recreation area designated by the director.

(i) "State park improvement account" means the state park improvement account of the Michigan conservation and recreation legacy fund provided for in section 2030.

(j) "State park revenues" means all revenues collected for state parks, including but not limited to, revenue from recreation passport fees, motor vehicle permits, concession fees, nonmotorized trail permits, fees, leases, camping fees, sale of farm animals from Maybury state park, donations, and gifts.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 392, Imd. Eff. Oct. 15, 2004;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 33, Eff. Oct. 1, 2010;—Am. 2018, Act 599, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Enacting section 2 of Act 599 of 2018 provides:

"Enacting section 2. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.74102 Legislative findings; duties of department.

Sec. 74102. (1) The legislature finds:

(a) Michigan state parks preserve and protect Michigan's significant natural and historic resources.

(b) Michigan state parks are appropriate and uniquely suited to provide opportunities to learn about protection and management of Michigan's natural resources.

(c) Michigan state parks are an important component of Michigan's tourism industry and vital to local economies.

(d) A holistic, integrated park system that reflects the unique value of both state and local parks is a goal of this state.

(e) State and local park planners should work in concert for a coordinated Michigan park and recreation plan.

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(2) The department shall create, maintain, operate, promote, and make available for public use and enjoyment a system of state parks to preserve and protect Michigan's significant natural resources and areas of natural beauty or historic significance, to provide open space for public recreation, and to provide an opportunity to understand Michigan's natural resources and the need to protect and manage those resources.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2010, Act 33, Eff. Oct. 1, 2010.

Popular name: Act 451

Popular name: NREPA

324.74102a Duties of commission; report.

Sec. 74102a. (1) The commission shall do all of the following:

(a) Advise and make recommendations to the governor and the legislature on state parks policy and provide guidance on state parks development, management, and planning issues.

(b) Seek the development of a broad variety of programs, facilities, and services for Michigan citizens utilizing the state parks.

(c) Inform and educate the public about the importance of and need for state parks.

(d) Strive to involve citizens in the planning and development of state parks and to ensure that the facilities, programs, and projects are barrier-free and accessible to all citizens.

(e) Establish and maintain effective public relations regarding state parks, utilizing all appropriate communications media.

(f) Advise on financial planning and pursue adequate budget support for state parks.

(g) Serve as a liaison and coordinate with other agencies to ensure a cooperative effort to provide the most effective and economical services possible at state parks.

(h) Periodically evaluate and submit a report to the standing committees of the legislature with jurisdiction over issues pertaining to natural resources and the environment on the state parks programs, facilities, services, and relationships to ensure that the goals and objectives of this section are being achieved.

(i) Advise and make recommendations to the department on the gem of the parks award, the state parks volunteer of the year award, and the state parks employee of the year award established under section 74124.

(j) Review and make recommendations to the department on whether land within a state park should be transferred as provided in section 74102b.

(2) Not later than 180 days after the effective date of the amendatory act that added this subsection, the commission shall submit a report to the standing committees and appropriations subcommittees of the legislature with jurisdiction over issues pertaining to natural resources and the environment. The report shall contain recommendations for savings in state park and forest recreation programs. Savings in state park programs equivalent to at least 10% of the cumulative expenditures for state park programs during the fiscal year ending September 30, 2009 shall be identified. In developing recommendations, the commission shall consult with the department and interested parties. The commission shall consider at least all of the following:

(a) Increased preventative maintenance.

(b) Energy conservation and efficiency.

(c) Contracting concessions, major maintenance or renovation work, and other park operations to private parties.

(d) Sharing resources and coordinating activities with parks or public recreation facilities owned by local units of government.

History: Add. 2004, Act 392, Imd. Eff. Oct. 15, 2004;—Am. 2006, Act 307, Imd. Eff. July 20, 2006;—Am. 2010, Act 33, Imd. Eff. Mar. 31, 2010.

Compiler's note: For transfer of powers and duties of citizens committee for Michigan state parks from department of natural resources to natural resources commission, and abolishment of the committee, see E.R.O. No. 2009-31 compiled at MCL 324.99919.

Popular name: Act 451

Popular name: NREPA

324.74102b Transfer of 100 acres or more than 15% of total acreage of state park; proposal; public hearing; recommendation; conditions; website; definitions.

Sec. 74102b. (1) Prior to recommending that the state transfer more than 100 acres or more than 15% of the total acreage of a state park, whichever is less, by sale or otherwise, the department shall do both of the following:

(a) Submit a proposal with detailed information regarding the potential transfer to the committee for its review and recommendation.

(b) Submit a proposal with detailed information regarding the potential transfer to the commission for its review and approval.

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(c) Hold a public hearing, following appropriate public notice, in the vicinity of the state park.

(2) Upon receipt of a proposal under subsection (1), the committee shall review the proposal and make a recommendation to the department. The committee's recommendation is not binding on the department.

(3) Following the public hearing under subsection (1) and receipt of the committee's recommendation under subsection (2), if the commission has approved the proposed transfer, the department may prepare a written recommendation for the transfer of land within a state park. The written recommendation shall include the committee's recommendation. The written recommendation shall be submitted to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment and to the senate and house appropriations committees. If the recommendation is for the transfer of more than 100 acres or more than 15% of the total acreage of a state park, whichever is less, to another public entity without compensation, the recommendation shall include a proposed deed restriction on the land that provides for public access to the land for purposes of hunting and fishing and other similar recreational uses of the land.

(4) The transfer of more than 100 acres or more than 15% of the total acreage of a state park, whichever is less, is prohibited unless specifically authorized by law.

(5) State park land, other than state park land described in subsection (4), shall not be sold unless all of the following conditions are met:

(a) The department has posted on its website notice of the proposed sale.

(b) The department has provided written notice of the proposed sale to the standing committees of the legislature with jurisdiction over issues primarily dealing with natural resources and the environment.

(c) The commission has approved the sale.

(d) The sale is not completed for a period of at least 30 days after the notice has been provided to the standing committees under subdivision (b).

(6) The department shall publish on its website a list of the acreage of each state park on the effective date of the amendatory act that added this subsection.

(7) As used in this section:

(a) "State park" means land within the dedicated boundary of a state park or state recreation area that was designated as a state park or state recreation area on the effective date of the amendatory act that added this section and any land within the dedicated boundary of a state park or state recreation area that is designated as a state park or state recreation area by the director after the effective date of the amendatory act that added this section.

(b) "Total acreage of a state park" means the total acreage within the dedicated boundaries of a state park on the effective date of the amendatory act that added this section or the largest amount of acreage included within the dedicated boundaries of a state park after the effective date of the amendatory act that added this section, whichever is greater.

History: Add. 2006, Act 307, Imd. Eff. July 20, 2006.

Popular name: Act 451

Popular name: NREPA

324.74103 Powers of department; land acquisition and improvement program.

Sec. 74103. In implementing the responsibilities under this part, the department may do 1 or more of the following:

(a) Enter into contracts or agreements that may be necessary to implement this part.

(b) Lease state park property to a person.

(c) Accept gifts, grants, or bequests from any public or private source to be used for a purpose consistent with this part.

(d) Acquire property for designation as a state park.

(e) Provide the granting of concessions to a person within the boundaries of a state park. In granting a concession, the department shall provide that each concession is awarded at least every 7 years based on extension, renegotiation, or competitive bidding.

(2) The department may acquire land and undertake an improvement program for state parks, pursuant to the powers, rights, and privileges conferred by this part, but land acquisition or an improvement program shall not be undertaken until approved by the legislature in the annual capital outlay appropriation act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: In the first paragraph, "(1)" evidently should appear between "Sec. 74103." and the beginning of the sentence.

Popular name: Act 451

Popular name: NREPA

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324.74103a Shooting range; posting hours of operation.

Sec. 74103a. At each state park that contains a designated shooting range that is open to visitors, the department shall post a notice at the entrance to the recreational areas of the state park that states the regular hours of operation of the shooting range. The notice shall be posted in a visible location, and the lettering on the notice shall be of a sufficient type size to be easily read by state park visitors. The department is not required to post the hours of operation in which the shooting range is open for special events. However, if the department does not post the hours of operation in which the shooting range is open for special events, the notice shall include a statement to that effect.

History: Add. 2006, Act 15, Imd. Eff. Feb. 9, 2006.

Popular name: Act 451

Popular name: NREPA

324.74104 "Adopt-a-park" program.

Sec. 74104. (1) The department shall establish an "adopt-a-park" program that will allow volunteer groups to assist state park staff in maintaining and enhancing state parks.

(2) Subject to subsection (3), volunteer groups in the adopt-a-park program may adopt any available state park and may choose any 1 or more of the following volunteer activities:

(a) Spring cleanups.

(b) Environmental activities.

(c) Accessibility projects.

(d) Special events.

(e) Park maintenance and development.

(f) Public information and assistance.

(g) Training.

(3) The department shall designate the activities to be performed by a volunteer group in the adopt-a-park program. The department may provide for more than 1 volunteer group to adopt a state park.

(4) A volunteer group that wishes to participate in the adopt-a-park program shall submit an application to the department on a form provided by the department. Additionally, volunteer groups shall agree to the following:

(a) Volunteer groups shall participate in the program for at least a 2-year period.

(b) Volunteer groups shall consist of at least 6 people who are 18 years of age or older, unless the volunteer group is a school or scout organization, in which case the volunteers may be under 18 years of age.

(c) Volunteer groups shall give a total of 400 hours over a 2-year period.

(d) Volunteer groups shall comply with other reasonable requirements of the department.

(5) A state park manager may issue to volunteers who are actively working on adopt-a-park projects that last more than 1 day free camping permits if campsites are available. A state park manager may waive state park entry fees for volunteers entering state parks to work on adopt-a-park projects.

(6) The department shall design and erect near the state park headquarters of each state park in the adopt-a-park program an adopt-a-park program sign with the name of the volunteer group's sponsoring organization listed for each volunteer group that has contributed at least 100 service hours by volunteers.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74105 Volunteers; appointment; immunity from civil liability; carrying of firearm prohibited.

Sec. 74105. The department may appoint persons to serve as volunteers for the purpose of facilitating the responsibilities of the department as provided in this part. While a volunteer is serving in such a capacity, the volunteer has the same immunity from civil liability as a department employee and shall be treated in the same manner as an employee under section 8 of Act No. 170 of the Public Acts of 1964, being section 691.1408 of the Michigan Compiled Laws. A volunteer shall not carry a firearm while functioning as a volunteer.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74106 Revenue bonds; issuance; amount; notice; includable costs; resolution.

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Sec. 74106. For the purpose of providing a park improvement program, the commission may issue revenue bonds as provided in this part. The commission may issue revenue bonds payable from state park revenues. The aggregate principal amount of the revenue bonds shall not exceed $100,000,000.00. The department shall provide notice to the appropriations committee of the senate and the house of representatives at least 30 days before bonds are offered for sale. There may be included in the cost for which bonds are to be issued a reasonable allowance for legal, engineering, architectural and consultant services, traffic studies, cost of printing and issuing of the bonds, interest on the bonds becoming due before collection of the first available state park revenues and for a period of 1 year thereafter, and other incidental expenses. The bonds shall be authorized by a resolution adopted by a majority vote of a quorum of the commission and may be issued in 1 or more series as shall be determined by the commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74107 Authority of department.

Sec. 74107. The commission may authorize the department, but only within limitation which shall be contained in the commission's authorizing resolution, to do 1 or more of the following:

(a) Sell and deliver and receive payment for bonds.

(b) Approve interest rates, purchase prices, discounts, premiums, maturities, principal amounts, interest payment dates, redemption rights at the option of the commission or the holder, and the place and time of delivery and payment for the bonds.

(c) Deliver bonds to refund prior bonds or partly to refund bonds and partly for other authorized purposes.

(d) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(e) Any other matters and procedures necessary to complete the issuance and delivery of the bonds.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74108 Resolution authorizing issuance of bonds; contents.

Sec. 74108. A resolution adopted by the commission authorizing the issuance of bonds shall contain all of the following:

(a) A description in reasonable detail of the improvement program as approved by the legislature, for which the bonds are to be issued.

(b) The form of the bonds and all of the following:

(*i*) The maturity date or dates for the bonds with no maturity later than 30 years after the issuance of the bonds.

(*ii*) The principal amount of and principal payment dates for the bonds.

(*iii*) The interest rate or rates for the bonds or that bonds shall not bear any interest.

(*iv*) The redemption provisions, with or without premium, for the bonds, if any.

(*v*) The authorized denominations for the bonds.

(*vi*) Whether the bonds may be sold at a discount or for a premium.

(*vii*) The manner in which the bonds will be executed.

(*viii*) Any other provision concerning the bonds or the security for the bonds the commission considers appropriate.

(c) A provision that the state park revenues shall be pledged for the payment of the bonds. However, the pledge of state park revenues shall be on a parity with pledges of the revenues previously or subsequently made by the commission pursuant to any other resolution authorizing the issuance of bonds under this part and the resolution shall state that the pledge complies with this subdivision.

(d) A covenant that the park permit fees and penalties provided in section 74117 shall be revised from time to time within the limits permitted by law when necessary to ensure that the revenues to be derived from the fees shall be sufficient to pay the principal of and interest on bonds issued pursuant to this part and other obligations of the commission in connection with the issuance of bonds.

(e) A provision requiring the fiscal agent to set aside money from the state park revenue bond receiving fund into a fund to be designated as the state park debt service fund in a sum proportionately sufficient to provide for the payment of the principal of and interest upon all bonds payable from the fund as and when the principal and interest becomes due and payable in the manner prescribed by the commission. In addition the resolution shall authorize the commission to provide that a reasonable excess amount may be set aside by the fiscal agent from time to time as directed by the commission in the state park debt service fund to produce and

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provide a reserve to meet a possible future deficiency in the fund. The resolution shall further provide that out of the revenues remaining each quarter, after having first met the requirements of the state park debt service fund, including the reserve for the fund, the commission may by direction to the fiscal agent next set aside additional money in the state park debt service fund for the purpose of calling bonds for redemption, subject to approval by the state administrative board. The resolution shall also contain a provision for the investment of funds held by the fiscal agent.

(f) A provision that money on deposit in the state park revenue bond receiving fund after setting aside the amounts in the state park debt service fund is surplus money, and shall be deposited quarterly by the fiscal agent upon the order of the commission in the state treasury in the state park improvement account. Money in the state park improvement account shall be used only for the improvement, operation, and maintenance of state parks and recreation areas and for the administration of the state park improvement account. Not less than $10.00 of each annual permit and not less than $2.00 of each daily permit projected to be sold in a fiscal year may be appropriated from the state park improvement account for the maintenance and operation of state parks and recreation areas in that fiscal year.

(g) The terms and conditions under which additional bonds payable from the state park revenues of equal standing with a prior issue of bonds may be issued.

(h) A provision for deposit and expenditure of the proceeds of sale of the bonds and for investment of the proceeds of sale of the bonds and of other funds of the commission relating to bonds authorized by this part.

(i) A provision that in the event of a default in the payment of principal of or interest on the bonds, or in the performance of an agreement or covenant contained in the resolution, the holders of a specified percentage of the outstanding bonds may institute 1 or more of the following for the equal benefit of the holders of all of the bonds:

(*i*) An action of mandamus or any other suit, action, or proceeding to enforce the rights of the holders of the bonds.

(*ii*) An action upon the defaulted bonds or coupons.

(*iii*) Any other action as may be provided by law.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.74109 Repealed. 2003, Act 170, Eff. Jan. 1, 2004.

Compiler's note: The repealed section pertained to prohibited use of increased fee revenue for state park operations and the conditional repeal of 177 PA 1989.

Popular name: Act 451

Popular name: NREPA

324.74110 Revenue bonds; state debt; extent of liability.

Sec. 74110. Any bond issued under this part shall state that it is not a general obligation of the state of Michigan, but is a revenue bond payable only from state park revenues. Nothing in this part authorizes the state to incur debt contrary to the constitution or laws of the state. The holders of the bonds shall not have the right to compel a sale of any real estate or personal property of the state parks, nor shall the holders of the bonds have any lien, mortgage, or other encumbrances upon any property of the state of Michigan, real, personal, or mixed. Bonds shall be fully negotiable within the meaning of the negotiable instruments law of this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74111 Revenue bonds; refunding issue.

Sec. 74111. The commission may issue bonds for the purpose of refunding any obligations issued under this part, or may authorize a single issue of bonds in part for the purpose of refunding such obligations and in part for the purpose of financing any additional cost of land or improvement program. Bonds issued under this section are payable only from state park revenues and may be sold in the manner provided for the sale of bonds in this part. If sold, that portion of the proceeds representing the refunding portion may be either applied to the payment of the obligations refunded or deposited in escrow for their retirement.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74112 Maximum rate of interest; sale and award of bonds; public or private sale; advertisement; notice of sale.

Sec. 74112. (1) The maximum rate of interest on bonds issued under this part shall be that set forth for bonds in the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The sale and award of bonds shall be conducted and made by the commission at a public or private sale. If a public sale is held, the bonds shall be advertised for sale once not less than 7 days before sale in a publication with statewide circulation that carries as a part of its regular service notices of the sales of municipal bonds and that has been designated in the resolution as a publication complying with these qualifications. The notice of sale shall be in the form designated by the commission.

(2) Bonds issued under this part are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) The issuance of bonds under this part is subject to the agency financing reporting act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2002, Act 249, Imd. Eff. Apr. 30, 2002.

Popular name: Act 451

Popular name: NREPA

324.74113 State park revenues; fiscal agent; receiving fund; expenses; designation of paying agents.

Sec. 74113. All state park revenues shall be deposited with the state treasurer who shall act as the fiscal agent for the department. The state treasurer shall establish a special depositary account to be designated "state park revenue bond receiving fund". The necessary expenses of the fiscal agent incurred by reason of his or her duties under this part shall be paid from the state park revenue bond receiving fund. The commission may designate banks or trust companies to act as paying agents for bonds issued pursuant to this part. The paying agent shall be paid from the state park debt service fund.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.74114 Fees; establishment; collection; deposit.

Sec. 74114. The department may establish fees and collect fees for activities in state parks except those activities for which fees are established under this part. All fees collected under this section shall be deposited into the state park improvement account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.74115 Free entry of motor vehicles into posted park prohibited.

Sec. 74115. Except as otherwise provided in this part, free entry of a motor vehicle shall not be permitted into any state park or portion of a state park posted in accordance with this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74116 Entry into state park by nonresident or resident motor vehicle; permit; payment of recreation passport fee; registration tab or sticker; exceptions.

Sec. 74116. (1) Subject to subsection (4), the operator of a nonresident motor vehicle or commercial motor vehicle shall not enter any state park with that motor vehicle unless a valid motor vehicle park permit issued under section 74117 is affixed to the lower right-hand corner of the windshield. An annual motor vehicle park permit for a nonresident motor vehicle shall be affixed permanently for that year. The department shall post signs at parks that state that a motor vehicle park permit is required for entry by a nonresident motor vehicle or commercial motor vehicle.

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(2) Subject to subsection (4), the operator of a resident motor vehicle shall not enter a state park with the resident motor vehicle unless the recreation passport fee has been paid for that motor vehicle. Payment of the recreation passport fee authorizes entry into all state parks and recreation areas and designated state-operated public boating access sites until expiration of the motor vehicle registration.

(3) Subject to subsection (4), if the secretary of state issues registration tabs or stickers as described in section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805, the operator of a resident motor vehicle shall not enter a state park with the resident motor vehicle unless the resident motor vehicle has a registration tab or sticker marked as provided under that section to show that the recreation passport fee has been paid.

(4) Subsections (1) to (3) do not apply under any of the following circumstances:

(a) While the motor vehicle is being driven or parked within an established federal, state, or county highway within a state park.

(b) If the motor vehicle is used in the operation or maintenance of a state park, is an emergency motor vehicle, is a state owned or law enforcement motor vehicle, or is a private motor vehicle being operated on official state business.

(c) If the motor vehicle is registered under section 803e(1) of the Michigan vehicle code, 1949 PA 300, MCL 257.803e, and is exempt under section 803e(6) of the Michigan vehicle code, 1949 PA 300, MCL 257.803e, from the registration tax, or if the motor vehicle is registered under section 217d or 803f of the Michigan vehicle code, 1949 PA 300, MCL 257.217d and 257.803f.

(d) At a state-operated public boating access site or a state park where there is an opportunity to fish on a day that the department has designated as a free winter fishing day or a free fishing day under section 43534.

(e) If and to the extent that the department waives the requirements for department-sponsored events or other circumstances as determined by the director or the director's designee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2010, Act 33, Eff. Oct. 1, 2010;—Am. 2013, Act 81, Eff. May 1, 2014;—Am. 2016, Act 1, Eff. Apr. 25, 2016.

Popular name: Act 451

Popular name: NREPA

324.74117 Park permits beginning October 1, 2010; nonresident motor vehicle park permit; fees; sale; loss or destruction of permit; use of credit card; additional permits for special services or park privileges; adjustment of amounts.

Sec. 74117. (1) This subsection and subsections (2) to (9) apply beginning October 1, 2010. The department shall prepare and distribute park permits as necessary to implement this part.

(2) Except as otherwise provided in this section, the department shall issue an annual nonresident motor vehicle park permit that authorizes the entry of a nonresident motor vehicle to which it is originally attached within any state park during the calendar year for which it is issued. The fee for the annual nonresident motor vehicle park permit for the owner of a nonresident motor vehicle is $29.00. An annual park permit shall not be used for a commercial motor vehicle.

(3) The department shall issue a daily motor vehicle park permit, valid for 1 day only, that authorizes the entry of a nonresident motor vehicle or commercial motor vehicle to which it is originally attached within any state park during the day for which it is issued. The fee for a daily nonresident motor vehicle park permit is $8.00. The fee for a daily commercial motor vehicle park permit is $15.00.

(4) A person who has obtained an annual nonresident motor vehicle park permit under this section for a recreational vehicle to be used as a stationary primary camping shelter camped legally in and not moved from a state park campground during the period of the camping stay may obtain a duplicate nonresident motor vehicle park permit effective for the duration of the camping stay for a towed second motor vehicle present at the time of entry for a fee of $6.00.

(5) The department may designate persons in this state authorized to sell park permits. The department shall require as a condition of the designation of a person other than a department employee that the person furnish a surety bond in an amount and form and with a surety acceptable to the department. After being designated by the department, a person may issue park permits in accordance with this part. This subsection does not apply to employees of the department of state acting under section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805.

(6) If a person's annual nonresident motor vehicle park permit is lost or destroyed, the department shall provide that person with a replacement motor vehicle park permit free of charge. The department may require a person requesting a replacement motor vehicle park permit to supply sufficient evidence of the loss or destruction of the original motor vehicle park permit.

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(7) The department may add to the cost of a reservation or a motor vehicle park permit or camping fee the charges that the state incurs because of the use of a credit card.

(8) This section and section 74116 apply only to the entry of motor vehicles into state parks and do not obviate the necessity of obtaining additional permits for special services or park privileges as may be required by law or by rules promulgated by the department.

(9) For each calendar year, the state treasurer shall adjust the amounts set forth in subsections (2) to (4) by an amount determined by the state treasurer to reflect the cumulative percentage change in the consumer price index from October 1, 2010 to the October 1 immediately preceding that calendar year, using the most recent data available and rounded to the nearest dollar.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 170, Eff. Jan. 1, 2004;—Am. 2006, Act 477, Imd. Eff. Dec. 21, 2006;—Am. 2009, Act 197, Imd. Eff. Dec. 28, 2009;—Am. 2010, Act 33, Imd. Eff. Mar. 31, 2010;—Am. 2010, Act 33, Imd. Eff. Mar. 31, 2010;—Am. 2013, Act 81, Eff. May 1, 2014.

Popular name: Act 451

Popular name: NREPA

324.74118 Park permits; monthly accounting; compensation; report.

Sec. 74118. On or before the tenth day of every month, all persons authorized to sell park permits shall pay to the department all money received from the sale of park permits for the preceding month. Any person who refuses or neglects to pay the money as provided in this section, in addition to other penalties provided by law, forfeits the right to sell park permits. All persons authorized to sell park permits, except employees of the department who receive a regular salary from the state, may charge the purchaser as compensation 15 cents additional for each annual park permit and 10 cents additional for each daily park permit issued. On or before February 15 of each year a complete report of all permits sold during the previous calendar year shall be filed with the department by each person authorized to sell park permits, and all unsold park permits for the previous year shall be returned to the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74119 Michigan state parks endowment fund.

Sec. 74119. (1) In accordance with section 35a of article IX of the state constitution of 1963, the Michigan state parks endowment fund is created within the state treasury. The Michigan state parks endowment fund may be referred to as the Genevieve Gillette state parks endowment fund.

(2) The state treasurer may receive money or other assets from any source for deposit into the endowment fund. The state treasurer shall direct the investment of the endowment fund. The state treasurer shall have the same authority to invest the assets of the endowment fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1141. The state treasurer shall credit to the endowment fund interest and earnings from endowment fund investments.

(3) Money in the endowment fund at the close of the fiscal year shall remain in the endowment fund and shall not lapse to the general fund.

(4) The accumulated principal of the endowment fund shall not exceed $800,000,000.00, which amount shall be annually adjusted pursuant to the Detroit Consumer Price Index—all items beginning when the endowment fund reaches $800,000,000.00. This annually adjusted figure is the accumulated principal limit of the endowment fund.

(5) Money in the endowment fund shall be expended for all of the following:

(a) Capital improvements at Michigan state parks.

(b) Operations and maintenance at Michigan state parks.

(c) Acquisition of land or rights in land for Michigan state parks.

(d) Administration of the endowment fund.

(6) Not less than 20% of the money made available for expenditure from the endowment fund from any state fiscal year shall be expended under subsection (5)(a) for capital improvements at Michigan State Parks.

(7) Money in the endowment fund shall be expended as follows:

(a) Until the endowment fund reaches an accumulated principal of $800,000,000.00, each state fiscal year the legislature may appropriate not more than 50% of the money received under section 35 of article IX of the state constitution of 1963 plus interest and earnings and any private contributions or other revenue to the endowment fund.

(b) Once the accumulated principal in the endowment fund reaches $800,000,000.00, only the interest and earnings of the endowment fund in excess of the amount necessary to maintain the endowment fund's

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accumulated principal limit shall be expended.

(8) Unexpended appropriations of the endowment fund from any state fiscal year as authorized by this section may be carried forward or may be appropriated as determined by the legislature for purposes of this section.

(9) The department shall annually prepare a report containing an accounting of revenues and expenditures from the endowment fund. This report shall identify the interest and earnings of the endowment fund from the previous year, the investment performance of the endowment fund during the previous year, and the total amount of appropriations from the endowment fund during the previous year. This report shall be provided to the senate and house of representatives appropriations committees and the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to natural resources and the environment.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2002, Act 54, Eff. Sept. 21, 2002;—Am. 2018, Act 598, Eff. Dec. 19, 2020.

Compiler's note: Enacting section 2 of Act 598 of 2018 provides:

"Enacting section 2. This amendatory act does not take effect unless Senate Joint Resolution O of the 99th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Senate Joint Resolution O was agreed to by the House of Representatives and the Senate on December 21, 2018, and filed with the Secretary of State December 27, 2018. The proposed amendment to the constitution was submitted to, and approved, by the electors on November 3, 2020, and became effective December 19, 2020.

Popular name: Act 451

Popular name: NREPA

324.74120 Rules.

Sec. 74120. (1) The department may promulgate rules to implement this part.

(2) The department may promulgate rules providing a method for an individual whose motor vehicle registration expires annually to pay a state park and state-operated public boating access site recreation passport fee in addition to the method provided for in section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805. The amount of the state park and state-operated public boating access site recreation passport fee required to be paid under a method provided for by rule under this subsection shall not exceed twice the amount of a state park and state-operated public boating access site recreation passport fee paid under the method provided for in section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805.

(3) The department shall promulgate rules providing a method for an individual whose motor vehicle registration does not expire annually and who is exempt under sections 74116(4)(c) and 78119(4)(b) from the recreation passport fee to voluntarily pay the recreation passport fee as a donation. The amount of the state park and state-operated public boating access site recreation passport fee required to be paid under the method provided for by rule under this subsection shall equal the amount of a state park and state-operated public boating access site recreation passport fee paid under the method provided for in section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805.

(4) A rule promulgated under this section shall provide for a method evidencing payment of the state park and state-operated public boating access site recreation passport fee, such as the issuance and display of a permit.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2010, Act 33, Imd. Eff. Mar. 31, 2010;—Am. 2013, Act 81, Eff. May 1, 2014.

Popular name: Act 451

Popular name: NREPA

324.74121 State parks; prohibited conduct.

Sec. 74121. A person shall not do the following in a state park:

(a) Destroy, damage, or remove any tree, shrub, wildflower, or other vegetation or property without the permission of the department.

(b) Operate a motor vehicle except in a designated area.

(c) Violate this part or rules promulgated under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74122 Violation; presumption; penalty.

Sec. 74122. (1) A person who violates this part or a rule promulgated under this part is guilty of a misdemeanor. This subsection does not apply to violations described in subsection (2).

(2) A person who violates section 74116(1), (2), or (3) is responsible for a state civil infraction and may be

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ordered to pay a civil fine of not more than $100.00. A person shall not be cited for a violation of both section 74116(2) and section 74116(3) for the same incident.

(3) In any proceeding for the violation of this part or a rule promulgated under this part, if a motor vehicle is found parked in a state park, the registration plate displayed on the motor vehicle constitutes prima facie evidence that the owner of the motor vehicle was the person who parked or placed it at the location where it was found.

(4) In addition to the penalties provided for in subsection (1), a person convicted of an act of vandalism to state park equipment, facilities, or resources shall reimburse the department up to 3 times the amount of the damage as determined by the court. All money collected pursuant to this subsection shall be credited to the state park improvement account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 33, Eff. Oct. 1, 2010 .

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.74123 Repealed. 2010, Act 32, Eff. Oct. 1, 2010.

Compiler's note: The repealed section pertained to establishment of fine for failure to purchase park permit.

324.74124 Create "gem of the parks", "volunteer of the year", and "employee of the year" award program.

Sec. 74124. (1) The department shall create a "gem of the parks" award to recognize key state parks for their contribution to the state parks system, a "volunteer of the year" award to recognize outstanding individuals who donate time or monetary contributions to the state park system, and an "employee of the year" award to recognize individuals who are outstanding employees of the state park system. The department shall develop a program to facilitate the determination and presentation of these awards. The awards shall be made on a yearly basis.

(2) The department shall develop a set of standards to use in determining the recipients of the awards under subsection (1) with consideration given to the following:

(a) The contribution of the state park, the volunteer, or the employee to the preservation of the state's natural resources.

(b) The amount of any monetary donation.

(c) The length of time donated or the years of employment.

(d) The length of a long-term commitment to the preservation of the environment.

(3) The department annually shall submit the names of the award recipients under subsection (1) to the standing committees in the senate and house of representatives responsible for natural resources matters.

History: Add. 2004, Act 395, Imd. Eff. Oct. 15, 2004.

Compiler's note: Former MCL 324.74124, which pertained to the powers of park and recreation enforcement officers, was repealed by Act 414 of 2000, Eff. Mar.`28, 2001.

Popular name: Act 451

Popular name: NREPA

324.74125 Bonds; exemption from taxation.

Sec. 74125. All bonds issued pursuant to this part and the interest on those bonds is exempt from taxation by the state, or by any municipality, corporation, county, or other political subdivision or taxing district of the state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74126 "Fred Meijer White Pine Trail State Park"; "Fred Meijer Berry Junction Trail"; criteria for naming state parks and state owned recreational facilities.

Sec. 74126. (1) The state owned land containing the White Pine trail, which traverses an abandoned rail corridor between Comstock Park and Cadillac, shall be known as the "Fred Meijer White Pine Trail State Park".

(2) The department shall facilitate the establishment of a recreational trail that traverses, in part, the

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abandoned rail corridor that runs from White Lake drive, south of the city of Whitehall, to Lake avenue in the city of North Muskegon. This trail shall be known as the "Fred Meijer Berry Junction Trail".

(3) The department, in consultation with the committee, the commission, and the Michigan natural resources trust fund board established in section 1905, shall develop criteria for naming state parks and other state owned recreational facilities. Within 1 year after the effective date of the amendatory act that added this subsection, the department shall present to the standing committees of the senate and the house of representatives with jurisdiction primarily relating to natural resources and state parks the criteria it has developed under this section.

History: Add. 2006, Act 248, Imd. Eff. July 3, 2006.

Popular name: Act 451

Popular name: NREPA

PART 742
CAMP REGISTRATION CARDS

324.74201 Camp registration card; posting; definition.

Sec. 74201. (1) A person shall not camp on any state owned lands under the jurisdiction or control of the department without having first posted a camp registration card.

(2) As used in this part, "to camp" means the erection of a tent or tent-type camper or the parking and occupancy of a travel or house trailer or truck camper.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74202 Camp registration card; obtaining; contents; posting.

Sec. 74202. A person may obtain without charge from a conservation officer or a person authorized to issue fishing or hunting licenses a camp registration card and shall enter on the camp registration card in the space provided, in plain and legible English, the name and address of every person occupying the camp. The card shall be prominently and conspicuously posted at the campsite before the camp is made and shall be left so posted upon the departure of the camping party.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74203 Disposal of rubbish.

Sec. 74203. Upon breaking camp, every member of a camping party is responsible for the disposal, by burying or burning, of all rubbish, papers, cans, containers, or any other article or thing of any nature whatsoever brought into or built upon the premises by the camping party. A person camping upon the state owned lands shall not deposit and leave any tin cans, bottles, refuse, or other rubbish unburied or otherwise disposed of on the premises.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74204 Camp registration cards; printing and distribution.

Sec. 74204. The department shall have printed and distributed a sufficient number of camp registration cards to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74205 Enforcement of part; duty of peace officers.

Sec. 74205. It is the duty of any peace officer, including conservation officers, to enforce this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74206 Violation of part; penalty.

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Sec. 74206. A person who violates this part is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00, and, in addition, is liable for any costs incurred by the department in cleaning up the campsite of the person, which liability shall be recoverable in any court of competent jurisdiction in this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2015, Act 215, Eff. Mar. 14, 2016.

Popular name: Act 451

Popular name: NREPA

324.74207 Applicability of part.

Sec. 74207. This part does not apply to any state park, campground, or recreation area administered by the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 743
STATE PARKS FOUNDATION

324.74301 Definitions.

Sec. 74301. As used in this part:

(a) "Foundation" means the Michigan state parks foundation created in section 74302.

(b) "State park" means a state park or state recreation area designated by the director.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74302 Michigan state parks foundation; appointment and terms of members; vacancy; removal; meetings; quorum; selection of chairperson, vice-chairperson, and other officials; compensation; staff assistance; conducting business at public meeting.

Sec. 74302. (1) The department shall create a foundation to be known as the Michigan state parks foundation. The foundation shall exercise its powers, functions, and duties independently of the department of natural resources. The foundation shall be governed by an executive board consisting of the director who shall serve as a nonvoting ex officio member, and 13 voting members who shall be appointed by the governor.

(2) The members of the foundation who are appointed by the governor pursuant to subsection (1) shall serve for a term of 4 years or until a successor is appointed, whichever is later, except that of the members first appointed, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years.

(3) If a vacancy occurs on the foundation from the members appointed by the governor, an appointment shall be made for the unexpired term in the same manner as the original appointment. The governor may remove appointed foundation members for neglect of duty or malfeasance in relation to the member's foundation duties.

(4) The foundation shall meet immediately upon complete formation and then shall meet at least quarterly.

(5) Seven members of the foundation shall constitute a quorum for the conducting of business. The foundation shall select a chairperson, vice-chairperson, and other officials from the membership as the members of the foundation consider necessary.

(6) A member of the foundation shall not receive compensation for his or her services but may be reimbursed for expenses incurred in the performance of his or her duties as a member of the foundation.

(7) The department shall provide staff assistance to the foundation as necessary for it to carry out its functions.

(8) The business the executive board of the foundation may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meetings shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74303 Michigan state parks foundation; purpose.

Sec. 74303. The purpose of the foundation is to support the overall enhancement of the Michigan state

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parks system and to foster awareness, appreciation, understanding, and involvement in the system through focused assistance that is supplementary to appropriated parks funding.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74304 Michigan state parks foundation; duties.

Sec. 74304. The foundation shall do the following:

(a) Determine those projects or undertakings for which the foundation will solicit funding. In determining projects to fund, the foundation shall select projects that enhance the use, preservation, enjoyment, or understanding of the natural and historic resources of the state parks through the following focus areas of need:

(*i*) Education and outreach.

(*ii*) Visitor information services and interpretive facilities.

(*iii*) Support for volunteer activities.

(*iv*) Employee support program.

(b) Maintain a current list and description of projects for which contributions are sought.

(c) Provide for methods by which persons who contribute to the foundation projects may be commemorated for their contributions.

(d) Advise potential contributors of all tax ramifications of contributions to the foundation.

(e) Invest assets of the foundation in any instrument, obligation, security, or property considered appropriate by the executive board of the foundation.

(f) Provide for receiving contributions in lump sums or periodic sums.

(g) Administer money collected by the foundation.

(h) Segregate contributions to the foundation into various accounts.

(i) Procure insurance against any loss in connection with the assets of the foundation or foundation activities.

(j) Enter into contracts on behalf of the foundation.

(k) Define the terms and conditions under which money may be disbursed by the foundation.

(*l*) Contract for goods and services and engage personnel as is necessary and engage the services of private consultants, actuaries, managers, legal counsel, and auditors for rendering professional, management, and technical assistance and advice, payable out of any money of the foundation. However, not more than 10% of the money of the foundation shall be used for the purpose of this subdivision or other administrative costs of the foundation.

(m) Exercise other powers necessary or convenient to carry out and effectuate the purposes, objectives, and provisions of this part, and the purposes of the foundation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74305 Michigan state parks foundation; management; use of assets.

Sec. 74305. The foundation shall be managed solely pursuant to and for the purpose set forth in this part and money or other assets of the foundation shall not be loaned or otherwise transferred or used by the state for any purpose other than the purposes of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.74306 Accounting.

Sec. 74306. The foundation shall annually prepare or cause to be prepared an accounting which shall be a public document and shall transmit a copy of the accounting to the governor, the senate majority and minority leaders, and the Republican and Democratic leaders of the house of representatives. The foundation may also make available the accounting of the foundation to a contributor to the foundation. The accounts of the foundation are subject to annual audits by the state auditor general or a certified public accountant appointed by the auditor general.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

PART 751
DARK SKY PRESERVE

324.75101 Definitions.

Sec. 75101. As used in this part:

(a) "Dark sky preserve" means an area designated in section 75102.

(b) "Fully shielded" means outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above 15 degrees below the horizontal plane and also constructed so that the filament or light source is not visible to the naked eye when viewed from a point higher than 15 degrees below the horizontal plane.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2012, Act 251, Imd. Eff. July 2, 2012.

Popular name: Act 451

Popular name: NREPA

324.75102 Designation as dark sky preserves; prohibition as to establishment in Upper Peninsula.

Sec. 75102. (1) The following lands are designated as dark sky preserves:

(a) State-owned land at Lake Hudson, legally described as:

All state-owned land located in Sections 25, 26, 27, 34, 35, and 36, T7S, R1E, and Section 1, T8S, R1E - Lenawee County, Michigan.

(b) The state-owned land comprising Wilderness State Park and the state forestland within Bliss Township, Cross Village Township, and Wawatam in Emmet County.

(c) Those portions of Port Crescent State Park lying north and west of the Pinnebog River in section 9 of Hume Township, Huron County, T18N, R12E.

(d) The state-owned land comprising Rockport State Recreation Area, located in Presque Isle Township, Presque Isle County and Alpena Township, Alpena County.

(e) The state-owned land comprising Negwegon State Park, located in Sanborn Township, Alpena County and Alcona Township, Alcona County.

(f) The state-owned land comprising Thompson's Harbor State Park, located in Krakow Township, Presque Isle County.

(g) The county-owned land comprising Dr. T. K. Lawless Park, located in Porter and Newberg Townships, Cass County.

(h) The county-owned land comprising Headlands International Dark Sky Park, located in Wawatam Township, Emmet County.

(2) Notwithstanding any other provision of this part, a dark sky preserve shall not be established in the Upper Peninsula.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2012, Act 251, Imd. Eff. July 2, 2012;—Am. 2016, Act 11, Eff. May 16, 2016;—Am. 2020, Act 74, Imd. Eff. Apr. 2, 2020.

Popular name: Act 451

Popular name: NREPA

324.75103 Outdoor lighting; installation; limitation.

Sec. 75103. (1) The commission shall ensure that outdoor lighting within a state-owned dark sky preserve is not installed unless necessary for safety, security, or the reasonable use and enjoyment of property within the preserve.

(2) The commission shall ensure that outdoor lighting within a state-owned dark sky preserve does not unreasonably interfere with nighttime activities that require darkness, including, but not limited to, the enjoyment of the night sky, nighttime photography, and wildlife photography.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2020, Act 74, Imd. Eff. Apr. 2, 2020.

Popular name: Act 451

Popular name: NREPA

324.75104 Outdoor lighting; requirements.

Sec. 75104. (1) The commission shall ensure that all outdoor lighting within a state-owned dark sky preserve conforms to the following:

(a) Lighting shall be directed downward.

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(b) If possible, lighting shall be provided by fully shielded fixtures.

(c) If practical and appropriate, outdoor lighting fixtures shall be motion sensor fixtures, and not fixtures that remain lighted during all hours of darkness.

(2) Notwithstanding any other provision of this part, the use and development of land within a state-owned dark sky preserve, including the use of the land for motorized and nonmotorized recreation, shall not be restricted due to the designation as a dark sky preserve.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2012, Act 251, Imd. Eff. July 2, 2012;—Am. 2020, Act 74, Imd. Eff. Apr. 2, 2020.

Popular name: Act 451

Popular name: NREPA

324.75105 Use and development not restricted; conditions.

Sec. 75105. This part does not restrict the use and development of the state owned land at lake Hudson as prescribed by the master plan approved by the commission if the use and development are in compliance with this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.75106 Repealed. 2002, Act 3, Eff. Mar. 31, 2003.

Compiler's note: The repealed section pertained to repeal of part.

Popular name: Act 451

Popular name: NREPA

ABORIGINAL RECORDS AND ANTIQUITIES AND ABANDONED PROPERTY

PART 761
ABORIGINAL RECORDS AND ANTIQUITIES

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324.76101 Definitions.

Sec. 76101. As used in this part:

(a) "Abandoned property" means an aircraft; a watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of an aircraft or watercraft; the personal property of the officers, crew, and passengers of an aircraft or watercraft; and the cargo of an aircraft or watercraft, which have been deserted, relinquished, cast away, or left behind and for which attempts at reclamation have been abandoned by owners and insurers. Abandoned property also means materials resulting from activities of historic and prehistoric Native Americans.

(b) "Bottomlands" means the unpatented lake bottomlands of the Great Lakes.

(c) "Committee" means the underwater salvage and preserve committee created in section 76103.

(d) "Great Lakes" means lakes Erie, Huron, Michigan, St. Clair, and Superior.

(e) "Great Lakes bottomlands preserve" means an area located on the bottomlands of the Great Lakes and extending upward to and including the surface of the water, which is delineated and set aside by rule for special protection of abandoned property of historical value, or ecological, educational, geological, or scenic features or formations having recreational, educational, or scientific value. A preserve may encompass a single object, feature, or formation, or a collection of several objects, features, or formations.

(f) "Historical value" means value relating to, or illustrative of, Michigan history, including the statehood, territorial, colonial, and historic, and prehistoric native American periods.

(g) "Mechanical or other assistance" means all humanmade devices, including pry bars, wrenches and other hand or power tools, cutting torches, explosives, winches, flotation bags, lines to surface, extra divers buoyancy devices, and other buoyance devices, used to raise or remove artifacts.

(h) "Recreational value" means value relating to an activity that the public engages in, or may engage in, for recreation or sport, including scuba diving and fishing.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

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324.76102 Aboriginal records and antiquities; right to explore, survey, excavate, and regulate reserved to state; possessory right or title to abandoned property.

Sec. 76102. (1) The state reserves to itself the exclusive right and privilege, except as provided in this part, of exploring, surveying, excavating, and regulating through its authorized officers, agents, and employees, all aboriginal records and other antiquities, including mounds, earthworks, forts, burial and village sites, mines or other relics, and abandoned property of historical or recreational value found upon or within any of the lands owned by or under the control of the state.

(2) The state reserves to itself a possessory right or title superior to that of a finder to abandoned property of historical or recreational value found on the state owned bottomlands of the Great Lakes. This property shall belong to this state with administration and protection jointly vested in the department and the department of history, arts, and libraries.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76103 Underwater salvage and preserve committee; creation; purpose; appointment, qualifications, and terms of members; vacancy; compensation; appointment, term, and duties of chairperson; committee as advisory body; functions of committee; limitation.

Sec. 76103. (1) The underwater salvage and preserve committee is created in the department to provide technical and other advice to the department and the department of history, arts, and libraries with respect to their responsibilities under this part.

(2) The underwater salvage and preserve committee shall consist of 9 members appointed as follows:

(a) Two individuals appointed by the department who have primary responsibility in the department for administering this part.

(b) Two individuals appointed by the director of the department of history, arts, and libraries who have primary responsibility in the department of history, arts, and libraries for administering this part.

(c) Five individuals appointed by the governor with the advice and consent of the senate from the general public. Two of these individuals shall have experience in recreational scuba diving.

(3) An individual appointed to the committee shall serve for a term of 3 years. A vacancy on the committee shall be filled in the same manner as an original appointment and the term of a member appointed to fill a vacancy shall be for 3 years. Members of the committee shall serve without compensation, except for their regular state salary where applicable.

(4) The chairperson of the committee shall alternate between the representatives from the department and the department of history, arts, and libraries. The chairperson shall be designated by the department or the director of the department of history, arts, and libraries, whichever is applicable from among his or her representatives on the committee. The chairperson's term shall run for 12 months, from October 1 through September 30. The department shall appoint the first chairperson of the committee for a term ending September 30, 1989. The chairperson shall call meetings as necessary but not less than 4 times per year, set the agenda for meetings, ensure that adequate minutes are taken, and file an annual report of committee proceedings with the head of the department of natural resources and the director of the department of history, arts, and libraries.

(5) The committee is an advisory body and may perform all of the following functions:

(a) Make recommendations with regard to the creation and boundaries of Great Lakes underwater preserves.

(b) Review applications for underwater salvage permits and make recommendations regarding issuance.

(c) Consider and make recommendations regarding the charging of permit fees and the appropriate use of revenue generated by those fees.

(d) Consider the need for and the content of rules intended to implement this part and make recommendations concerning the promulgation of rules.

(e) Consider and make recommendations concerning appropriate legislation.

(f) Consider and make recommendations concerning program operation.

(6) The committee shall not replace or supersede the responsibility or authority of the department of history, arts, and libraries or the department to carry out their responsibilities under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical

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resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76104 Deed; clause reserving to state property and exploration rights in aboriginal antiquities; exceptions; waiver.

Sec. 76104. A deed, as provided by this part, given by this state, except state tax deeds for the conveyance of any land owned by the state, shall contain a clause reserving to this state a property right in aboriginal antiquities including mounds, earthworks, forts, burial and village sites, mines, or other relics and also reserving the right to explore and excavate for the aboriginal antiquity by and through this state's authorized agent and employee. This section applies only to the sale of tax reverted land. The department, with the approval of the department of history, arts, and libraries, may waive this reservation when conveying platted property and when making conveyances under subpart 3 of part 21.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76105 Permit for exploration or excavation of aboriginal remain; exception.

Sec. 76105. (1) A person, either personally or through an agent or employee, shall not explore or excavate an aboriginal remain covered by this part upon lands owned by the state, except as authorized by a permit issued by the department, with written approval of the department of history, arts, and libraries, pursuant to part 13. A permit shall be issued without charge.

(2) Subsection (1) does not apply to the Mackinac Island state park commission on lands owned or controlled by the Mackinac Island state park commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76106 Removal of relics or records of antiquity; consent of landowner required.

Sec. 76106. Without the consent of the land owner, a person shall not remove any relics or records of antiquity such as human or other bones; shells, stone, bone, or copper implements; pottery or shards of pottery, or similar artifacts and objects from the premises where they have been discovered.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76107 Permit to recover, alter, or destroy abandoned property; recovered property as property of department of history, arts, and libraries; prohibitions as to human body or remains; violation; penalty; prior convictions.

Sec. 76107. (1) Except as provided in section 76108, a person shall not recover, alter, or destroy abandoned property which is in, on, under, or over the bottomlands of the Great Lakes, including those within a Great Lakes bottomlands preserve, unless the person has a permit issued jointly by the department of history, arts, and libraries and the department under section 76109.

(2) A person who recovers abandoned property without a permit when a permit is required by this part shall transmit the property to the department of history, arts, and libraries and the recovered property shall be the property of the department of history, arts, and libraries.

(3) A person shall not remove, convey, mutilate, or deface a human body or the remains of a human body located on the bottomlands of the Great Lakes. This subsection does not apply to a person who removes or conveys a human body or the remains of a human body pursuant to a court order, pursuant to the written consent of the decedent's next of kin if the decedent's death occurred less than 100 years before the removal or conveying, or to a person who removes or conveys the body for law enforcement, medical, archaeological, or

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scientific purposes. A person who violates this subsection is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $5,000.00, or both.

(4) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the value of the property is less than $200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or 3 times the aggregate value of the property involved, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00 or 3 times the value of the property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The value of the property involved is $200.00 or more but less than $1,000.00.

(*ii*) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $10,000.00 or 3 times the value of the property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The value of the property involved is $1,000.00 or more but less than $20,000.00.

(*ii*) The person violates subdivision (b)(*i*) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(*ii*).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00 or 3 times the value of the property involved, whichever is greater, or both imprisonment and a fine:

(*i*) The property involved has a value of $20,000.00 or more.

(*ii*) The person violates subdivision (c)(*i*) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(*ii*).

(5) The values of property recovered or destroyed in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the property recovered or destroyed.

(6) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(7) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001;—Am. 2001, Act 155, Eff. Jan. 1, 2002.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76108 Recovery of abandoned property without permit; report; availability of recovered property for inspection; release of property.

Sec. 76108. (1) A person may recover abandoned property outside a Great Lakes bottomlands preserve without a permit if the abandoned property is not attached to, nor located on, in, or located in the immediate vicinity of and associated with a sunken aircraft or watercraft and if the abandoned property is recoverable by hand without mechanical or other assistance.

(2) A person who recovers abandoned property valued at more than $10.00 without a permit pursuant to subsection (1) shall file a written report within 30 days after removal of the property with the department or the department of history, arts, and libraries if the property has been abandoned for more than 30 years. The

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written report shall list all recovered property that has been abandoned for more than 30 years and the location of the property at the time of recovery. For a period of 90 days after the report is filed, the person shall make the recovered property available to the department and the department of history, arts, and libraries for inspection at a location in this state. If the department of history, arts, and libraries determines that the recovered property does not have historical value, the department of history, arts, and libraries shall release the property to the person by means of a written instrument.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76109 Recovery of abandoned property; permit; scope; application; filing, form, and contents; additional information or documents; approval or disapproval of application; conditions; payment of salvage costs; recovery of cargo outside Great Lakes bottomlands preserves; administrative review; conduct of hearing; combined appeals; joint decision and order; duration of permit; issuance of new permit; transfer or assignment of permit.

Sec. 76109. (1) A person shall not recover abandoned property located on, in, or located in the immediate vicinity of and associated with a sunken aircraft or watercraft except as authorized by a permit issued by the department and the department of history, arts, and libraries pursuant to part 13.

(2) Notwithstanding section 1303(1), a person shall file an application for a permit with the department on a form prescribed by the department and approved by the department of history, arts, and libraries. The application shall contain all of the following information:

(a) The name and address of the applicant.

(b) The name, if known, of the watercraft or aircraft on or around which recovery operations are to occur and a current photograph or drawing of the watercraft or aircraft, if available.

(c) The location of the abandoned property to be recovered and the depth of water in which it may be found.

(d) A description of each item to be recovered.

(e) The method to be used in recovery operations.

(f) The proposed disposition of the abandoned property recovered, including the location at which it will be available for inspection by the department and the department of history, arts, and libraries.

(g) Other information which the department or the department of history, arts, and libraries considers necessary in evaluating the request for a permit.

(3) An application for a permit is not complete until all information requested on the application form and any other information requested by the department or the department of history, arts, and libraries has been received by the department. After receipt of an otherwise complete application, the department may request additional information or documents as are determined to be necessary to make a decision to grant or deny a permit.

(4) The department and the department of history, arts, and libraries shall approve or deny an application for a permit with the advice of the committee. A condition to the approval of an application shall be in writing on the face of the permit. The department and the department of history, arts, and libraries may impose such conditions as are considered reasonable and necessary to protect the public trust and general interests, including conditions that accomplish 1 or more of the following:

(a) Protect and preserve the abandoned property to be recovered, and the recreational value of the area in which recovery is being accomplished.

(b) Assure reasonable public access to the abandoned property after recovery.

(c) Conform with rules applying to activities within a Great Lakes bottomlands preserve.

(d) Prohibit injury, harm, and damage to a bottomlands site or abandoned property not authorized for removal during and after salvage operations by the permit holder.

(e) Prohibit or limit the amount of discharge of possible pollutants, such as floating timbers, planking, and other debris, which may emanate from the shipwreck, plane wreck, or salvage equipment.

(f) Require the permit holder to submit a specific removal plan prior to commencing any salvaging activities. Among other matters considered appropriate by either the department or the department of history, arts, and libraries, or both, the removal plan may be required to ensure the safety of those removing or assisting in the removal of the abandoned property and to address how the permit holder proposes to prevent, minimize, or mitigate potential adverse effects upon the abandoned property to be removed, that portion of

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the abandoned property which is not to be removed, and the surrounding geographic features.

(5) The department shall approve an application for a permit unless the department determines that the abandoned property to be recovered has substantial recreational value in itself or in conjunction with other abandoned property in its vicinity underwater, or the recovery of abandoned property would not comply with rules applying to a Great Lakes bottomlands preserve.

(6) The department of history, arts, and libraries shall approve the application for a permit unless the department of history, arts, and libraries determines that the abandoned property to be recovered has substantial historical value in itself or in conjunction with other abandoned property in its vicinity. If the property has substantial historical value, the department of history, arts, and libraries, pursuant to subsection (4), may impose a condition on the permit requiring the permittee to turn over recovered property to the department of history, arts, and libraries for the purpose of preserving the property or permitting public access to the property. The department of history, arts, and libraries may authorize the display of the property in a public or private museum or by a local unit of government. In addition to the conditions authorized by subsection (4), the department of history, arts, and libraries may provide for payment of salvage costs in connection with the recovery of the abandoned property.

(7) A person shall not recover cargo situated on, in, or associated with an abandoned watercraft that is located outside of a Great Lakes bottomlands preserve except as authorized by a permit issued pursuant to this section and part 13. Subject to subsection (4), the permit shall be issued to the first person applying for the permit. However, only the person who discovered the abandoned watercraft may apply for a permit during the first 90 days after the discovery. When a watercraft containing cargo is simultaneously discovered by more than 1 person, a permit shall be approved with respect to the first person or persons jointly applying for a permit.

(8) A person aggrieved by a condition contained on a permit or by the denial of an application for a permit may request an administrative review of the condition or the denial by the commission or the department of history, arts, and libraries, whichever disapproves the application or imposes the condition. A person shall file the request for review with the commission or the department of history, arts, and libraries, whichever is applicable, within 90 days after the permit application is submitted to the department. An administrative hearing conducted pursuant to this subsection shall be conducted under the procedures set forth in chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. If neither the department nor the department of history, arts, and libraries approves the application and an administrative review is requested from both the commission and the department of history, arts, and libraries, the appeals shall be combined upon request of the appellant or either the commission or the department of history, arts, and libraries and a single administrative hearing shall be conducted. The commission and the department of history, arts, and libraries shall issue jointly the final decision and order in the case.

(9) A permit issued under this section is valid until December 31 of the year in which the application for the permit was filed and is not renewable. If an item designated in a permit for recovery is not recovered, a permit holder may, upon request following the expiration of the permit, be issued a new permit to remove the same abandoned property if the permit holder demonstrates that diligence in attempting recovery was exercised under the previously issued permit.

(10) A permit issued under this section shall not be transferred or assigned unless the assignment is approved in writing by both the department and the department of history, arts, and libraries.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76110 Recovered abandoned property; report; examination; removal from state; action for recovery; release of property.

Sec. 76110. (1) Within 10 days after recovery of abandoned property, a person with a permit issued pursuant to section 76109 shall report the recovery in writing to the department. The person recovering the abandoned property shall give authorized representatives of the department and the department of history, arts, and libraries an opportunity to examine the abandoned property for a period of 90 days after recovery. Recovered abandoned property shall not be removed from this state without written approval of the department and the department of history, arts, and libraries. If the recovered abandoned property is removed from the state without written approval, the attorney general, upon request from the department or the department of history, arts, and libraries, shall bring an action for the recovery of the property.

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(2) If the department of history, arts, and libraries determines that the recovered abandoned property does not have historical value, the department of history, arts, and libraries shall release the property to the person holding the permit by means of a written instrument.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76111 Great Lakes bottomlands preserve; establishment; rules; determination; factors; granting permit to recover abandoned artifacts; limitation; intentional sinking of vessel; prohibited use of state money; Thunder Bay Great Lakes state bottomland preserve.

Sec. 76111. (1) Subject to subsection (7), the department of environmental quality shall establish Great Lakes bottomlands preserves by rule. A Great Lakes bottomlands preserve shall be established by emergency rule if it is determined by the department that this action is necessary to immediately protect an object or area of historical or recreational value.

(2) A Great Lakes bottomlands preserve may be established whenever a bottomlands area includes a single watercraft of significant historical value, includes 2 or more abandoned watercraft, or contains other features of archaeological, historical, recreational, geological, or environmental significance. Bottomlands areas containing few or no watercraft or other features directly related to the character of a preserve may be excluded from preserves.

(3) In establishing a Great Lakes bottomlands preserve, the department of environmental quality shall consider all of the following factors:

(a) Whether creating the preserve is necessary to protect either abandoned property possessing historical or recreational value, or significant underwater geological or environmental features.

(b) The extent of local public and private support for creation of the preserve.

(c) Whether a preserve development plan has been prepared by a state or local agency.

(d) The extent to which preserve support facilities such as roads, marinas, charter services, hotels, medical hyperbaric facilities, and rescue agencies have been developed in or are planned for the area.

(4) The department of environmental quality and the department of history, arts, and libraries shall not grant a permit to recover abandoned artifacts within a Great Lakes bottomlands preserve except for historical or scientific purposes or when the recovery will not adversely affect the historical, cultural, or recreational integrity of the preserve area as a whole.

(5) An individual Great Lakes bottomlands preserve shall not exceed 400 square miles in area. Great Lakes bottomlands preserves shall be limited in total area to not more than 10% of the Great Lakes bottomlands within this state. However, the limitations provided in this subsection do not apply to the Thunder Bay Great Lakes bottomland preserve established in subsection (7).

(6) Upon the approval of the committee, not more than 1 vessel associated with Great Lakes maritime history may be sunk intentionally within a Great Lakes bottomlands preserve. However, state money shall not be expended to purchase, transport, or sink the vessel.

(7) The Thunder Bay Great Lakes state bottomland preserve established under R 299.6001 of the Michigan administrative code shall have boundaries identical with those described in 15 C.F.R. 922.190 for the Thunder Bay national marine sanctuary and underwater preserve. As long as the Thunder Bay national marine sanctuary and underwater preserve remains a designated national marine sanctuary, the right and privilege to explore, survey, excavate, and regulate abandoned property of historical or recreational value found upon or within the lands owned by or under control of the state within those boundaries shall be jointly managed and regulated by the department of environmental quality and the national oceanic and atmospheric administration. However, this subsection shall not be construed to convey any ownership right or interest from the state to the federal government of abandoned property of historical or recreational value found upon or within the lands owned by or under control of the state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2000, Act 441, Imd. Eff. Jan. 9, 2001;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 299.6001 et seq. of the Michigan Administrative Code.

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324.76112 Rules generally.

Sec. 76112. (1) The department and the department of history, arts, and libraries, jointly or separately, may promulgate rules as are necessary to implement this part.

(2) Within each Great Lakes bottomlands preserve, the department and the department of history, arts, and libraries may jointly promulgate rules that govern access to and use of a Great Lakes bottomlands preserve. These rules may regulate or prohibit the alteration, destruction, or removal of abandoned property, features, or formations within a preserve.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76113 Limitations not imposed by MCL 324.76107 to 324.76110.

Sec. 76113. Sections 76107 to 76110 shall not be considered to impose the following limitations:

(a) A limitation on the right of a person to engage in diving for recreational purposes in and upon the Great Lakes or the bottomlands of the Great Lakes.

(b) A limitation on the right of the department or the department of history, arts, and libraries to recover, or to contract for the recovery of, abandoned property in and upon the bottomlands of the Great Lakes.

(c) A limitation on the right of a person to own either abandoned property recovered before July 2, 1980 or abandoned property released to a person after inspection.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76114 Suspension or revocation of permit; grounds; hearing; civil action.

Sec. 76114. (1) If the department or the department of history, arts, and libraries finds that the holder of a permit issued pursuant to section 76105 or 76109 is not in compliance with this part, a rule promulgated under this part, or a provision of or condition in the permit, or has damaged abandoned property or failed to use diligence in attempting to recover property for which a permit was issued, the department or the department of history, arts, and libraries, individually or jointly, may summarily suspend or revoke the permit. If the permit holder requests a hearing within 15 days following the effective date of the suspension or revocation, the commission or the department of history, arts, and libraries shall conduct an administrative hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, to consider whether the permit should be reinstated.

(2) The attorney general, on behalf of the department or the department of history, arts, and libraries, individually or jointly, may commence a civil action in circuit court to enforce compliance with this part, to restrain a violation of this part or any action contrary to a decision denying a permit, to enjoin the further removal of artifacts, geological material, or abandoned property, or to order the restoration of an affected area to its prior condition.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76115 Dangers accepted by participants in sport of scuba diving.

Sec. 76115. Each person who participates in the sport of scuba diving on the Great Lakes bottomlands accepts the dangers that adhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from entanglements in sunken watercraft or aircraft; the condition of sunken watercraft or aircraft; the location of sunken watercraft or aircraft; the failure of the state to fund staff or programs at bottomlands preserves; and the depth of the objects and bottomlands within preserves.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical

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resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76116 Violation as misdemeanor; penalty.

Sec. 76116. (1) A person who violates section 76105 or 76106 is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not more than $100.00, or both.

(2) A person who violates sections 76107 or 76111 or a rule promulgated under this part is guilty of a misdemeanor. Unless another penalty is provided in this part, a person convicted of a misdemeanor under this subsection is punishable by imprisonment for not more than 6 months, or a fine of not more than $500.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76117 Attaching, proceeding against, or confiscating equipment or apparatus; procedure; disposition of proceeds.

Sec. 76117. (1) If a person who violates this part or a rule promulgated under this part uses a watercraft, mechanical or other assistance, scuba gear, sonar equipment, a motor vehicle, or any other equipment or apparatus during the course of committing the violation, the items so used may be attached, proceeded against, and confiscated as prescribed in this part.

(2) To effect confiscation, the law enforcement or conservation officer seizing the property shall file a verified complaint in the circuit court for the county in which the seizure was made or in the circuit court for Ingham county. The complaint shall set forth the kind of property seized, the time and place of the seizure, the reasons for the seizure, and a demand for the property's condemnation and confiscation. Upon the filing of the complaint, an order shall be issued requiring the owner to show cause why the property should not be confiscated. The substance of the complaint shall be stated in the order. The order to show cause shall fix the time for service of the order and for the hearing on the proposed condemnation and confiscation.

(3) The order to show cause shall be served on the owner of the property as soon as possible, but not less than 7 days before the complaint is to be heard. The court, for cause shown, may hear the complaint on shorter notice. If the owner is not known or cannot be found, notice may be served in 1 or more of the following ways:

(a) By posting a copy of the order in 3 public places for 3 consecutive weeks in the county in which the seizure was made and by sending a copy of the order by certified mail to the last known business or residential address of the owner. If the last addresses of the owner are not known, mailing a copy of the order is not required.

(b) By publishing a copy of the order in a newspaper once each week for 3 consecutive weeks in the county where the seizure was made and by sending a copy of the order by registered mail to the last known residential address of the owner. If the last residential address of the owner is not known, mailing a copy of the order is not required.

(c) In such a manner as the court directs.

(4) Upon hearing of the complaint, if the court determines that the property mentioned in the petition was possessed, shipped, or used contrary to law, either by the owner or by a person lawfully in possession of the property under an agreement with the owner, an order shall be made condemning and confiscating the property and directing its sale or other disposal by the department. If the owner signs a property release, a court proceeding is not necessary. At the hearing, if the court determines that the property was not possessed, shipped, or used contrary to law, the court shall order the department to immediately return the property to its owner.

(5) The department shall deposit the proceeds it receives under this section into the state treasury to the credit of the underwater preserve fund created in section 76118.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

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324.76118 Underwater preserve fund; creation; sources of revenue; purposes for which money appropriated.

Sec. 76118. (1) The underwater preserve fund is created as a separate fund in the state treasury, and it may receive revenue as provided in this part, or revenue from any other source.

(2) Money in the underwater preserve fund shall be appropriated for only the following purposes:

(a) To the department of history, arts, and libraries for the development of maritime archaeology and for the promotion of Great Lakes bottomlands preserves in this state.

(b) To the department for the enforcement of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 75, Imd. Eff. July 24, 2001.

Compiler's note: For transfer of powers and duties relating to promotion of history and the preservation of the state's historical resources to the department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 3
MACKINAC ISLAND STATE PARK

PART 765
MACKINAC ISLAND STATE PARK

324.76501 Definitions.

Sec. 76501. As used in this part:

(a) "Commission" means the Mackinac Island state park commission created in section 76503.

(b) "Director" means the director of the Mackinac Island state park commission.

(c) "Motor vehicle" means any device that is self-propelled, or partially self-propelled, by which a person or property may be transported or drawn.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76502 Mackinac Island state park; establishment.

Sec. 76502. Pursuant to the turning over to the state of Michigan, for use as a state park, and for no other purpose, the military reservation, lands and buildings of the national park on Mackinac Island, subject to a reversion to the United States whenever the state ceases to use the lands for the purpose described in this section, by the secretary of war, under the authorization of an act of congress, the lands and buildings shall be used as a state park and shall be known as the Mackinac Island state park.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76503 Mackinac Island state park commission; members; appointment and qualifications; resident commissioners; terms; vacancies; expenses; officers; powers and duties.

Sec. 76503. (1) The Mackinac Island state park commission shall consist of 7 members appointed by the governor.

(2) Members of the commission shall be citizens of, registered voters, and regularly domiciled in this state. However, the present members of the commission shall hold office until their successors have been appointed. One member of the commission shall be known as the "resident commissioner", and this member shall be a legal resident of the island and a property owner in the city of Mackinac Island for a period of not less than 6 months preceding his or her nomination. One member of the commission shall be a resident of the village of Mackinaw City.

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(3) The members of the commission shall be appointed by the governor, by and with the advice and consent of the senate, for terms of 6 years each and shall hold office until their successors are appointed. However, of the members first appointed, 2 shall be appointed for a term of 2 years, 2 for a term of 4 years each, and 3 for a term of 6 years each. Not more than 4 members of the commission at any 1 time shall be of the same political party. Vacancies shall be filled by the governor in the same manner as the original appointment for the unexpired term.

(4) A member of the commission shall not receive any compensation for his or her services on the commission, but each member of the commission shall be reimbursed for expenses incurred in connection with the duties of his or her office.

(5) The commission shall annually elect a chairperson, vice-chairperson, and secretary.

(6) The Mackinac Island state park commission is created within the department of history, arts, and libraries and shall have the powers and duties of an agency transferred under a type I transfer pursuant to section 3 of the executive organization act of 1965, 1965 PA 380, MCL 16.103.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76504 Mackinac Island state park; control and management by commission; quorum; conducting business at public meeting; notice; powers of commissioners; rules; deputy sheriffs; disposition of moneys; availability of writings to public; annual report; statement of receipts and expenditures; recommendations and suggestions.

Sec. 76504. (1) The Mackinac Island state park shall be under the control and management of the commission, and a majority of the members of the commission constitutes a quorum for the transaction of business. The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) The commission shall have the exclusive right to do either or both of the following:

(a) Lay out, manage, and maintain the park and preserve the old fort and other property held by the commission on or acquired by the commission after August 6, 2001.

(b) Promulgate and enforce rules not inconsistent with the laws of this state and necessary to implement the commission's duties.

(3) The commission may do 1 or more of the following:

(a) Enter into leases and establish prices for rentals or privileges upon property controlled by the commission.

(b) Sell or lease as personal property buildings or structures acquired by the commission in settlement of delinquent land rentals.

(c) Employ a director and other persons as may be needed.

(4) The rules of the commission shall apply to all roads situated on Mackinac Island state park lands. The commission shall not make a rule permitting the use of motor vehicles except motor vehicles owned by the state, a political subdivision of the state, or by a public utility, and used in the exercise of its franchise. The commission may provide by rule for the issuance of temporary permits for the operation of motor vehicles over roads situated on state park lands. The commission may grant permits pursuant to part 13 for the use of lands for the expansion of existing cemeteries, under terms and conditions as the commission prescribes. The commission may also grant privileges and franchises for waterworks, sewerage, transportation, and lighting, for a period of not more than 40 years. The commission shall prescribe by rule the maximum number of horse drawn vehicles for hire that may be licensed by the commission for operation within the park.

(5) The sheriff of the county of Mackinac, upon the application of the commission, shall appoint 1 or more persons who shall be designated by the commission as deputy sheriffs in and for the county, and who shall be employees of the commission but who shall not receive fees or emoluments for services as deputy sheriffs. The commission may establish the compensation of the persons employed by the commission, but a debt or obligation shall not be created by the commission exceeding the amount of money at its disposal at the time.

(6) All money received from rentals or privileges shall be paid promptly into the state treasury to be credited to the general fund and to be disbursed as appropriated by the legislature. The commission, in

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consideration of the furnishing of fire protection, street service, sewerage service, and other public service agreed upon, may remit reasonable rentals as the commission determines from leases of property acquired by the state under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and deeded to the commission, to the several tax assessing units in which the property is situated as provided in that act, in proportion to the delinquent taxes and special assessments of the units canceled against the description of land.

(7) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The commission shall provide to the governor an annual report and statement of receipts and expenditures, and recommendations and suggestions as the commission considers proper.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 318.111 et seq. of the Michigan Administrative Code.

324.76505 Fort Mackinac; flag; maintenance.

Sec. 76505. The director shall see to it that the United States flag is kept floating from the flagstaff at Fort Mackinac, and rules relative thereto are the same as those that have governed in that matter when the fort was in possession and occupancy by the United States troops.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 176, Imd. Eff. July 1, 2004.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76506 Fort deBuade; restoration; fees; rules.

Sec. 76506. The Mackinac Island state park commission may acquire by purchase, lease, grant, or transfer the use of certain state land in the county of Mackinac for the purpose of developing and restoring as an historical site the area in or near the location where Fort deBuade once stood. After the acquisition and restoration, the site shall be under the jurisdiction, management, and control of the Mackinac Island state park commission, and the commission shall have and exercise the same rights and powers over the site as it has and exercises over Mackinac Island state park, including the right to levy and collect fees for the use of the facilities at the site. All rules promulgated by the commission shall be effective within the whole territory covered by the park. The commission may promulgate and enforce rules relative to any part or portion of the park, notwithstanding any contrary or inconsistent ordinance, regulation, or bylaw of any political subdivision.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76507 Mackinac Island state park; operation of vehicle without permit; misdemeanor; penalty.

Sec. 76507. Except as provided in section 76504, a person who operates a motor vehicle on land within the Mackinac Island state park without a permit is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both, plus the costs of prosecution.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 176, Imd. Eff. July 1, 2004.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26,

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compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76507a Damaging or removing trees, vegetation, or state property; violation; civil liability.

Sec. 76507a. (1) A person shall not cut, peel, damage, destroy, or remove a tree or other vegetation or state property located in any park or other property under the control of the commission, without written permission from the director.

(2) A person who violates subsection (1) is civilly liable to the commission in a sum equal to triple the amount of damage, destruction, or value of the property.

History: Add. 2004, Act 176, Imd. Eff. July 1, 2004.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76508 Special police; appointment; supervision; powers and duties.

Sec. 76508. The director may appoint, by and with the consent of the commission, such number of special police as the commission may by resolution direct, which special police shall be under the supervision and direction of the director, who shall be charged with the enforcement of the laws of this state related to the park and the rules promulgated by the commission for the care and preservation of the park, and the property in and about the fort. The special police shall be vested with the authority of county sheriffs and, within the park, may apprehend and arrest, without warrant, any person whom they may find violating the laws of this state related to the park or the rules that have been promulgated concerning the preservation of property, the mutilation of landmarks, or the destruction or injury to growing trees and shrubs.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.76509 Mackinac Island state park commission; acceptance of gifts.

Sec. 76509. The Mackinac Island state park commission, for and on behalf of the state of Michigan, is authorized to receive, accept, and hold, by gift, grant, devise, or bequest, any property, real or personal, but only for the purposes incidental to or connected with the state parks under its management and control.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

PART 767
MACKINAC ISLAND STATE PARK COMMISSION

324.76701 “Commission” defined.

Sec. 76701. As used in this part, "commission" means the Mackinac Island state park commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

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324.76702 Mackinac Island state park commission; additional powers.

Sec. 76702. The Mackinac Island state park commission may, in addition to the powers already conferred on it by law, exercise the following powers: (a) To acquire, construct, improve, repair, maintain, restore, equip, furnish, use, and operate all property, real or personal, necessary or convenient to the exercise of the powers or the performance of the duties conferred upon it by law, including, but not limited to, property that in the judgment of the commission will increase the beauty and utility of the state park facilities and provide recreational, historical, or other facilities for the benefit and enjoyment of the public and landscaping, driveways, streets, or walkways for such property.

(b) To employ consulting architects, engineers, museum technicians, landscape architects, supervisors, managers, lawyers, fiscal agents, and other agents and employees as it considers necessary, and to establish their compensation.

(c) To enlist the guidance, assistance, and cooperation of the Michigan historical commission.

(d) To establish charges for admission to the facilities under its jurisdiction, to establish other charges for the use of any facilities, including fees or charges to be imposed on concessionaires, and to charge rentals for the lease or use of any of its facilities as the commission determines proper and as will assure the prompt and full carrying out of all covenants contained in the proceedings authorizing any bonds pursuant to this part.

(e) To accept gifts, grants, and donations.

(f) To acquire, construct, develop, improve, repair, maintain, and operate, but not to extend the runway beyond 3,600 feet, an airport or landing field on property under its jurisdiction, and to lease to any governmental unit any real or personal property under its jurisdiction for use as an airport or landing field on the terms and conditions approved by the commission and the department of management and budget. The exercise of any power granted by this subdivision is subject to determination by the proper federal authority that such exercise will not affect the title of the state to the land involved. All rules and regulations established by any lessee shall reflect written approval by the commission before the rules or regulations are in effect.

(g) To sell real or personal property that is under the control of the commission if all of the following requirements are met:

(*i*) The property is sold for fair market value. The determination of fair market value may take into account a commitment by the buyer to keep the property open or accessible to the public. Furthermore, if the property is sold to a person who donated labor or materials for the improvement, repair, maintenance, or restoration of the property, the price may be reduced by an amount not greater than the portion of the fair market value attributable to the donation of labor or materials.

(*ii*) The commission determines that the property is not of current or potential value to the purposes of the commission as set forth in this subchapter.

(*iii*) The commission determines that the sale of the property is in the best interests of the state.

(*iv*) The sale of the property is not otherwise prohibited by law.

(*v*) If the property is real property, the property is zoned residential or commercial and is not contiguous to state park land.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2006, Act 181, Imd. Eff. June 6, 2006.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76703 Mackinac Island state park commission; gross revenue bonds; purpose; cost; interim receipts or certificates; maximum rate of interest; sale and award of notes; notice; resolution; contents; trust indenture; money received as trust funds; disposition; gross revenue refunding bonds; powers of commission; annual audit; signature on bonds; attestation; electronic format; issuance of bonds subject to agency financing reporting act; interest rate agreement.

Sec. 76703. (1) The commission may issue its gross revenue bonds in anticipation of the collection of all or any part of its revenues, for the purpose of acquiring, constructing, reconstructing, improving, bettering, extending, restoring, refurbishing, renovating, repairing, equipping, furnishing, any or all, the properties and facilities that it is authorized to acquire, construct, reconstruct, maintain, or operate under this part, including properties and facilities owned by it, and shall pledge to the payment of the interest on and principal of the bonds, all or any part of the revenues derived from the operation of the properties and facilities controlled and operated by the commission. There may be included in the cost for which bonds are to be issued, reasonable allowances for legal, engineering, or fiscal services, interest during construction or reconstruction and for 6

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months after the estimated date of completion of the construction or reconstruction or until full revenues are being received from the operation of the facility, and other incidental expenses. The bonds shall be authorized by resolution of the commission and may be issued in 1 or more series, may bear the date or dates, may mature at the time or times not exceeding 30 years from their respective dates, may bear interest at the rate or rates, may be in the form, either coupon or registered, may be executed in the manner, may be payable at the place or places, may be subject to the terms of redemption, with or without premium, and may contain the terms, covenants, and conditions as the resolution or subsequent resolution may provide. Pending preparation of the definitive bonds, interim receipts, or certificates in the form and with the provisions as the commission may determine may be issued to the purchaser or purchasers of the bonds sold pursuant to this part. The bonds and interim receipts and certificates shall be fully negotiable within the meaning of and for all purposes of the negotiable instruments law of this state. The maximum rate of interest on such bonds shall be that set forth for bonds issued under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The sale and award of notes shall be conducted and made by the commission at a public or private sale. If a public sale is held, the notes shall be advertised for sale once not less than 7 days before sale in a publication printed in the English language and circulated in this state, which carries as a part of its regular service notices of the sales of municipal bonds and which has been designated in the resolution as a publication complying with these qualifications. The notice of sale shall be in the form as designated by the commission. Bonds may be sold at a discount as provided in the bond resolution. Bonds issued under this section are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) Any resolution authorizing the issuance of bonds under this part or any instrument of trust entered into as authorized by this part may contain covenants, including, but not limited to, any of the following:

(a) The purpose or purposes to which the proceeds of the sale of the bonds may be applied, and the deposit, use, and disposition of the proceeds.

(b) The use, deposit, securing of deposits, and disposition of the revenues of the commission, including the creation and maintenance of reserves.

(c) The issuance of additional bonds payable from the revenues of the commission.

(d) The operation and maintenance of properties of the commission.

(e) The insurance to be carried thereon, and the use, deposit, and disposition of insurance money.

(f) Books of account and the inspection and audit of the books of account and the accounting methods of the commission.

(g) The nonrendering of any free service by the commission.

(h) The preservation of the properties of the commission, so long as any of the bonds remain outstanding, from any mortgage, sale, lease, or other encumbrance not specifically permitted by the terms of the resolution.

(i) The employment of sufficient personnel for the collection of fees and charges incident to the operation of the facility and for the payment of compensation to the personnel out of the fees and charges.

(3) In the discretion of the commission, any bonds issued under this part may be secured by a trust indenture by and between the commission and a corporate trustee, which may be any bank having the right to exercise the powers of a trust company within this state. Any trust indenture described in this subsection may pledge or assign the revenues from the operation of properties of the commission, but shall not convey or mortgage any properties, except the revenues. Any trust indenture or any resolution providing for the issuance of bonds may contain the provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the improvements in connection with which the bonds have been authorized, and the custody, safeguarding, and application of all money, and provisions for the employment of consulting engineers, architects, and landscape architects in connection with the planning, construction, or operation of the improvements. Any trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any trust indenture or resolution may contain other provisions as the commission considers reasonable and proper for the security of the bondholders. The holder of any bond issued under this part or a trustee in his or her behalf may bring suit against the commission and its members, officers, and agents to enforce the provisions and covenants contained in any trust indenture or resolution. All expenses incurred in carrying out the provisions of any trust indenture may be treated as a part of the cost of operation of the improvements for which the bonds are authorized.

(4) Money received pursuant to this part, whether as proceeds from the sale of bonds or as revenues from the operations of properties, or otherwise received by the commission, shall be considered to be trust funds, to be held and applied solely as provided in this part and in the resolution authorizing, or trust indenture

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securing, its bonds. All money received may be deposited in as received and paid out by any bank or banks selected for the purpose and eligible to hold public money under the laws of this state, the deposits and paying out to be in the manner provided in the resolution or trust indenture. None of the money need be paid into the state treasury.

(5) If the commission has issued any bonds under this part, the commission may subsequently issue and negotiate new bonds under this part for the purpose of providing for the retirement of those outstanding bonds, in whole or in part. The new bonds shall be designated "gross revenue refunding bonds", and except as otherwise provided in the refunding resolution, shall be secured to the same extent and shall have the same source of payment as the bonds that have been refunded, or may be payable from earnings on investments held in trust to pay refunded bonds for the period of time specified in the ordinance authorizing the bonds. The refunding bonds may be issued to include the amount of any premium to be paid upon the calling of the callable bonds to be refunded or any premium necessary to be paid in order to secure the surrender of the noncallable bonds to be refunded, interest to the maturity or redemption date of the bonds to be refunded, and the cost of issuing the refunding bonds. This section shall not be construed as providing for the redemption of noncallable unmatured bonds without the consent of the holder or holders of the bonds. The refunding bonds may be sold at public sale, may be privately negotiated, or may be exchanged for the obligations to be refunded by the obligations, and if sold, the proceeds shall be deposited in a bank and credited to a special trust account to be used only for the redemption or purchase of the outstanding bonds. If refunding bonds are to be issued and sold for the purpose of refunding noncallable unmatured bonds, those bonds shall be surrendered and canceled at the time of delivery to the purchaser of the refunding bonds, or sufficient funds shall be deposited in trust to pay principal and interest to maturity on noncallable bonds. If refunding bonds are to be issued for the purpose of refunding callable bonds, those bonds shall be surrendered and canceled at the time of delivery to the purchaser of the refunding bonds, or sufficient funds shall be deposited in trust to pay principal, interest, and redemption premium to the earliest redemption date on callable bonds. When the resolution authorizing the bonds to be refunded permits, the borrower may deposit in trust direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States and which do not permit redemption at the option of the issuer, the principal and interest on which when due, without reinvestment, will provide funds sufficient to pay principal, interest, and call premium, when due, on the bonds being refunded.

(6) Notwithstanding the other provisions of this section:

(a) Interest on the bonds may be payable at any time provided in the resolution, and may be set, reset or calculated, or both, as provided in the resolution.

(b) If so authorized in the resolution bonds may be:

(*i*) Made the subject of a put or agreement to repurchase by the commission.

(*ii*) Secured by a letter of credit issued by a bank pursuant to an agreement entered into by the commission or secured by any other collateral.

(*iii*) Callable.

(*iv*) Reissued by the commission once reacquired by the commission pursuant to any put or repurchase agreement.

(c) The commission may by resolution do any of the following:

(*i*) Authorize the issuance of renewal bonds.

(*ii*) Refund, or refund in advance, bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured.

(*iii*) Issue bonds partly to refund bonds and partly for any other purposes authorized by this part.

(*iv*) Buy and sell any bonds issued under this part.

(d) Renewal, refunding, or advance refunding bonds are subject to all of the following:

(*i*) Shall be sold and the proceeds applied to the purchase redemption or payment of the bonds to be renewed or refunded.

(*ii*) May be sold or resold at a public or private sale upon such terms and conditions as the commission may establish in the order.

(*iii*) May pledge the revenues pledged in the issue to be refunded in advance effective when a defeasance has occurred with respect to the original issue.

(e) If authorized by the commission in the resolution authorizing the bonds, any bonds issued may be secured in whole or in part pursuant to a trust or escrow agreement, which agreement may also govern the issuance of renewal bonds, refunding bonds, and advance refunding bonds. The agreement may authorize the trustee or escrow agent to make investments of any type authorized in the agreement.

(f) Powers specified in this subsection shall be in addition to those set forth in all other subsections and sections of this part.

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(7) The commission shall hire an independent certified public accountant approved by the legislative auditor general to perform an annual audit of all of its operations which are required by, or in any way relate to, any covenants made in connection with any bonds issued pursuant to this part.

(8) The bonds may be issued in electronic format only or, if issued in paper copies, shall be signed by the chairperson or vice-chairperson of the commission and attested to by any other officer of the commission authorized to do so by resolution of the commission. The signature of either officer, but not both, may be affixed by facsimile or electronically.

(9) The issuance of bonds and notes under this section is subject to the agency financing reporting act.

(10) For the purpose of more effectively managing its debt service, the commission may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001;—Am. 2002, Act 389, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76704 Mackinac Island state park commission; charges and fees; payment of bonds.

Sec. 76704. The commission shall prescribe and collect charges and fees as above authorized for admission to and for the use of the services, facilities and commodities supplied by or through all its properties, including museums, the revenues of which have been pledged to the payment of bonds issued under this part, and shall revise such charges and fees from time to time whenever necessary to ensure that the revenues to be derived from the charges and fees shall be fully sufficient to pay principal of and interest on such bonds, and to carry out all requirements and covenants contained in the proceedings pursuant to which any such bonds are issued. All or any part of the gross revenues derived by the commission from the operation, leasing, or other use of any properties of the commission utilized as a part of any state park project financed under this part may be pledged to the payment of such principal and interest. Each bond shall recite in substance that the bond and the interest on the bond are payable solely from the revenues pledged to the payment thereof, and that the bond does not constitute a debt of the commission or of the state of Michigan within the meaning of any constitutional or statutory limitation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76705 Mackinac Island state park commission; public body corporate; tax exemptions.

Sec. 76705. The commission is a public body corporate constituting an instrumentality of the state of Michigan and carrying out duties and functions imposed upon and in the state under its constitution and laws, and shall have the power to sue and be sued. It is accordingly found, determined, and declared that the carrying out of powers of the commission and the purposes of this part are for the benefit of the people of the state and constitute a public purpose. Accordingly, all property owned by the commission or owned by the state and controlled by the commission shall be exempt from all taxes levied by the state and all of its political subdivisions and taxing districts, and the bonds and interim receipts or certificates issued by the commission and the income therefrom shall be free from taxation within the state, and the commission shall be required to pay no taxes or assessments upon its activities or upon any of its revenues.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Effective date: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76706 Construction of part; indebtedness.

Sec. 76706. This part shall not be construed or interpreted as authorizing or permitting the incurring of the indebtedness of the state of Michigan contrary to the provisions of the constitution or laws of the state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26,

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compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76707 Mackinac Island state park commission; authorizing resolution; publication; validity.

Sec. 76707. The commission may in its discretion cause any resolution authorizing the issuance of bonds under this part to be published 1 time in a newspaper published in the county where the facilities are located having a general circulation in that county. Any action or proceeding questioning the validity of the resolution or any provision of the resolution or the validity of the bonds authorized by the resolution or the provisions of any trust indenture in the resolution authorized to be executed for the security of the bonds, must be commenced within 20 days from the publication of the resolution. After the expiration of the 20 days, no right of action or defense founded upon the invalidity of the resolution or any of its provisions or of the trust indenture, if any, or of the bonds, shall be asserted nor shall any court in this state have authority to inquire into such matters.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76708 Mackinac Island state park commission; acts; approval.

Sec. 76708. Except to the extent that the state constitution of 1963 may be construed to require the approval of any act of the commission under this part, by the state administrative board, the commission may carry out all powers and functions granted and imposed in it under this part without first obtaining the approval of any other state department, board, bureau, agency, or official.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

324.76709 Construction of part.

Sec. 76709. If 1 or more provisions of this part are inconsistent with any other act, general or special, this part is controlling.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

Popular name: Act 451

Popular name: NREPA

PART 769
MACKINAC ISLAND STATE PARK RULES

324.76901 Mackinac Island state park commission; rules; care and preservation; violation; fine.

Sec. 76901. (1) The Mackinac Island state park commission may promulgate and enforce reasonable rules for the care and preservation of the Mackinac Island state park and other property under the control of the Mackinac Island state park commission including, but not limited to, the Mill Creek site described in 1975 PA 285 and the site formerly occupied as a military post under the name of Fort Michilimackinac as described in section 77701.

(2) The Mackinac Island state park commission may promulgate rules for the protection of the lands and property under its control against wrongful use or occupancy to protect the lands and property from depredations and to preserve the lands and property from molestation, spoilation, destruction, or any other improper use or occupancy.

(3) A person who violates a rule promulgated by the Mackinac Island state park commission under this act is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

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Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 318.111 et seq. of the Michigan Administrative Code.

324.76902 Repealed. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: The repealed rule pertained to enforcement of rules at Mackinac Island state park.

Popular name: Act 451

Popular name: NREPA

324.76903 Mackinac Island state park commission; rules; jurisdiction.

Sec. 76903. All rules promulgated by the Mackinac Island state park commission under this part, this act, or any other act shall be effective within the whole territory covered by the park, and the Mackinac Island state park commission may promulgate and enforce rules relative to any part or portion of the park or other property controlled by the Mackinac Island state park commission, notwithstanding any contrary or inconsistent ordinance, regulation, or bylaw of the city of Mackinac Island, the township of Mackinaw, county of Cheboygan, or the village of Mackinaw City.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

PART 771
MACKINAC ISLAND FIRE PROTECTION

324.77101 Mackinac Island state park commission; contract for fire protection.

Sec. 77101. The Mackinac Island state park commission and the city of Mackinac Island by its governing body are authorized to enter into a continuing contract for fire protection to be furnished by the city of Mackinac Island for property under the control and management of the Mackinac Island state park commission. The fire protection service and apparatus to be furnished shall meet with the approval of the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b. The contract shall be signed by the chief executive and clerk of the city of Mackinac Island and by the chairperson and secretary of the Mackinac Island state park commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2006, Act 194, Imd. Eff. June 19, 2006.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

PART 773
OLD MISSION CHURCH AT MACKINAC ISLAND

324.77301 Old Mission Church; acquisition; description.

Sec. 77301. The Mackinac Island state park commission is authorized to acquire, in consideration of the payment of the sum of $1.00 and other considerations to be in hand paid, the so-called "Old Mission Church", being all that certain piece or parcel of land situate and being in the city of Mackinac Island, county of Mackinac and state of Michigan, and more particularly described as follows:

Lot 6 of Block 4 of C. R. Miller's Proposed Subdivision of the Mission House Lots in the Village of Mackinac and bounded and more particularly described as follows: Beginning at a point in the North line of East Water Street as prolonged in said subdivision 30 feet North 89° East from the Southeast corner of the

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North half of Lot 12 (known as the Wendell Homestead) for a place of beginning; thence North 6° East along the East line of Mission Street as platted in said subdivision to the South line of an alley 120 feet; thence along the South line of said alley North 89° 15" East 51 feet; thence Southerly about 118 feet to a point in the prolongation of the North line of said East Water Street in said proposed plat of said subdivision; thence Westerly on said North line of said East Water Street 52 feet to the place of beginning, said lot being intended to be the same land on which the Old Mission Church now stands, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.77302 Old Mission Church; maintenance as historic shrine.

Sec. 77302. The property acquired by the Mackinac Island state park commission under this part shall be maintained as a historic shrine by the Mackinac Island state park commission and shall be open to the public subject to such reasonable rules promulgated by the Mackinac Island state park commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

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PART 775
MACKINAC ISLAND; CLERK'S QUARTERS—AMERICAN FUR COMPANY

324.77501, 324.77502 Repealed. 2001, Act 78, Eff. Aug. 6, 2001.

Popular name: Act 451

Popular name: NREPA

PART 777
MICHILIMACKINAC STATE PARK

324.77701 Michilimackinac state park; control; name change.

Sec. 77701. The Mackinac Island state park commission shall have the control and management of the site formerly occupied as a military post under the name of Fort Michilimackinac, in the village of Mackinaw City, county of Cheboygan and state of Michigan, previously conveyed by the village of Mackinaw City to the state of Michigan, under and by virtue of Act No. 520 of the local acts of 1903, conveyed as Wawatam park, by deed dated January 27, 1904, which deed is recorded in the office of the register of deeds of Cheboygan county in liber 26 of deeds on page 588. Though conveyed as "Wawatam Park," the park shall hereafter be known as "Michilimackinac state park".

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.77702 Michilimackinac state park; rules; protection and maintenance.

Sec. 77702. The Mackinac Island state park commission may promulgate and enforce reasonable rules for the care and preservation of Michilimackinac state park, for the maintenance of good order, for the protection of property and for the welfare of the park as shall from time to time be considered necessary or expedient by the Mackinac Island state park commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

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Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

324.77703 Repealed. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: The repealed section pertained to enforcement of rules at Michilimackinac state park.

Popular name: Act 451

Popular name: NREPA

324.77704 Michilimackinac state park; rules; jurisdiction of commission.

Sec. 77704. All rules promulgated by the Mackinac Island state park commission under this part, this act, or any other act shall be effective within the whole territory covered by the park. The Mackinac Island state park commission may promulgate and enforce rules relative to any part or portion of the park, notwithstanding any contrary or inconsistent ordinance, regulation, or bylaw of the village of Mackinaw City.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

PART 779.
MILL CREEK

324.77901 Mill creek site; control and management.

Sec. 77901. The Mackinac Island state park commission shall have the control and management of the site known as the Mill Creek site described in 1975 PA 285.

History: Add. 2001, Act 78, Eff. Aug. 6, 2001.

Compiler's note: For transfer of Mackinac Island state park commission to department of natural resources, see E.R.O. No. 2009-26, compiled at MCL 399.752.

For transfer of Mackinac Island state park commission from department of natural resources and environment to department of natural resources, see E.R.O. No. 2011-1, compiled at MCL 324.99921.

Popular name: Act 451

Popular name: NREPA

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SUBCHAPTER 4
THE MICHIGAN STATE WATERWAYS COMMISSION

GENERAL

PART 781
MICHIGAN STATE WATERWAYS COMMISSION

324.78101 Definitions.

Sec. 78101. As used in this part:

(a) "Commercial motor vehicle" means that term as defined in section 74101.

(b) "Commission" means the Michigan state waterways commission.

(c) "Department" means the department of natural resources.

(d) "Designated state-operated public boating access site" means a state-operated public boating access site designated under section 78105(2).

(e) "Director" means the administrative director of the commission.

(f) "Diesel motor fuel" means any liquid fuel used in the operation of engines of the diesel type in motor vehicles or watercraft.

(g) "Gasoline" means gasoline, casing head or natural gasoline, benzole, benzine, and naphtha. Gasoline also means any liquid prepared, advertised, offered for sale, sold for use as, or used for, the generation of power for the propulsion of motor vehicles or watercraft, including any product obtained by blending together

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any 1 or more products of petroleum, regardless of their original names or characteristics, with or without other products, unless the resultant product obtained is entirely incapable of use for the generation of power for the propulsion of motor vehicles or watercraft. Gasoline does not include diesel fuel, liquefied petroleum gas, or commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed, sold, or used exclusively for purposes other than as a fuel for motor vehicles or watercraft.

(h) "Harbor" means a portion of a lake or other body of water either naturally or artificially protected so as to be a place of safety for watercraft, including contrivances used or designed for navigation on water and used or owned by the United States.

(i) "Harbor facilities" means the structures at a harbor constructed to protect the lake or body of water and the facilities provided within the harbor and ashore for the mooring and servicing of watercraft and the servicing of crews and passengers.

(j) "Inland lake or stream" means that term as defined in section 30101.

(k) "Liquefied petroleum gas" means gases derived from petroleum or natural gases that are in the gaseous state at normal atmospheric temperature and pressure, but that may be maintained in the liquid state at normal atmospheric temperature by suitable pressure.

(*l*) "Marina" means a site that contains harbor facilities.

(m) "Motor vehicle" means that term as defined in section 74101.

(n) "Navigable water" means any waterway navigable by vessels, or capable of being made navigable by vessels through artificial improvements, and includes the structures and facilities created to facilitate navigation.

(o) "Nonresident motor vehicle" means that term as defined in section 74101.

(p) "Person" includes any individual, partnership, corporation, association, or body politic, except the United States and this state, and includes any trustee, receiver, assignee, or other similar representative of those entities.

(q) "Public boating access site" means a publicly owned site for the launching of recreational watercraft.

(r) "Recreational boating facilities" means boat launches, harbors, marinas, and locks assisting recreational boats accessing water bodies at different elevations.

(s) "Recreation passport fee" means that term as defined in section 2001.

(t) "Resident motor vehicle" means that term as defined in section 74101.

(u) "Retail fuel dealer" includes any person or persons, both private and municipal, who engage in the business of selling or distributing fuel within this state.

(v) "Secretary of state" means the secretary of state of this state, acting directly or through a duly authorized deputy, investigators, agents, and employees.

(w) "Vessel" means all watercraft except the following:

(*i*) Watercraft used for commercial fishing.

(*ii*) Watercraft used by the sea scout department of the boy scouts of America chiefly for training scouts in seamanship.

(*iii*) Watercraft owned by this state, any political subdivision of this state, or the federal government.

(*iv*) Watercraft when used in interstate or foreign commerce and watercraft used or owned by any railroad company or railroad car ferry company.

(*v*) Watercraft when used in trade, including watercraft when used in connection with an activity that constitutes a person's chief business or means of livelihood.

(x) "Watercraft" means any contrivance used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat, but does not include contrivances used or owned by the United States.

(y) "Waterway" means any body of water.

(z) "Waterways account" means the waterways account of the Michigan conservation and recreation legacy fund provided for in section 2035.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 210, Imd. Eff. July 1, 1998;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2006, Act 466, Imd. Eff. Dec. 20, 2006;—Am. 2010, Act 34, Eff. Oct. 1, 2010;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

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324.78102 Michigan state waterways commission; creation; appointment, qualifications, and terms of members; oath; reimbursement for expenses; removal of members; vacancies; seal; rules; election of officers; action by commission; offices and equipment.

Sec. 78102. There is created a state commission to be known and designated as the Michigan state waterways commission. The commission shall consist of 7 members, who shall be appointed by the governor, with the advice and consent of the senate. The term of office of each member shall be 3 years, except that of members first appointed, 2 shall be appointed for 1 year, 2 shall be appointed for 2 years, and 1 shall be appointed for 3 years. Not less than 2 members shall reside north of townline 16, 1 of whom shall reside in the upper peninsula and 1 of whom shall reside in the lower peninsula. One of the members shall be an individual who owns or operates a harbor or marina in this state at the time of his or her appointment and during his or her membership on the commission. One member shall be a representative of the marine-trades industry who does not own or operate a harbor or marina. The first term of the individual who owns or operates a harbor or marina shall expire on September 18, 1989. The first term of the marine-trade representative who does not own or operate a harbor or marina shall expire on September 18, 1988. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the unexpired term. Members shall qualify by taking and filing the constitutional oath of office. A member of the commission shall not receive a salary for his or her services as a commissioner, but may be reimbursed for actual and necessary expenses incurred in performance of official duties. The members of the commission may be removed by the governor for inefficiency, neglect of duty, misuse of office, or malfeasance in office, in the manner provided by law for the removal of other public officers for similar causes. Vacancies shall be filled for the unexpired term in the same manner as original appointments. The commission shall, immediately upon its appointment, organize, adopt a seal, and make, amend, and revise the rules necessary for the administration of the commission's duties under this part. The commission at the organization meeting shall elect from its members a chairperson and vice-chairperson to serve for 1 year and annually thereafter shall elect such officers, each to serve until his or her successor is appointed and qualified. Action shall not be taken by the commission with less than a majority assent of its members. The department of management and budget shall provide suitable offices and equipment for the use of the commission.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78103 Waterways commission; conducting business at public meeting; notice of meeting; availability of writings to public.

Sec. 78103. (1) The business which the Michigan state waterways commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78104 Waterways commission; director; appointment; qualifications; term; compensation; duties; assistants; salaries; expenses.

Sec. 78104. There is established the office of administrative director of the commission. The director qualified by a record of experience in connection with boating shall be appointed by the commission to serve for an indefinite term, during his or her efficient, honest, and businesslike execution of his or her duties. He or she shall receive such compensation as the commission may determine, not in excess of $8,400.00, and shall be reimbursed for all traveling and other expenses incurred by him or her in the discharge of his or her official duties. The director shall be charged with the administration of this part in accordance with the policies established by the commission. The department, upon recommendation of the director, subject to the approval of the commission, may employ such assistants, and make such expenditures as may be necessary in implementing this part related to the powers and duties of the commission. The salaries of all employees, and

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the necessary expenses while traveling in performing any of their duties, shall be paid in the same manner as the salaries and expenses of other state employees are paid.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78105 Powers and duties of department; designation of state-operated boating access sites requiring passes; fees.

Sec. 78105. (1) The department has the following powers and duties:

(a) To acquire, construct, and maintain harbors, channels, and facilities for vessels in the navigable waters lying within the boundaries of this state.

(b) To acquire, by purchase, lease, gift, or condemnation the lands, rights of way, and easements necessary for harbors and channels. For the purposes of this subdivision, the department shall be considered a state agency under 1911 PA 149, MCL 213.21 to 213.25.

(c) To acquire, by purchase, lease, gift, or condemnation suitable areas on shore for disposal of the material from dredging.

(d) To enter into any contracts or agreements that may be necessary in carrying out this part, including agreements to hold and save the United States free from damages due to the construction and maintenance by the United States of those works that the United States undertakes.

(e) To provide for the granting of concessions within the boundaries of harbors, so as to furnish the public gas, oil, food, and other facilities.

(f) To represent this state and the governor in dealings with the chief of engineers of the United States army and his or her authorized agents for the purposes set forth in this part.

(g) To charge fees for both seasonal and daily moorage at state-operated small craft mooring facilities. All revenues derived from this source shall be deposited in the waterways account.

(h) To collect the proceeds from the sale of marine fuel at harbors operated by the department. The proceeds from the sales shall be credited to the waterways account and used for the purchase of marine fuel supplies as may be needed. Any remaining revenue from this source not needed for the purchase of marine fuel supplies may be expended in the same manner as other funds within the waterways account.

(2) The director shall designate state-operated public boating access sites that, subject to section 78119(4), shall not be entered by a resident motor vehicle unless the recreation passport fee has been paid or by a nonresident or commercial motor vehicle unless a pass purchased under subsection (3) is affixed to the motor vehicle as described in section 78119.

(3) The department shall charge fees for passes authorizing seasonal or daily entry by nonresident motor vehicles or commercial motor vehicles at designated state-operated public boating access sites. Fee revenue under this subsection shall be deposited in the waterways account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 34, Eff. Oct. 1, 2010 ;—Am. 2013, Act 81, Eff. May 1, 2014.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.78106 Authority of local agencies and public colleges and universities to enter contracts with department.

Sec. 78106. The local units of government of this state, within the jurisdiction of which are situated inland waterways connected with or connecting the waters of the Great Lakes, or within which channels to nearby inland lakes and streams may be constructed or opened for navigation and shelter of light draft vessels, may by majority vote of their respective legislative bodies enter into contracts and agreements with the department in carrying out the purposes of this part. In addition, the public colleges and universities of the state may enter into contracts and agreements with the department in carrying out the purposes of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 19, Imd. Eff. June 18, 2003.

Popular name: Act 451

Popular name: NREPA

324.78107 Facilities in harbors and connecting waterways; use.

Sec. 78107. Facilities in harbors and connecting waterways established under this part shall be open to all

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on equal and reasonable terms.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78108 Financing local agencies and public colleges and universities to obtain federal participation; contracts with army corps of engineers.

Sec. 78108. (1) The department may do 1 or more of the following:

(a) Take actions as may be necessary to provide the finances required of local agencies and public colleges and universities as condition for United States' participation in any project in which the department is empowered to act.

(b) Use any part or all of the appropriation and funds otherwise available to meet the portion of the requirement of local participation as the department considers proper.

(c) Enter into agreements with any public college or university or political subdivision of the state in connection with participation with the United States in any project in which the department is empowered to act and provide adjustments which in the judgment of the department are considered to be in the best interest of the state.

(2) The department may enter into any contract or agreement with the army corps of engineers of the United States, or any other agency or instrumentality of the United States for the dredging of harbors, the erection of breakwaters, piers or any other device for the protection of vessels, and may do any act or enter into any contract or agreement desirable in implementing this part. The department may take such steps as may be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 19, Imd. Eff. June 18, 2003.

Popular name: Act 451

Popular name: NREPA

324.78109 Administration of part; advice by commission.

Sec. 78109. The commission shall advise the department on the administration of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78110 Waterways account; use.

Sec. 78110. Money in the waterways account shall be used only for the following:

(a) The construction, operation, and maintenance of the following that are associated with recreational boating facilities:

(*i*) Ramps and related support infrastructure for launching watercraft.

(*ii*) Piers, jetties, breakwaters, or other similar structures connected to existing or proposed recreational boating facilities or harbors of refuge.

(*iii*) Moorage facilities and related support infrastructure at marinas to provide dockage for transient and seasonal users.

(*iv*) Studies and surveys necessary for the development of recreational boating facilities or the operation of recreational boating facilities, and the implementation of recommendations from these studies and surveys.

(*v*) Restrooms, sewage treatment facilities, showers, potable water supplies, security lights, and parking areas.

(*vi*) Pump outs.

(*vii*) Access roads, bridges, signals, and other infrastructure to provide the public access to recreational boating facilities.

(*viii*) Engineering costs, including planning and construction costs and costs of environmental assessments and permit applications.

(*ix*) Dredging, stump removal, and aquatic weed control when the activities can be shown to clear lanes to make a water body more accessible primarily for recreational boats as opposed to general navigation.

(*x*) Navigational aids in the immediate area of recreational boating facilities.

(*xi*) Signage for the effective use of recreational boating facilities.

(*xii*) Publication of guides, brochures, maps, road signs, internet sites, and other aids to inform boaters of recreational boating facilities.

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(*xiii*) Projects that compensate or mitigate for natural resource losses caused by activities described in this subdivision.

(*xiv*) Locks used exclusively by recreational boaters.

(*xv*) Leases of property for recreational boating facilities or parking areas for the exclusive use of recreational boating facilities.

(*xvi*) Boat storage facilities, boat lift facilities, and boat servicing facilities within recreational boating facilities when constructed so as to be leased to a private marina operator under the guidelines of part 791.

(*xvii*) Equipment used exclusively for the development, maintenance, or operation of recreational boating facilities.

(b) The acquisition of property or rights in property for the purposes of this part, including both of the following:

(*i*) Land acquisition for the development of recreational boating facilities or parking areas exclusively for the servicing of recreational boating facilities.

(*ii*) Water rights for the securing of recreational boating access facilities.

(c) For grants to local units of government and state colleges or universities to acquire and develop harbors of refuge and public boating access sites under section 78115.

(d) For the purposes provided in part 791.

(e) For the administration of this part and part 791, including the following:

(*i*) Administrative and overhead cost directly related to recreational boating facilities.

(*ii*) Employee wages and benefits incurred for the administration of this part.

(*iii*) Conferences, meetings, and training for employees working at or on recreational boating facilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 210, Imd. Eff. July 1, 1998;—Am. 2003, Act 19, Imd. Eff. June 18, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.78111 State appropriation as advancement.

Sec. 78111. It is the purpose of this part, in providing for harbors and channels, that the appropriation made by the state be considered an advancement, and that the fees, taxes, and other revenues received under this part, to be credited to the waterways account, shall be applied against the advancement, until all advancements have been fully paid. Thereafter, all such fees, taxes, and revenues shall be available for continued expansion and development of harbors and connecting waterways. However, subject to the approval of the state administrative board, the necessary expense of administration of this part, and any expense necessary to the protection of the harbors, and connecting waterways, constructed or established under the provisions of this part, or any improvement to the harbors and connecting waterways necessary for the proper and adequate protecting of vessels, shall be paid from the fees, taxes, and revenues before being credited to the advancements. The state administrative board shall from time to time provide for the transfer of credits to advancements from the waterways account to the general fund, until the advancements have been fully paid.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.78112 State acceptance of federal program for construction of harbors of refuge.

Sec. 78112. In addition to the other matters contained in this part, this part shall constitute prima facie evidence of the acceptance by the state of Michigan of the provisions for state participation in the federal program for construction of certain harbors of refuge within the boundaries of the state of Michigan as provided for in chapter 19, 59 Stat. 10, Public Law 14 of the 79th Congress authorized March 2, 1945, pursuant to House Document No. 446 of the 78th Congress.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.78113 Public boating access site advisory committee.

Sec. 78113. (1) Within 30 days after the effective date of this section, the department shall establish a public boating access site advisory committee to advise the department and the legislature on the state's method of acquiring public boating access sites. The advisory committee shall consist of not more than 20 members representing the boating industry, recreational users, riparian owners, local public officials who have public boating access sites within their local unit of government, experts from Michigan institutions of higher education, and other interested parties as appointed by the department. At least 2 members of the advisory committee shall be representatives of the general public. The advisory committee shall review and make recommendations regarding the current method of acquiring and operating public boating access sites. Additionally, the committee shall make recommendations on all of the following:

(a) The protection of the ecological integrity of lakes from degradation.

(b) The protection of the boating public and other lake users, including, but not limited to, riparian owners, from overly intense use of lakes.

(c) The provision of recreational boating opportunities for members of the general public.

(d) Other issues the advisory committee considers relevant.

(2) A meeting of the advisory committee shall be held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) Within 6 months after the advisory committee is established under subsection (1), the advisory committee shall deliver a report to the department, the commission, and the legislature on administrative and any legislative changes that the state should consider in acquiring and operating public boating access sites.

(4) Not later than 1 year after the advisory committee is established under subsection (1), the advisory committee shall be disbanded.

History: Add. 1998, Act 210, Imd. Eff. July 1, 1998.

Compiler's note: For transfer of public boating access site advisory committee to department of natural resources by type III transfer, see E.R.O. No. 2010-13, compiled at MCL 324.99917.

Popular name: Act 451

Popular name: NREPA

324.78114 Acquisition of public boating access site; placement of land option.

Sec. 78114. (1) Prior to acquiring a public boating access site, the department shall obtain a 90-day option on the land proposed for acquisition. In obtaining this option, the department shall attempt to negotiate an option that may be transferred to a local unit of government. Upon placing the option on the land, the department shall notify the municipality and the county in which the land is located of the option and whether the department plans to hold a public hearing on the proposed purchase and development of the land as a public boating access site. The municipality or county in which the proposed public boating access site is located may hold a public hearing on the proposed purchase and development of the land as a public boating access site. If a municipality or county holds a public hearing under this subsection, the municipality or county shall notify the department, and a representative of the department shall attend the public hearing.

(2) During the 90-day period in which the department holds an option under subsection (1), the municipality or county in which the land is located may do either of the following:

(a) Notify the department that it intends to operate a public boating access site on that land. If the department receives a notice pursuant to this subdivision, the department shall transfer the option, if possible, to the municipality or county so that it may exercise the option and purchase the land. If the municipality exercises the option and purchases the land, the exercise of the option shall be contingent upon the municipality or county and the department entering into a legally enforceable agreement that specifies how the public boating access site will be operated. The agreement shall provide that the public boating access site will be operated in the same manner as a public boating access site that is operated by the department, unless the department agrees to alternative terms. The agreement shall also provide that if the municipality or county violates the agreement, the department may operate the public boating access site in compliance with the agreement.

(b) Identify another suitable location on the lake that the department could acquire for a public boating access site. The public boating access site shall be comparable for development as the one proposed by the department.

History: Add. 1998, Act 210, Imd. Eff. July 1, 1998.

Popular name: Act 451

Popular name: NREPA

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324.78115 Public boating access sites grant program.

Sec. 78115. (1) The department shall establish a public boating access sites grant program. The grant program shall provide funding with money in the waterways account to local units of government and public colleges or universities for all or a portion of the cost of either or both of the following:

(a) The acquisition of land for the establishment of a public boating access site.

(b) The cost of developing a public boating access site.

(2) A grant under subsection (1)(a) may be used as the required match by a local unit of government or a public college or university under part 19 or another state or federal program.

(3) A local unit of government or a public college or university receiving a grant under subsection (1)(b) must agree to operate the public boating access site in accordance with the department's operational requirements. The operational requirements shall be included within a grant agreement that is entered into by the grant recipient and the department. The grant agreement may contain, but need not be limited to, 1 or more of the following provisions as required by the department:

(a) Any net revenues accruing from the operation of the public boating access site shall be separately accounted for and reserved in a restricted fund by the grantee for the future maintenance or expansion of the public boating access site or, with the approval of the department, the construction of other recreational boating facilities. Unless otherwise provided in the grant agreement or otherwise authorized in writing by the department, if a fee is charged for the use of the public boating access site, the fee shall be the same as the fee rates set by the department.

(b) Unless otherwise provided in the grant agreement or otherwise authorized in writing by the department, the public boating access site and any facilities constructed for use in conjunction with the public boating access site shall be reserved by the grantee exclusively for the use or rental, on a daily basis, of recreational watercraft.

(c) Unless otherwise provided in the grant agreement or otherwise authorized in writing by the department, commercial operations of any type shall not be permitted to regularly use the public boating access site or any of the facilities constructed for use in conjunction with the public boating access site.

(d) The public boating access site and any facilities constructed for use in conjunction with that public boating access site shall be open to the public at all times on equal and reasonable terms.

(4) A local unit of government or a public college or university that wishes to be considered for a grant under this section shall submit an application to the department in a manner prescribed by the department and containing the information required by the department.

History: Add. 1998, Act 210, Imd. Eff. July 1, 1998;—Am. 2003, Act 19, Imd. Eff. June 18, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Compiler's note: Act 451

Popular name: NREPA

324.78116 Rules.

Sec. 78116. The department may promulgate rules to implement this part.

History: Add. 1998, Act 210, Imd. Eff. July 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.78117 Township ordinances regulating activities at public boating access site; scope.

Sec. 78117. A township may by ordinance regulate activities at a public boating access site owned by the department and located on an inland lake or stream. However, the scope of the ordinance shall not exceed the scope of applicable rules promulgated or orders issued by the department under section 504.

History: Add. 2006, Act 466, Imd. Eff. Dec. 20, 2006.

Popular name: Act 451

Popular name: NREPA

324.78119 Entry into state-operated boating access site; pass, tab, or sticker required; recreation passport fee; exceptions; violation as civil infraction; fine; evidence.

Sec. 78119. (1) Subject to subsection (4), a person shall not enter, in a nonresident motor vehicle or commercial motor vehicle, a state-operated public boating access site designated under section 78105(2)

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without a valid pass affixed to the lower right-hand corner of the windshield. A seasonal pass shall be affixed permanently for the season.

(2) Subject to subsection (4), the operator of a resident motor vehicle shall not enter a state-operated public boating access site designated under section 78105(2) with the resident motor vehicle unless the recreation passport fee has been paid for that motor vehicle. Payment of the recreation passport fee authorizes entry into all state parks and recreation areas and designated state-operated public boating access sites until expiration of the motor vehicle registration.

(3) Subject to subsection (4), if the secretary of state issues registration tabs or stickers as described in section 805 of the Michigan vehicle code, 1949 PA 300, MCL 257.805, the operator of a resident motor vehicle shall not enter a designated state-operated public boating access site with the resident motor vehicle unless the resident motor vehicle has a registration tab or sticker marked as provided under that section to show that the recreation passport fee has been paid.

(4) Subsections (1) to (3) do not apply under any of the following circumstances:

(a) If the motor vehicle is used in the operation or maintenance of the public boating access site, is an emergency motor vehicle, is a state-owned or law enforcement motor vehicle, or is a private motor vehicle being operated on official state business.

(b) If the motor vehicle is registered under section 803e(1) of the Michigan vehicle code, 1949 PA 300, MCL 257.803e, and is exempt under section 803e(6) of the Michigan vehicle code, 1949 PA 300, MCL 257.803e, from the registration tax, or if the motor vehicle is registered under section 217d or 803f of the Michigan vehicle code, 1949 PA 300, MCL 257.217d and 257.803f.

(c) If and to the extent the department waives the requirements for department-sponsored events or other circumstances as determined by the director or the director's designee.

(5) A person who violates subsection (1), (2), or (3) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00. A person shall not be cited for a violation of both subsections (2) and (3) for the same incident.

(6) In any proceeding for the violation of this part or a rule promulgated under this part, if a motor vehicle is found parked in a designated state-operated public boating access site, the registration plate displayed on the motor vehicle constitutes prima facie evidence that the owner of the motor vehicle was the person who parked or placed it at the location where it was found.

History: Add. 2010, Act 34, Eff. Oct. 1, 2010;—Am. 2013, Act 81, Eff. May 1, 2014.

Popular name: Act 451

Popular name: NREPA

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PART 783
FERRY DOCKS AT THE STRAITS OF MACKINAC

324.78301 Ferry docks at Straits of Mackinac; jurisdiction and control; transfer; description.

Sec. 78301. The jurisdiction and control of the following described lands is transferred from the state transportation department to the department:

Mackinaw City Dock

Lots 1 to 6, both inclusive, of block 9 and Railroad avenue lying east of the east line of Huron avenue in Wendell's addition to Mackinaw City, Cheboygan county, Michigan.

Oil Storage Area

All that part of the unplatted portion of government lot 1 of section 18, town 39 north, range 3 west, village of Mackinaw City, Cheboygan county, Michigan, and water lots 55 and 56, block B of the plat of "Mackinaw City" as recorded in the office of the register of deeds, Cheboygan county, Michigan, described as:

Beginning at a point on the southerly line of government lot 1 of said section 18 which is 93.7 feet easterly, measured along said southerly lot line from its intersection with the former westerly line of Huron avenue according to the recorded plat of the village of Mackinaw City, said point of beginning being the center line of the existing pavement on Huron avenue; thence northeasterly along said center line at an angle of 103° 03' 15" with the southerly line of said government lot 1, a distance of 418.54 feet to the northerly line of water lot 55 extended westerly; thence easterly at an angle to the right of 77° 02' 25", along said extension and the northerly line of said water lot 55, a distance of 410 feet more or less to the water's edge of the Straits of Mackinac; thence southerly along said water's edge, 408 feet more or less to the southerly line of government lot 1 of said section 18; thence westerly along said southerly line of said government lot 1, a distance of 520 feet more or less, to the point of beginning; reserving an easement for highway purposes in, over and upon that part of the above described property which lies westerly of a line 100 feet easterly of, measured at right angles to, and parallel with the center line of the existing pavement on Huron avenue. Subject to the

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reservation in favor of the Michigan Central railroad company and the New York Central railroad company as recorded in liber 122, on pages 467-469, office of the register of deeds, Cheboygan county, Michigan.

St. Ignace Dock 1

Lots 6 to 12, both inclusive, of block 2, of assessor's plat No. 5, city of St. Ignace, Mackinac county, Michigan, according to the plat thereof recorded in liber 2 of plats, on page 49, register's office, Mackinac county, Michigan.

St. Ignace Dock 2

Lots 1 and 2, block 2, assessor's plat No. 5, city of St. Ignace, Mackinac county, Michigan, according to the plat thereof recorded in liber 2 of plats, on page 49, register's office, Mackinac county, Michigan.

Also, that part of private claim 15 located south of assessor's plat No. 5, city of St. Ignace, lying between State street on the west and lake Huron on the east, city of St. Ignace, Mackinac county, Michigan.

Also, that part of the north 2/3 of private claim 14 lying between State street on the west and lake Huron on the east, city of St. Ignace, Mackinac county, Michigan.

St. Ignace Dock 3

Lots 16 to 28, both inclusive, of block 1 and entire blocks 5, 6, 7, 8, 9 and 10 of Straits subdivision, city of St. Ignace, Mackinac county, Michigan, according to the plat thereof recorded in liber 2 of plats, on page 39, register's office, Mackinac county, Michigan.

Also, that part of private claim 2 located south of the south line of Straits subdivision and east of the east line of State street, city of St. Ignace, Mackinac county, Michigan.

Also, that part of private claim 1 located north of the north line of block 1 of the partition plat of private claim 1 and east of a line 363 feet east of, measured at right angles, and parallel with the centerline of State street, city of St. Ignace, Mackinac county, Michigan.

Also, lots 6 to 15, both inclusive, block 1; lots 6 to 19, both inclusive, block 2 and lots 1 to 4, both inclusive, block 5, including the streets and alley adjacent thereto, of the partition plat of private claim 1, city of St. Ignace, Mackinac county, Michigan.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78302 Operation and maintenance of docks and approaches to docks; determination; purpose; relinquishment of control.

Sec. 78302. The department shall operate and maintain the docks, and approaches to the docks, as the department determines is necessary to serve tourism and boating in the area. The department shall relinquish control of the docks and approaches for use by the state or any of its agencies if for any reason the Mackinac Straits bridge becomes unusable, or in the event of an emergency declared by the governor.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78303 Ferry docks at Straits of Mackinac; leases; concessions; rules.

Sec. 78303. Subject to the provisions of this part, the department may grant leases and concessions for the use of the properties transferred by this part. The department shall promulgate rules for the use of these properties by all persons without discrimination. The department shall not grant exclusive use of the docking facilities to any person, but may lease designated areas to particular persons for the operation of commercial enterprises. The department may make arrangements with other state agencies for use of portions of the properties transferred by this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78304 Entering into lease with village of Mackinaw City; duration; duties of village.

Sec. 78304. The department may enter into a lease for a period not to exceed 25 years with the village of Mackinaw City, whereby the village agrees to operate and maintain the parking facilities located on the property described in section 78301 as the Mackinaw City dock, to construct, operate, and maintain buildings on the Mackinaw City dock, or to perform other functions in relation to the Mackinaw City dock, under such terms and conditions as may be agreed upon by the department and the village of Mackinaw City.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

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Popular name: Act 451

Popular name: NREPA

324.78305 Entering into lease with city of St. Ignace; duration; duties of city.

Sec. 78305. The department may enter into a lease for a period not to exceed 25 years with the city of St. Ignace, whereby the city agrees to operate and maintain the parking facilities located on the property described in section 78301 as the St. Ignace docks numbers 1 and 2, to construct, operate, and maintain buildings on the St. Ignace docks numbers 1 and 2, or to perform other functions in relation to the St. Ignace docks numbers 1 and 2, under such terms and conditions as may be agreed upon by the department and the city of St. Ignace.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78306 Land transferred from Mackinac Island state park commission to department; small craft harbor facility.

Sec. 78306. (1) The jurisdiction and control of the following described land is transferred from the Mackinac Island state park commission to the department:

A parcel of land beginning at the northwest corner of lot No. 88 of assessors plat No. 2, city of Mackinac Island, county of Mackinac, extending along the south side of Huron street in a westerly direction 530 feet thence to the shoreline of lake Huron in a southerly direction, the distance from Huron street to the shore of lake Huron being approximately 80 feet; thence easterly along the shore of lake Huron to the southwest corner of Lot No. 88 of assessors plat No. 2, city of Mackinac Island, county of Mackinac, and thence northerly approximately 80 feet along the west line of lot No. 88, assessors plat No. 2, city of Mackinac Island, county of Mackinac, to the point of beginning; also the docks, piers, buildings and appurtenances situated thereon or attached thereto, which are now under the jurisdiction of the Mackinac Island state park commission.

(2) The department shall operate the properties transferred by this section as a harbor facility for small craft and shall not permit the operation of any commercial enterprise thereon except the sale of marine fuel and other supplies for small craft by the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78307 Disposition of revenues.

Sec. 78307. All revenues received by the department under this part shall be deposited in the state treasury to the credit of the state waterways fund and shall be expended as appropriated by the legislature.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78308 Administration of part; advice by commission.

Sec. 78308. The Michigan state waterways commission created in part 781 shall advise the department on the administration of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 785
CHEBOYGAN LOCK AND DAM

324.78501 Cheboygan lock and dam; acquisition.

Sec. 78501. The department may purchase and receive from its owners on behalf of the state for a nominal consideration of not to exceed $1.00 and subject to an agreement that the department maintain the property and such terms, conditions, and stipulations as the department may approve, the locks, dams, races, structures, and related properties, facilities, flowage easements, and real estate connected with or a part of the facility now known as the Cheboygan lock and dam, at Cheboygan, Michigan.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: NREPA

324.78502 Cheboygan lock and dam; leases; agreements.

Sec. 78502. The department may operate, control, maintain, and lease such property and may establish and revise fees and hours of operation for the facility. The department may enter into agreements with any person with respect to water rights, water levels, controls, lockage fees, and related matters.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.78503 Revenues; disposition.

Sec. 78503. Revenues received by the department under this part shall be deposited in the state treasury to the credit of the waterways account of the Michigan conservation and recreation legacy fund provided for in section 2035.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.78504 Administration of part; advice by commission.

Sec. 78504. The Michigan state waterways commission created in part 781 shall advise the department on the administration of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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HARBOR DEVELOPMENT

PART 791
HARBOR DEVELOPMENT

324.79101 Definitions.

Sec. 79101. As used in this part:

(a) "Commission" means the Michigan state waterways commission created in part 781.

(b) "Harbor" means a portion of a lake or other body of water either naturally or artificially protected in order to be a place of safety for watercraft.

(c) "Harbor facilities" means the structures of a harbor constructed to protect the lake or body of water and the facilities provided within the harbor and on shore for the mooring and servicing of watercraft and the servicing of crews and passengers.

(d) "Marina" means a site which contains harbor facilities.

(e) "Nonrevenue-producing harbor facilities" means any portion of harbor facilities that would not normally produce revenue and includes, but is not limited to, jetties, breakwaters, dredging, and shore protection.

(f) "Revenue-producing harbor facilities" means any portion of harbor facilities that normally produce revenue and includes, but is not limited to, watercraft slips, watercraft launching facilities, watercraft storage, lodging, access roads, watercraft repair facilities, parking lots, mechanical haul-out devices, and facilities for fuel, food, and other services.

(g) "Watercraft" means any contrivance used or designed for navigation on water, including, but not limited to, any vessel, ship, boat, motor vessel, steam vessel, vessel operated by machinery, motorboat, sailboat, barge, scow, tugboat, and rowboat.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79102 Providing assistance to certain persons.

Sec. 79102. The department may provide assistance to a person seeking to secure construction, operation, and maintenance of recreational boat slips on the waters of this state as provided in this part.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79103 Purchase of real property for development of marinas.

Sec. 79103. The department may purchase real property accessible to, or capable of being made accessible to, the waters of this state for the development of marinas, as provided in this part, only when it can be demonstrated that the demand for recreational boat slips within a specific harbor or within a local unit of government exceeds the available supply.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79104 Purchase of property located within local unit of government.

Sec. 79104. The department shall not purchase property located within a local unit of government, under this part, if the local unit of government where the property is located imposes property taxes on property containing a shoreline recreational facility that is owned by an adjacent local unit of government.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79105 Sale of structures, real property, or rights or interest in real property.

Sec. 79105. The department may sell or remove buildings or other structures on real property acquired by the department under this part, and may sell real property or rights or interest in real property not considered essential for the purposes of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79106 Construction of nonrevenue-producing harbor facilities.

Sec. 79106. If, in the judgment of the department, real property acquired under this part requires modification or improvement to make it financially attractive to potential investors in a marina, the department may construct nonrevenue-producing harbor facilities at those sites.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79107 Leases of real property.

Sec. 79107. After real property is acquired under this part, the department may enter into leases of the real property or portions of the real property the department determines will aid in the construction of a marina, the provision of summer or winter storage of watercraft, or the provision of services normally found at commercial marinas.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79108 Solicitation and evaluation of proposals.

Sec. 79108. (1) If the department determines that real property acquired by it under this part is suitable for use as a marina, the department shall publicly solicit proposals for the development of the marina and the lease of the real property. The solicitation of proposals shall include published notices in at least 1 local news publication of general circulation in the area in which the marina will be located and in at least 2 journals related to the marina, watercraft, or harbor industries, which journals have statewide circulation. A reasonable time shall be allowed for bidders to respond, and all proposals shall be publicly opened and read. A proposal received by the department in response to the solicitation may be rejected by the department for any reason or without cause if the department believes such action to be appropriate. The department may waive any defects in any proposals received, at its discretion, but is not required to do so.

(2) In evaluating proposals for the construction of revenue-producing harbor facilities and the operation of a marina, the department shall take into consideration, among other things, the technical qualifications of the

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applicants; the financial responsibility of the applicants; the ability of the applicants to perform efficiently the services necessary to maintain a sound facility, including the prior experience, if any, of the applicants in operating a marina; the proposed lease payments; the nature and scope of each applicant's plans for the marina; and the timetables for development of the proposed marina.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79109 Term of lease; extension; rule establishing penalty schedule for nonpayment of lease payments; notice of taxation.

Sec. 79109. (1) A lease entered into by the department under this part shall be for an initial term of not more than 25 years. A lease may be extended for a period not to exceed 5 years, at the discretion of the department, if the lessee has complied with the provisions of the lease and has made appropriate efforts to upgrade and maintain the real property.

(2) The department shall establish, by rule, a penalty schedule for nonpayment of lease payments. The department shall provide in a lease entered into under this part that, if a lessee is in default on a payment for more than 60 days, or if a lessee defaults on a payment or delays making a payment for more than 30 days on more than 2 occasions in a single year, the department may declare the lease agreement breached and seek its remedies at law or in accordance with the lease agreement.

(3) The department shall provide notice in any lease entered into under this part that the lessee may be subject to taxation under Act No. 189 of the Public Acts of 1953, being sections 211.181 to 211.182 of the Michigan Compiled Laws.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79110 Sale, transfer, or assignment of lease; transfer by bequest or descent of lessee.

Sec. 79110. A lease entered into by the department under this part or an interest in a lease entered into by the department under this part shall not be sold, transferred, or assigned unless the sale, transfer, or assignment is first approved by the department, after receipt of a written application containing the same information as to the purchaser, transferee, or assignee as is required of an original applicant. This section does not restrict the transfer by bequest or descent of the lessee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79111 Consideration for issuance of lease; reduction of initial financial burden.

Sec. 79111. A lease entered into by the department under this part shall not be issued without consideration. However, the department may establish annual lease payments, which reduce the initial financial burden on the lessee as much as is reasonably possible, with subsequent payments to be appropriately increased to assure payment of the total lease obligation prior to the termination of the lease.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79112 Lease agreements with 1 or more local units of government; apportionment of revenue.

Sec. 79112. The department may enter into lease agreements for purposes of this part with 1 or more local units of government or public colleges or universities acting jointly with the department as a lessor. Revenue from each lease shall be apportioned according to the proportional share of the investments made by the department and the local unit or units of government or public colleges or universities in the construction of nonrevenue-producing harbor facilities and in consideration of the relative land investments of the entities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 19, Imd. Eff. June 18, 2003.

Popular name: Act 451

Popular name: NREPA

324.79113 Minimum standards for construction and operation of harbor facilities by lessee.

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Sec. 79113. The department may establish minimum standards applicable to the construction and operation of harbor facilities by a lessee including, but not limited to, restrooms and showers, the number of slips available to transient and seasonal watercraft rentals, construction material, parking lots, engineering and architectural plans and designs, watercraft launching facilities, and watercraft storage and repair facilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79114 Disposition of revenue from lease contracts.

Sec. 79114. All revenue from lease contracts entered into under this part shall be deposited in the state treasury and credited to the waterways account of the Michigan conservation and recreation legacy fund provided for in section 2035.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.79115 Liability.

Sec. 79115. The department shall not be liable for loss of life or injury or damage to persons or property as a result of the conditions on real property, waterways, or facilities on real property leased to persons by the department under this part. However, this section shall not relieve lessees of any obligations they may otherwise have to persons or to damages if they are found to have failed to meet their obligations properly.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79116 Rules.

Sec. 79116. The department shall promulgate rules as are necessary to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79117 Administration of part; advice by department.

Sec. 79117. The Michigan state waterways commission created in part 781 shall advise the department on the administration of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79118 Discrimination prohibited.

Sec. 79118. A person shall not deny another individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations created under this part because of religion, race, color, national origin, age, sex, or marital status.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 793
HARBORS, CHANNELS, AND OTHER NAVIGATIONAL FACILITIES

324.79301 “Political subdivision” defined.

Sec. 79301. As used in this part, "political subdivision" means any local unit of government or port district of this state and any other governmental agency or subdivision, public corporation, authority, or district in this state, which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate harbors, channels, and other navigational facilities. Whenever used in this part, the term political subdivision includes any combination of political subdivisions acting jointly.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79302 Political subdivision; powers.

Sec. 79302. A political subdivision may do 1 or more of the following:

(a) Adopt and amend all necessary rules, regulations, and ordinances for the management, government, and use of any waterways, harbors, channels, or other navigational facilities under its control, either within or outside of its territorial limits; employ harbor guards, police, or a harbormaster with full police powers; establish penalties for the violation of the rules, regulations, and ordinances; and enforce those penalties.

(b) Adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of harbors, channels, connecting waterways, or other navigational facilities within the political subdivision or its political jurisdiction, which rules shall be consistent with and conform to, as nearly as possible, the laws of this state.

(c) Vest authority for the maintenance, operation, and regulation thereof in an officer, board, or body of the political subdivision by ordinances or resolution which shall prescribe the duties and powers of the officers, boards, or body.

(d) Employ a regular harbormaster for the harbors, channels, connecting waterways, or navigational facilities under its control; or, in cases where a harbor board or body is established, the harbormaster may be employed by the board or body.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.79303 Political subdivisions; joint action.

Sec. 79303. All powers, rights, and authority granted to any political subdivision in this part may be exercised and enjoyed by 2 or more political subdivisions, or by this state through its appropriate agencies and 1 or more such political subdivisions acting jointly, either within or outside of the territorial limits of either of them, and contracts may be entered with each political subdivision for the purposes of implementing this part and authorizing joint action.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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PART 795
WATERFRONT REVITALIZATION

324.79501 Definitions.

Sec. 79501. As used in this part:

(a) "Commission" means the Michigan jobs commission.

(b) "Department" means the department of environmental quality.

(c) "Gaming facility" means a gaming facility regulated under the Michigan gaming control and revenue act, the initiated law of 1996, MCL 432.201 to 432.226.

(d) "Grant" means a waterfront redevelopment grant under this part.

(e) "Response activity" means that term as it is defined in part 201.

(f) "Waterfront" means land that is contiguous to the Great Lakes or their connecting waterways, a river, or a lake or impoundment that has a surface area of not less than 50 acres.

(g) "Waterfront planning area" means the geographic area included within a waterfront redevelopment plan.

(h) "Waterfront redevelopment plan" means a waterfront redevelopment plan prepared by a local unit of government under section 79503 or a state approved recreation plan that includes waterfront improvements.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79502 Waterfront redevelopment grants program; establishment; provisions; funding sources; waterfront public access.

Sec. 79502. (1) The department shall establish a waterfront redevelopment grants program. A local unit of

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government may apply to the department for a grant to conduct a project that does any of the following:

(a) Provides for response activities on waterfront property consistent with a waterfront redevelopment plan.

(b) Provides for the demolition of buildings and other facilities along a waterfront that are inconsistent with a waterfront redevelopment plan.

(c) Provides for the acquisition of waterfront property or the assembly of waterfront property consistent with a waterfront redevelopment plan.

(d) Provides public infrastructure and public facility improvements to waterfront property consistent with a waterfront redevelopment plan.

(2) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

(3) For any grant issued under this part, the department shall require that a local unit of government provide at least 25% of the total project's cost from other public or private funding sources.

(4) A project funded pursuant to this part shall provide for waterfront access to the general public.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79503 Waterfront redevelopment plan; preparation.

Sec. 79503. A local unit of government that wishes to apply for a grant shall prepare a waterfront redevelopment plan that provides for the improvement of the waterfront. The waterfront redevelopment plan, at a minimum, shall do both of the following:

(a) Clearly designate the geographic area included within the waterfront planning area.

(b) Identify the economic impact on the improved area, the surrounding neighborhood, and the region in which the waterfront planning area is located.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79504 Grant application.

Sec. 79504. A local unit of government that wishes to be considered for a grant shall submit a written grant application to the department in a manner prescribed by the department and containing the information required by the department. The grant application shall also include all of the following:

(a) A detailed description of the project and how the grant would be used, including any private sector participation.

(b) A copy of the waterfront redevelopment plan for the area in which the project is to be located.

(c) An explanation of how the project will contribute significantly to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods.

(d) An explanation of how the project will provide for public access to the waterfront or will provide recreational opportunities for the public.

(e) If the project includes the purchase of property, an identification of the intended use of the property, and a timeline for redevelopment of the property.

(f) The total cost of the project and the source of the local unit of government's contribution to the project.

(g) A detailed description of the practices the local unit of government will implement and maintain to control nonpoint source pollution from the project site both during construction activities and throughout the period of time in which the state is paying off the bonds that were issued pursuant to the clean Michigan initiative act.

(h) Other information that the department and the commission consider relevant.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79505 Grant application; review by department and commission.

Sec. 79505. Upon receipt of a grant application under section 79504, the department shall forward a copy of the application to the commission. The department and the commission shall jointly review the grant

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applications. In reviewing grant applications, the department and the commission shall consider all of the following:

(a) Whether the project proposed to be funded is authorized by this part.

(b) Whether the grant application submitted complies with this part.

(c) Whether the project is consistent with the waterfront redevelopment plan for the area in which the project is located.

(d) Whether the project provides significant public access to the waterfront or provides recreational opportunities for the public.

(e) Whether the project will significantly contribute to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods.

(f) Whether there is evidence of adverse economic and socioeconomic conditions within the waterfront planning area.

(g) The viability of the waterfront redevelopment plan.

(h) Whether the project is innovative in comparison to other grant applications.

(i) The level of public and private commitment and other resources available for the project.

(j) The level of public and private commitment to other aspects of the waterfront redevelopment plan.

(k) How the project relates to a broader economic and community development plan for the local unit of government as a whole.

(*l*) The level of demonstrated commitment from other governmental agencies.

(m) The level of public and private commitment to improving abandoned real property within the waterfront planning area in which the project is located.

(n) Other criteria that the department and the commission consider relevant.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79506 Issuance of grants.

Sec. 79506. The department, with the approval of the commission, shall issue grants under this part for projects that the department determines meet the requirements of this part and will contribute to the revitalization of waterfronts throughout the state that are not being used in a manner that maximizes economic and public value.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79507 Recovery of costs.

Sec. 79507. The department and the department of attorney general may recover costs expended pursuant to section 79502(1)(a) and all other costs recoverable under part 201 from persons who are liable under part 201. Actions to recover costs shall proceed in the manner provided in part 201.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

324.79508 Administration of part.

Sec. 79508. Grants made under this part are subject to the applicable requirements of part 196. The department shall administer this part in compliance with the applicable requirements of part 196, including the reporting requirements to the legislature of the grants provided under this part.

History: Add. 1998, Act 285, Eff. Dec. 1, 1998.

Popular name: Act 451

Popular name: NREPA

SUBCHAPTER 5
WATERCRAFT AND MARINE SAFETY

PART 801
MARINE SAFETY

324.80101 Definitions; A to C.

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Sec. 80101. As used in this part:

(a) "Airboat" means a motorboat that is propelled, wholly or in part, by a propeller projecting above the water surface.

(b) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

(c) "Anchored rafts" means all types of nonpowered rafts used for recreational purposes that are anchored seasonally on waters of this state.

(d) "Associated equipment" means any of the following that are not radio equipment:

(*i*) An original system, part, or component of a boat at the time that boat was manufactured, or a similar part or component manufactured or sold for replacement.

(*ii*) Repair or improvement of an original or replacement system, part, or component.

(*iii*) An accessory or equipment for, or appurtenance to, a boat.

(*iv*) A marine safety article, accessory, or equipment intended for use by a person on board a boat.

(e) "Boat" means a vessel.

(f) "Boat livery" means a business that holds a vessel for renting, leasing, or chartering.

(g) "Boating safety certificate" means any of the following:

(*i*) The document issued by the department under part 802 that certifies that the individual named in the document has successfully completed a boating safety course and passed an examination approved and administered as required under section 80212.

(*ii*) A document issued by the United States coast guard auxiliary or United States power squadron that certifies that the individual named in the document has successfully completed a United States coast guard auxiliary course concerning boating safety.

(*iii*) A written rental agreement provided to an individual named in the rental agreement entered into under section 44522 only on the date or dates indicated on the rental agreement while the named individual is operating a personal watercraft leased, hired, or rented from a boat livery.

(h) "Boating safety course" means a course that meets both of the following requirements:

(*i*) Provides instruction on the safe operation of a personal watercraft that meets or exceeds the minimum course content for boating or personal watercraft education established by the national association of state boating law administrators education committee (October 1996), a province of the commonwealth of Canada, or another country.

(*ii*) Is approved by the department.

(i) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(j) "Conviction" means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt, or a probate court or family division disposition on a violation of this part, regardless of whether the penalty is rebated or suspended.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 547, Imd. Eff. Jan. 3, 2005;—Am. 2012, Act 120, Eff. Nov. 1, 2012;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80102 Definitions; D to L.

Sec. 80102. As used in this part:

(a) "Dealer" means a person and an authorized representative of that person who annually purchases from a manufacturer, or who is engaged in selling or manufacturing, 6 or more vessels that require certificates of number under this part.

(b) "Identification document" means any of the following:

(*i*) A valid Michigan operator's or chauffeur's license.

(*ii*) A valid driver's or chauffeur's license issued by an agency, department, or bureau of the United States or another state.

(*iii*) An official identification card issued by an agency, department, or bureau of the United States, this state, or another state.

(*iv*) An official identification card issued by a political subdivision of this state or another state.

(c) "Issuing authority" means the United States coast guard or a state that has a numbering system approved by the United States coast guard.

(d) "Law of another state" means a law or ordinance enacted by any of the following:

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(*i*) Another state.

(*ii*) A local unit of government in another state.

(*iii*) Canada or a province or territory of Canada.

(*iv*) A local unit of government in a province or territory of Canada.

(e) "Lifeboat" means a small boat designated and used solely for lifesaving purposes, and does not include a dinghy, tender, speedboat, or other type of craft that is not carried aboard a vessel for lifesaving purposes.

(f) "Long-term incapacitating injury" means an injury that causes serious impairment of a body function.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80103 Definitions; M to O.

Sec. 80103. As used in this part:

(a) "Manufacturer" means a person engaged in any of the following:

(*i*) The manufacture, construction, or assembly of boats or associated equipment.

(*ii*) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(*iii*) The importation of a boat or associated equipment into the state for sale.

(b) "Marine law" means this part, a local ordinance adopted in conformity with this part, or a rule promulgated under this part.

(c) "Marine safety act" means former Act No. 303 of the Public Acts of 1967.

(d) "Marine safety program" means marine law enforcement, search and rescue operations, water safety education, recovery of drowned bodies, and boat livery inspections.

(e) "Michigan vehicle code" means Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(f) "Motorboat" means a vessel propelled wholly or in part by machinery.

(g) "Operate" means to be in control of a vessel while the vessel is under way and is not secured in some manner such as being docked or at anchor.

(h) "Operator" means the person who is in control or in charge of a vessel while that vessel is underway.

(i) "Owner" means a person who claims or is entitled to lawful possession of a vessel by virtue of that person's legal title or equitable interest in a vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80104 "Highly restricted personal information" defined; definitions; P to W.

Sec. 80104. As used in this part:

(a) "Highly restricted personal information" means an individual's photograph or image, Social Security number, digitized signature, and medical and disability information.

(b) "Passenger" means an individual carried on board, attached to, or towed by a vessel, other than the operator.

(c) "Peace officer" means any of the following:

(*i*) A sheriff.

(*ii*) A sheriff's deputy.

(*iii*) A deputy who is authorized by a sheriff to enforce this part and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(*iv*) A village or township marshal.

(*v*) An officer of the police department of a municipality.

(*vi*) An officer of the department of state police.

(*vii*) The director and conservation officers employed by the department.

(d) "Personal information" means information that identifies an individual, including an individual's driver license number, name, address not including zip code, and telephone number, but does not include information on watercraft operation and equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally related information.

(e) "Personal watercraft" means that term as defined in 40 CFR 1045.801.

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(f) "Political subdivision" means a county, metropolitan authority, municipality, or combination of those entities in this state. If a body of water is located in more than 1 political subdivision, all of the subdivisions shall act individually in order to comply with this part, except that if the problem is confined to a specific area of the body of water, only the political subdivision in which the problem waters lie shall act.

(g) "Port" means left, and reference is to the port side of a vessel or to the left side of the vessel.

(h) "Prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(*i*) A violation or an attempted violation of section 80176(1), (3), (4), (5), (6), or (7), except that only 1 violation or attempted violation of section 80176(6), a local ordinance substantially corresponding to section 80176(6), a law of another state substantially corresponding to section 80176(6), or a law of the United States substantially corresponding to section 80176(6) may be used as a prior conviction other than for enhancement purposes as provided in section 80178a(1)(b).

(*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of a vessel or an attempt to commit any of those crimes.

(*iii*) Former section 73, 73b, or 171(1) of the marine safety act.

(i) "Probate court or family division disposition" means the entry of a probate court order of disposition or family division order of disposition for a child found to be within the provisions of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(j) "Prosecuting attorney", unless the context requires otherwise, means the attorney general, prosecuting attorney of a county, or attorney representing a political subdivision of government.

(k) "Regatta", "boat race", "marine parade", "tournament", or "exhibition" means an organized water event of limited duration that is conducted according to a prearranged schedule.

(*l*) "Slow—no wake speed" means a very slow speed whereby the wake or wash created by the vessel would be minimal.

(m) "Specialty court program" means a program under any of the following:

(*i*) A drug treatment court, as defined in section 1060 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060, in which the participant is an adult.

(*ii*) A DWI/sobriety court, as defined in section 1084 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1084.

(*iii*) A hybrid of the programs under subparagraphs (*i*) and (*ii*).

(*iv*) A mental health court as defined in section 1090 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1090.

(*v*) A veterans treatment court, as defined in section 1200 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1200.

(n) "Starboard" means right, and reference is to the starboard side of a vessel or to the right side of the vessel.

(o) "State aid" means payment made by this state to a county for the conduct of a marine safety program.

(p) "Temporary ordinance" means a type of local ordinance adopted by a political subdivision of this state under section 80112a that includes, but is not limited to, a local watercraft control or administrative rule.

(q) "Undocumented vessel" means a vessel that does not have, and is not required to have, a valid marine document issued by the United States Coast Guard or federal agency successor to the United States Coast Guard.

(r) "Uniform inspection decal" means an adhesive-backed sticker created by the department that is color-coded to indicate the year that it expires and is attached to a vessel in the manner prescribed for decals in section 80122 when a peace officer inspects and determines that the vessel complies with this part.

(s) "Use" means operate, navigate, or employ.

(t) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

(u) "Waters of this state" means any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state.

(v) "Waterways account" means the waterways account established in section 2035.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2012, Act 58, Eff. Nov. 1, 2012;—Am. 2014, Act 402, Eff. Mar. 31, 2015;—Am. 2020, Act 72, Imd. Eff. Apr. 2, 2020;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

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Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80105 Application of part.

Sec. 80105. (1) This part applies to vessels and associated equipment used, to be used, or carried in vessels used on waters subject to the jurisdiction of this state.

(2) This part, except where expressly indicated otherwise, does not apply to any of the following:

(a) Foreign vessels temporarily using waters subject to state jurisdiction.

(b) Military or public vessels of the United States, except recreational-type public vessels.

(c) A vessel whose owner is a state or political subdivision of a state, other than this state and its political subdivisions, that is used principally for governmental purposes and that is clearly identifiable as such.

(d) A ship's lifeboat.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80106 Administration of part; advisory representative.

Sec. 80106. The department shall be responsible for administration of this part except as otherwise provided in this part. The Michigan sheriffs' association shall designate an advisory representative to the department who shall transmit information, advice, and recommendations relative to county marine activities and assist in the coordination of state and county marine safety programs.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80107 Review of boating accidents, safety education programs, and policies.

Sec. 80107. The department shall review boating accidents on Michigan waters and study the development of marine safety education programs and other policies of state government relating to marine safety and shall consider changes to department policies and programs.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80108 Regulations of waterborne vehicles; exclusive diving, fishing, swimming or water ski areas; special local regulations.

Sec. 80108. The department may regulate the operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on the waters of this state. Where special regulations are determined necessary, the department may establish vessel speed limits; prohibit the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances; restrict the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances by day and hour; establish and designate areas restricted solely to boating, skin or scuba diving, fishing, swimming, or water skiing; and prescribe any other regulations relating to the use or operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances that will assure compatible use of state waters and best protect the public safety. The department shall prescribe special local regulations in such a manner as to make the regulations uniform with other special local regulations established on other waters of this state insofar as is reasonably possible.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80108[1] Lists of information; sale prohibited.

Sec. 80108. The department or any other state department or agency that maintains or collects lists of information as part of its duties or responsibilities under this act shall not sell any lists of information

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maintained or collected for the purpose of surveys, marketing, and solicitations.

History: Add. 2000, Act 194, Eff. Jan. 1, 2001.

Compiler's note: Section 80108, as added by Act 194 of 2000, was compiled as MCL 324.80108[1] to distinguish it from another section 80108, deriving from Act 58 of 1995 and pertaining to regulation of waterborne vehicles.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80108a Operation of airboat within certain distance of residence; limitation; exceptions.

Sec. 80108a. (1) A person shall not operate an airboat on the waters of this state within 450 feet of a residence between the hours of 11 p.m. and 6 a.m. at a speed in excess of the minimum speed required to maintain forward movement.

(2) Subsection (1) does not apply to any of the following:

(a) The operation of an airboat in an emergency when necessary to protect public safety.

(b) The operation of an airboat so as to free the airboat when it has run aground.

(c) The operation of an airboat for a governmental purpose if the airboat is clearly marked and identified as being used for a governmental purpose.

History: Add. 2008, Act 152, Imd. Eff. June 5, 2008.

Compiler's note: Former MCL 324.80108a, which pertained to operation of airboat within certain distance of residence, was repealed by Act 547 of 2004, Eff. May 1, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80109 Rules; subsection (1) inapplicable to special local rules.

Sec. 80109. (1) Except as provided in subsection (2), the department shall promulgate rules authorized by this part. The department shall publish the approved rules in a convenient form.

(2) Subsection (1) shall not apply to special local rules adopted pursuant to sections 80110 and 80111.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80110 Special rules for vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances; investigations and inquiries; preliminary report; notice of public hearing; presentation of views by interested persons; determination by department; proposal for local ordinance; appeal; "water body" defined.

Sec. 80110. (1) Except as provided under section 80112a, the department may initiate an investigation and inquiry into the need for a special rule for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of this state to assure compatibility of uses and to protect public safety. If the department receives a resolution under section 80112, the department shall initiate an investigation and inquiry under this subsection.

(2) The department's investigation and inquiry under subsection (1) into whether a special rule is needed on a water body must include consideration of all of the following:

(a) Whether the activities subject to the proposed rule pose any issues of safety to life or property.

(b) The profile of the water body, including the name of the political subdivision with jurisdiction, size, geographic location, and amount of vessel traffic.

(c) The current and historical depth of the water body, including whether there is an established lake level.

(d) Whether any special problems or conditions exist on the water body for the activities subject to the proposed rule, such as rocks, pier heads, swimming areas, public access sites, shallow waters, and submerged obstacles.

(e) Whether the proposed rule would unreasonably interfere with normal navigational traffic.

(f) Whether user conflicts exist on the water body.

(g) Complaints received by local law enforcement agencies regarding activities on the water body.

(h) The status of any accidents that have occurred on the water body.

(i) Historical uses of the water body and potential future uses of the water body.

(j) Whether the water body is public or private.

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(k) Whether existing law adequately regulates the activities subject to the proposed rule.

(3) Following completion of the department's investigation and inquiry under subsection (1), the department shall prepare a preliminary report that includes the department's evaluation of the items listed in subsection (2) and a preliminary recommendation as to whether a special rule is needed for the water body.

(4) On preparation of the preliminary report under subsection (3), the department shall provide a copy of the preliminary report to the political subdivision and schedule a public hearing in the vicinity of the water body to gather public input on the preliminary report and the need for a special rule. The department shall provide notice of the public hearing in a newspaper of general circulation in the area where the water body is located not less than 10 days before the hearing. At the public hearing, any interested person may comment on the preliminary report and the need for a special rule, either orally or in writing.

(5) Within 90 days after the public hearing under subsection (4), if the department determines that a special rule is needed for the water body, the department shall propose a local ordinance or appropriate changes to a local ordinance. If the department determines that a special rule is not needed, the department shall notify the political subdivision and provide the specific reasons for the determination.

(6) A determination by the department under this section that a special rule is not needed for the water body may be appealed to the director by the political subdivision. The director shall make the final agency decision on whether a special rule is needed for the water body.

(7) As used in this section, "water body" includes all or a portion of a water body.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2006, Act 237, Imd. Eff. June 26, 2006;—Am. 2020, Act 72, Imd. Eff. Apr. 2, 2020.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80111 Proposed local ordinance; submission to governing body; approval or disapproval; enactment; enforcement.

Sec. 80111. A local ordinance proposed pursuant to section 80110 shall be submitted to the governing body of the political subdivision in which the water body subject to the proposed special rules is located. Within 60 calendar days, the governing body shall inform the department that it approves or disapproves of the proposed local ordinance. If the required information is not received within the time specified, the department shall consider the proposed local ordinance disapproved by the governing body. If the governing body disapproves the proposed local ordinance, or if the 60-day period has elapsed without a reply having been received from the governing body, no further action shall be taken. If the governing body approves the proposed local ordinance, the local ordinance shall be enacted identical in all respects to the local ordinance proposed by the department. After the local ordinance is enacted, the local ordinance shall be enforced as provided for in section 80113.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2006, Act 237, Imd. Eff. June 26, 2006.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80112 Special local ordinances; request for assistance; form; receipt of resolution by department.

Sec. 80112. Local political subdivisions that believe that special local ordinances of the type authorized by this part are needed on waters subject to their jurisdiction shall inform the department and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision following a public hearing on the resolution. Upon receipt of a resolution under this section, the department shall proceed as required by sections 80110 and 80111.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2006, Act 237, Imd. Eff. June 26, 2006.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80112a Temporary ordinance for use of vessels on a water body; application; information required; investigation; notice; expiration; right to appeal.

Sec. 80112a. (1) If a political subdivision believes a temporary ordinance is needed for the use of vessels on a water body subject to its jurisdiction, the political subdivision may submit an application and a resolution

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for a temporary ordinance to the department.

(2) An application for a temporary ordinance under this section must contain all of the following information:

(a) The resolution and a copy of the public notice that lists the adoption of the resolution on the agenda.

(b) The information required under section 80110(2).

(c) The circumstances that justify a temporary ordinance rather than a special rule under section 80110.

(d) A complete list of all local ordinances, regulations, and rules concerning the water body and how the ordinances, regulations, and rules are enforced.

(e) If the temporary ordinance is approved, how the political subdivision will provide for and fund the public notice of the temporary ordinance, including, but not limited to, buoy placement and signage.

(f) If the temporary ordinance is approved, how the political subdivision will enforce the temporary ordinance.

(g) Any other information the political subdivision believes is relevant or necessary.

(3) Within 10 days after receiving an application under subsection (2), the department shall review the application. If the application is complete, the department shall conduct an investigation and inquiry within 10 days into the need for a temporary ordinance. If additional information is needed, the department shall request the additional information. Within 10 days after receiving the additional information, the department shall conduct an investigation and inquiry into the need for a temporary ordinance.

(4) Within 10 days after completing the investigation and inquiry under subsection (3), if the department determines that there is a need for a temporary ordinance, the department shall propose a temporary ordinance that affects all boats or boat types on the water body. If the department determines that there is not a need for a temporary ordinance, the department shall notify the political subdivision and provide the specific reasons for the determination.

(5) A determination by the department under this section that there is not a need for a temporary ordinance may be appealed by the political subdivision to the director. The director shall make the final agency decision on the need for a temporary ordinance.

(6) If the department determines there is a need for a temporary ordinance, the department shall submit to the political subdivision a proposed temporary ordinance. Notwithstanding any charter provision or other provision of law, the proposed temporary ordinance takes effect when both of the following requirements are met, which must occur within 30 days after the department submits the proposed temporary ordinance to the political subdivision:

(a) The governing body of the political subdivision adopts the ordinance at a public meeting.

(b) The political subdivision notifies the department of the adoption.

(7) If the political subdivision fails to notify the department of the adoption of the proposed temporary ordinance, the proposed temporary ordinance is considered disapproved and no further action shall be taken.

(8) A temporary ordinance expires 6 months after the department is notified of the adoption of the temporary ordinance under subsection (6). The temporary ordinance may be extended or renewed in consecutive years only if the political subdivision is going through the process of adopting a proposed special rule under sections 80110 and 80111, and the public hearing required under section 80110(4) has occurred.

(9) If the department determines that a special rule is not needed under section 80110(5), and the director denies the appeal under section 80110(6), the political subdivision may not extend or renew a temporary ordinance in consecutive years under subsection (8).

(10) As used in this section, "water body" includes all or a portion of a water body.

History: Add. 2020, Act 72, Imd. Eff. Apr. 2, 2020.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80113 Enforcement of local ordinances; existing rules; enactment of statutory provisions as ordinance.

Sec. 80113. (1) State, county, and local peace officers shall enforce local ordinances enacted in accordance with this part.

(2) All rules establishing special local watercraft controls promulgated under former 1967 PA 303 before March 17, 1986 shall remain in effect unless rescinded pursuant to sections 80108, 80110, 80111, and 80112.

(3) Local political subdivisions may enact as an ordinance any or all of sections 80101 to 80104, 80122 to 80124, 80126, 80140, 80141, 80144 to 80153, 80155, 80164, 80165, and 80166 to 80173.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2000, Act 215, Imd. Eff. June 27, 2000.

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Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

Administrative rules: R 281.700.1 et seq. of the Michigan Administrative Code.

324.80114 Rules; violation; fine.

Sec. 80114. (1) The department may promulgate rules to establish performance or other safety standards relating to boat construction or the installation, use, or carriage of associated equipment.

(2) In order that a boat operator may pass unhindered from jurisdiction to jurisdiction, rules authorized by this section shall be identical to federal regulations for enforcement purposes. However, rules requiring the carrying or using of marine safety articles to meet uniquely hazardous conditions or circumstances within this state may be promulgated, if the rules for the safety articles are approved by the United States coast guard.

(3) A person who violates a rule promulgated to implement this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80114a Prohibition against operation of motorized vessel; exemption; marine exemption certificate; physician's attestation.

Sec. 80114a. (1) A marine law that prohibits the operation of a motorized vessel on a portion of the waterways of this state shall not be enforced against an individual who meets all of the following qualifications:

(a) The individual has a disability that prevents him or her from rowing or paddling a vessel.

(b) The individual has in his or her possession a marine exemption certificate.

(c) The individual is operating a noncommercial vessel at slow—no wake speed using an electric motor that is rated at 100 pounds of thrust or less.

(2) This section does not exempt an individual from compliance with any other marine law.

(3) An individual may obtain a marine exemption certificate from either the department or a sheriff's department by presenting a physician's attestation that the physician has examined the individual and determined that the individual has a disability that prevents him or her from rowing or paddling a vessel.

(4) The department shall develop and make available for use as prescribed in this section a physician's attestation form and a marine exemption certificate.

History: Add. 2008, Act 119, Imd. Eff. Apr. 29, 2008.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80115 Disposition of revenues; credit to waterways account; appropriation; fees.

Sec. 80115. (1) The revenue received under this part shall be deposited in the state treasury. The revenue division, department of treasury, shall annually present to the department an accurate total of all the revenues collected, and shall then, except as provided in section 80124b, credit the revenues collected to the waterways account to be used as follows:

(a) 17.5% to implement part 781.

(b) 33.5% to implement part 791.

(c) 49% for water safety education programs and for the administration and enforcement of this part, including state aid to counties, and for no other purpose.

(2) Fees provided for in section 80124 shall not be appropriated for the inspection of vessels that carry passengers for hire and are regulated under part 445.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 292, Imd. Eff. Jan. 8, 2004;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: Marine Safety Act

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Popular name: NREPA

324.80116 Boating safety program; compliance with rules; federal financial assistance.

Sec. 80116. The department shall do all things necessary to conduct a comprehensive boating safety program as provided in chapter 131 of part I of subtitle II of title 46 of the United States Code, 46 U.S.C. 13101 to 13110; to comply with rules promulgated under that act by the secretary of the department in which the coast guard is operating; and to accept federal financial assistance as provided in that act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80117 Marine safety program; state aid; formula; limitation on determination; use; statement of expenditures.

Sec. 80117. (1) Each county of the state is entitled to receive state aid as provided in this part. A county board of commissioners desiring to conduct a marine safety program shall submit to the department by December 31 of each year an estimate of authorized expenditures for the following calendar year, in the form and containing the information the department requires. The department shall review the entire request and may approve the county request for state aid. The department shall annually survey the marine safety program of each county to assist in determining the amount of state aid to be allocated to a county for its marine safety program. In making its annual determination of the amount of state aid to be allocated to a county, the department shall develop and employ a formula which shall include such factors as:

(a) The number of students to be trained in boating safety in any United States coast guard auxiliary, United States power squadron, or department-sponsored marine safety classes.

(b) The number of boat user days.

(c) The number of livery boats.

(d) Program effectiveness measured by comparing the existing rate of compliance with current statutes to the acceptable rate of compliance determined by the department.

(e) The number and type of boat access areas requiring a county marine safety program.

(f) The water area of the county.

(2) A determination of the amount of state aid allocated to a county under this part shall not be based, wholly or in part, upon the number of vessels within that county that are stopped or inspected under section 80166.

(3) State aid allocated to a county under this part shall be used exclusively for the conduct of the county marine safety program as provided by this part and rules promulgated under this part. Within 90 days after the close of each calendar year, a county board of commissioners shall submit to the department a statement of authorized expenditures actually incurred, in the form and containing the information that the department requires. A county that provides the department with statements or supplements to statements subsequent to the 90-day period is not eligible for state aid under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80118 Allocation of state aid to counties.

Sec. 80118. The amount of state aid to be allocated to a county pursuant to this part shall be determined by the department in the manner the department determines is appropriate. The department shall review the county's statement of authorized expenditures actually incurred and if satisfied shall provide state aid in an amount not to exceed 3/4 of the county's estimated authorized expenditures for the past calendar year. If the county's authorized expenditures actually incurred for the past calendar year exceed the county's estimated authorized expenditures for that calendar year, the department, if it considers it to be in the best interests of the state and adequate funds have been appropriated by the legislature for state aid to counties, may provide state aid in excess of 3/4 of the county's estimated authorized expenditures for that calendar year, but not in excess of 3/4 of the county's authorized expenditures actually incurred. If the amount appropriated by the legislature for state aid to counties is insufficient to pay the full amount to which the counties are entitled, the department shall reduce the allocations proportionate to the shortfall of revenue among all state and local programs for which waterways account money was appropriated.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

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Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80119 Marine safety program; audits of county records; refunds to state.

Sec. 80119. Annually the department of the treasury shall audit the county records pertaining to the marine safety program to assure the proper disposition of this money in accordance with this part and rules promulgated under this part. If the audit reveals that a refund of state aid money is due to the state, the county treasurer, within 30 days of the completion of the audit, shall send to the department the amount of the refund due to the state, which the department shall return to the waterways account to be used for the purpose described in section 80115(1)(c).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80120 Marine safety program; cooperation with county sheriffs; records; reports.

Sec. 80120. The department and the county sheriffs shall cooperate in the conduct of the marine safety program. The county sheriffs shall maintain records and submit reports in a form and containing information as the department may require.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80121 Rules.

Sec. 80121. The department may promulgate rules as may be necessary to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80122 Conditions to operation of vessels; violation; fine.

Sec. 80122. (1) Except as otherwise provided in this part, a person shall not operate or give permission for the operation of a vessel of any length on the waters of this state unless the fees prescribed in section 80124 for the vessel are paid, the certificate of number assigned to the vessel is on board and is in full force and effect, and, except for the following, the identifying number and decal are displayed on each side of the forward half of the vessel in accordance with this part and the rules promulgated by the department under this part:

(a) A decal and identifying numbers for a wooden hull and historic vessel as that term is defined in section 80124 may be displayed in the manner described in section 80126(2).

(b) A decal for an inflatable boat may be displayed on the transom of the boat.

(2) If a vessel is actually numbered in another state of principal use in accordance with a federally approved numbering system, it is in compliance with the numbering requirements of this state while it is temporarily being used in this state. This subsection applies to a vessel for which a valid temporary certificate is issued to the vessel's owner by the issuing authority of the state in which the vessel is principally used.

(3) If a vessel is removed to this state as the new state of principal use, a number awarded by any other issuing authority is valid for not more than 60 days before numbering is required by this state.

(4) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

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Popular name: Marine Safety Act

Popular name: NREPA

324.80123 Exemption.

Sec. 80123. (1) The owner of a vessel is not required to pay a fee and a vessel is not required to be numbered and to display a decal under this part if the vessel is 1 or more of the following:

(a) Used temporarily on the waters of this state and the owner and the vessel are from a country other than the United States.

(b) A vessel that is owned by the United States, used in the public service for purposes other than recreation, and clearly identifiable as such a vessel.

(c) A vessel's lifeboat.

(d) An all-terrain vehicle not used as a vessel.

(e) A raft, sailboard, surfboard, or swim float.

(f) A vessel 16 feet or less, propelled by hand either with oars or paddles, and not used for rental or other commercial purposes.

(g) A nonmotorized canoe or kayak not used for rental or other commercial purposes.

(2) The owner of a vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard shall comply with this part, including the payment of fees as provided in this part. However, the vessel shall not be required to display numbers under this part.

(3) This part does not prohibit the numbering of an undocumented vessel pursuant to this part upon request by the owner, even though the vessel is exempt from the numbering requirements of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80124 Application for certificate of number; certificate of title; 15-day permit; fee; "the length of vessel" defined; tax exemption; issuance; delinquent fee or tax; penalty; retention of certificate of number on shore; contents of lease or rental agreement; painting or attaching number; assigning block of numbers; federally documented vessel; decal; issuance of original certificate of number, numbering renewal decal, or other renewal device; numbering system; registration; issuance of certificate of number; historic vessel; refund to owner of nonmotorized canoe or kayak; refund and computation of fee.

Sec. 80124. (1) Except as otherwise provided in this section, the owner of a vessel required, pursuant to sections 80122 and 80123, to be numbered and to display a decal shall file an application for a certificate of number with the secretary of state. The secretary of state shall prescribe and furnish certificate of title application forms. If a vessel requiring a certificate of title under part 803 is sold by a dealer, that dealer shall combine the application for a certificate of number that is signed by the vessel owner with the application for a certificate of title. The dealer shall obtain the certificate of number in the name of the owner. The application for a certificate of number shall include a certification. The owner of the vessel shall sign the application or, if the application is filed electronically, provide information requested by the secretary of state to verify the owner's identity. A person shall not file an application for a certificate of number that contains false information. A dealer who fails to submit an application as required by this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.

(2) A dealer who submits an application for a certificate of number as provided in subsection (1) may issue to the owner of the vessel a 15-day permit, on forms prescribed by the secretary of state, for the use of the vessel while the certificate of number is being issued.

(3) A dealer may issue a 15-day permit, on a form prescribed by the secretary of state, for the use of a vessel purchased in this state and delivered to the purchaser for removal to a place outside of this state, if the purchaser certifies by his or her signature that the vessel will be registered and primarily used and stored outside of this state and will not be returned to this state by the purchaser for use or storage. A certificate of number shall not be issued for a vessel holding a permit under this subsection.

(4) A 15-day permit issued under subsection (2) or (3) shall not be renewed or extended.

(5) A person shall operate or permit the operation of a vessel for which a 15-day permit has been issued under this section only if the permit is valid and displayed on the vessel as prescribed by rule promulgated by the department under this part.

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(6) Except as otherwise provided in this section, an applicant shall pay the following fee at the time of application:

(a) A 15-day permit issued under subsection (3)	$ 10.00
(b) Nonpowered vessels, other than nonmotorized canoes or kayaks	9.00
(c) Nonmotorized canoes or kayaks	5.00
(d) Motorboats less than 12 feet in length	14.00
(e) Motorboats 12 feet or over but less than 16 feet in length	17.00
(f) Motorboats 16 feet or over but less than 21 feet in length	42.00
(g) Motorboats 21 feet or over but less than 28 feet in length	115.00
(h) Motorboats 28 feet or over but less than 35 feet in length	168.00
(i) Motorboats 35 feet or over but less than 42 feet in length	244.00
(j) Motorboats 42 feet or over but less than 50 feet in length	280.00
(k) Motorboats 50 feet in length or over	448.00
(*l*) Pontoon vessels regardless of size	23.00
(m) Motorized canoes regardless of size	14.00
(n) Vessels licensed under part 473	15.00
(o) Vessels carrying passengers for hire that are in compliance with part 445, or under federal law; and vessels carrying passengers and freight or freight only and owned within this state or hailing from a port within this state	45.00

(7) As used in this section, "the length of a vessel" means the distance from end to end over the deck, excluding the longitudinal upward or downward curve of the deck, fore and aft. For a pontoon boat, length of a vessel means the length of its deck, fore and aft.

(8) Payment of the fee specified in this section exempts the vessel from the tax imposed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(9) Upon receipt of an initial application for a certificate of number in approved form and payment of the required fee, the secretary of state shall enter the information upon the official records and issue to the applicant a certificate of number containing the number awarded to the vessel, the name and address of the owner, and other information that the secretary of state determines necessary. The secretary of state shall issue a certificate of number that is pocket size and legible. Except as provided in subsection (13), a person operating a vessel shall present that vessel's certificate of number to a peace officer upon the peace officer's request.

(10) If a check or draft payable to the secretary of state under this part is not paid on its first presentation, the fee or tax is delinquent as of the date the draft or check was tendered. The person tendering the check or draft remains liable for the payment of the fee or tax and a penalty.

(11) Upon determining that a fee or tax required by this part has not been paid and remains unpaid after reasonable notice and demand, the secretary of state may suspend a certificate of number.

(12) If a person who tenders a check or draft described in subsection (10) fails to pay the fee or tax for which the check or draft was tendered within 15 days after the secretary of state gives him or her notice that the check or draft described in subsection (10) was not paid on its first presentation, the secretary of state shall assess and collect a penalty of $5.00 or 20% of the check or draft, whichever is larger, in addition to the fee or tax.

(13) The owner or authorized agent of the owner of a vessel less than 26 feet in length that is leased or rented to a person for noncommercial use for not more than 24 hours may retain, at the place from which the vessel departs or returns to the possession of the owner or the owner's representative, the certificate of number for that vessel if a copy of the lease or rental agreement is on the vessel. Upon the demand of a peace officer, the operator shall produce for inspection either the certificate of number or a copy of the lease or rental agreement for that vessel. The lease or rental agreement shall contain each of the following:

(a) The vessel number that appears on the certificate of number.

(b) The period of time for which the vessel is leased or rented.

(c) The signature of the vessel's owner or that person's authorized agent.

(d) The signature of the person leasing or renting the vessel.

(14) Upon receipt of a certificate of number for a vessel, the owner of that vessel shall paint on or attach in a permanent manner to each side of the forward half of the vessel the number identified in the certificate of number, in the manner prescribed by rules promulgated by the department. The secretary of state shall assign

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to the owner of vessels for rent or lease a block of numbers sufficient to number consecutively all of that owner's rental or lease vessels. The owner shall maintain the numbers in a legible condition. A vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard is not required to display numbers under this part but shall display a decal indicating payment of the fee prescribed in subsection (6), and shall otherwise be in compliance with this part. This subsection does not apply to a nonpowered vessel 12 feet or less in length.

(15) Upon receipt of an application for a certificate of number in an approved form and payment of the fee required by this part, the secretary of state shall issue a decal that indicates that the vessel is numbered in compliance with this part. The decal shall be color-coded and dated to identify the year of its expiration. The department shall promulgate a rule or rules to establish the manner in which the decal is to be displayed. A person who operates a vessel in violation of a rule promulgated to implement this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(16) A decal is valid for a 3-year period that begins on April 1 and expires on March 31 of the third year. An original certificate of number may be issued up to 90 days before April 1. A numbering renewal decal or other renewal device may be issued up to 90 days before the expiration of a certificate.

(17) Upon receipt of a request for renewal of a decal and payment of the fee prescribed in subsection (6), the secretary of state shall issue to the applicant a decal as provided in subsection (15). A person who operates a vessel for which no decal was issued as required under this section or for which a decal has expired is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(18) The numbering system adopted under this part shall be in accordance with the standard system of numbering established by the secretary of the department in which the United States coast guard operates.

(19) An agency of this state, a political subdivision of this state, or a state supported college or university of this state that owns a vessel that is required to be numbered under this part shall register that vessel and upon payment of either of the following shall receive from the secretary of state a certificate of number for that vessel:

(a) A fee of $3.00 for a vessel that is not used for recreational, commercial, or rental purposes.

(b) The fee required under subsection (6) for a vessel that is used for recreational, commercial, or rental purposes.

(20) The secretary of state shall, upon receipt of payment of the fee required under subsection (19), issue a certificate of number for each vessel subject to subsection (19).

(21) A vessel that is 30 years of age or older and not used other than in club activities, exhibitions, tours, parades, and other similar activities is a historic vessel. The secretary of state shall make available to the public application forms for certificates of number for historic vessels and, upon receipt of a completed application form and fee, shall number a historic vessel as a historic vessel. The fee for the numbering of a historic vessel is 1/3 of the otherwise applicable fee specified in subsection (6).

(22) The secretary of state shall refund to the owner of a vessel registered under this part all of the registration fee paid for that vessel under this section if all of the following conditions are met during the period for which the registration fee was paid:

(a) The owner transfers or assigns title or interest in the registered vessel before placing the decal issued under subsection (15) on the vessel.

(b) The owner surrenders the unused decal to the secretary of state within 30 days after the date of transfer or assignment.

(23) The secretary of state shall refund to the surviving spouse of a deceased vessel owner the registration fee paid under this part, prorated on a monthly basis, upon receipt of the decal issued under subsection (15) or evidence satisfactory to the secretary of state that the decal issued under subsection (15) has been destroyed or voided.

(24) If the secretary of state computes a fee under this part that results in a figure other than a whole dollar amount, the secretary of state shall round the figure to the nearest whole dollar.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007;—Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012;—Am. 2012, Act 294, Imd. Eff. Aug. 1, 2012.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80124a Great Lakes protection specialty watercraft decal.

Sec. 80124a. (1) Subject to subsection (4), the secretary of state shall make available for purchase an annual Great Lakes protection specialty watercraft decal. The Great Lakes protection specialty watercraft

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decal shall be designed by the secretary of state and shall depict some aspect of the Great Lakes or of Great Lakes water quality.

(2) The Great Lakes protection specialty watercraft decal shall be sold for $35.00. Revenues from the sale of Great Lakes specialty watercraft decals shall be expended as provided for in section 80124b.

(3) The secretary of state may establish the appropriate placement of Great Lakes protection specialty watercraft decals on watercraft so as not to create confusion for law enforcement officers with decals required under section 80124.

(4) The secretary of state shall discontinue sales of Great Lakes protection specialty watercraft decals under subsection (1) if the secretary of state is unable to sell at least 2,000 decals in the 2-year period ending September 30, 2006 and at least 500 decals in each fiscal year thereafter.

History: Add. 2003, Act 293, Imd. Eff. Jan. 8, 2004;—Am. 2005, Act 271, Imd. Eff. Dec. 19, 2005.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80124b Great Lakes protection specialty watercraft decal; use of money received from sale; definitions.

Sec. 80124b. (1) Money received by the secretary of state from the sale of each Great Lakes protection specialty watercraft decal under section 80124a shall be used as follows:

(a) $10.00 shall be retained by the secretary of state for use in creating and distributing the decal.

(b) $25.00 shall be forwarded to the state treasurer for deposit into the Michigan Great Lakes protection fund to be used for research on aquatic nuisance species, for public education of the threat of aquatic nuisance species, and for efforts to eradicate aquatic nuisance species from the Great Lakes and other waters of the state.

(2) As used in this section:

(a) "Aquatic nuisance species" means that term as it is defined in section 3101.

(b) "Michigan Great Lakes protection fund" means the Michigan Great Lakes protection fund created in section 32905.

History: Add. 2003, Act 294, Imd. Eff. Jan. 8, 2004.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80125 Notice of destruction or sale of vessel; transfer of vessel; change of address; surrender of certificate; cancellation of certificate and reassignment of number; certificate for replacement vessel; refund; recording new address and returning certificates; application for transfer of certificate; fees; duration of certificate; duplicate certificate.

Sec. 80125. (1) The owner of a vessel shall notify the secretary of state within 15 days if the vessel is destroyed or sold; if an interest in the vessel is transferred either wholly or in part, to another person; or if the owner's address no longer conforms to the address appearing on the certificate of number. The notice shall consist of a surrender of the certificate of number, on which the proper information shall be noted on a place to be provided on the certificate. When the surrender of the certificate is due to the vessel being destroyed, the secretary of state shall cancel the certificate and enter that fact in the secretary of state's records, and the number may be reassigned.

(2) The owner of a destroyed vessel, upon proper application, may receive a new certificate of number, valid for the remainder of the numbering period, for a replacement vessel, if all of the following conditions are met:

(a) The replacement vessel is owned by the same person who owned the destroyed vessel.

(b) The owner of the replacement vessel pays additional fees, if required under section 80124, due to the change in vessel size or classification.

(c) Payment of a $2.00 application fee.

(3) If the fees required for the replacement vessel under section 80124 are less than the fees that were required for the destroyed vessel, the owner of the vessel shall not receive a refund.

(4) If the surrender of the certificate of number is due to a change of the owner's address, the new address shall be recorded by the secretary of state and a certificate of number bearing that information shall be returned to the owner.

(5) The transferee of a vessel registered under this part, within 15 days after acquisition of the vessel, shall

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apply to the secretary of state for transfer to the transferee of the certificate of number issued to the vessel. The transferee shall provide his or her name, address, and the number of the vessel and pay to the secretary of state a transfer fee of $2.00. The registration fee for the certificate of number shall be 2/3 the fee provided in section 80124 if the transferred certificate of number would have remained valid for 1 year or less. The registration fee for the certificate of number shall be 1/3 the fee provided in section 80124 if the transferred certificate of number would have remained valid for more than 1 year but less than 2 years. An additional registration fee shall not be assessed if the transferred registration would have remained valid for 2 or more years. Unless the application is made and the fee paid within 15 days after acquisition of the vessel, the vessel shall be considered to be without certificate of number and a person shall not operate the vessel until a certificate is issued. Upon receipt of the application and appropriate fees, the secretary of state shall transfer the certificate of number issued for the vessel to the new owner. The certificate of number shall be valid for a 3-year period.

(6) If a certificate of number is lost, mutilated, or illegible, the owner of the vessel shall obtain a duplicate of the certificate upon application and payment of a fee of $2.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80126 Dealer certificates of number and dealer decals.

Sec. 80126. (1) A dealer shall apply for and obtain from the secretary of state dealer certificates of number and dealer decals for each vessel of the dealer that is tested, demonstrated, or otherwise operated. Upon receipt of an application in a form approved by the secretary of state and payment of $30.00 for each set of dealer certificates of number and dealer decals, the secretary of state shall issue to the applicant the dealer certificates of number and dealer decals. A single dealer certificate of number and dealer decal issued pursuant to this section may be used on only 1 vessel at a time.

(2) The operator of a vessel governed by this section shall do each of the following:

(a) Maintain the dealer certificate of number on board the vessel.

(b) Upon demand of a peace officer, display the dealer certificate of number.

(c) Permanently or temporarily display the identifying number and dealer decal on the vessel in accordance with rules promulgated by the department under this part.

(3) A person shall not operate a vessel numbered under this section unless the dealer is on board the vessel or the operator has the written authorization of the dealer to operate the vessel. A person shall not use a vessel numbered under this section for commercial purposes that include the rental of the vessel or the carrying of passengers for hire on the vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80127 Payment of fee by credit card or check.

Sec. 80127. The secretary of state may accept payment by a credit card or check in lieu of cash of a fee required under this part. The secretary of state shall determine which major credit cards may be utilized, provided, however, that the fee received shall not be less than 100% of the applicable fee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80128 Secretary of state; certificate of number.

Sec. 80128. The secretary of state may award any certificate of number directly or may authorize any person to act as his or her agent for the awarding of a certificate of number.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

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324.80129 Maintenance of records; availability to the public.

Sec. 80129. Records maintained under this part, other than those declared to be confidential by law or which are restricted by law from disclosure to the public, shall be available to the public pursuant to procedures prescribed in this part and in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130 Commercial lookup service of records; disposition of fees; computerized central file; purpose; creation; maintenance; providing records to nongovernmental person or entity; payment; admissibility in evidence.

Sec. 80130. (1) The secretary of state may provide a commercial lookup service of records maintained under this part. For each individual record looked up, the secretary of state shall charge a fee of $15.00 per record. The secretary of state shall process a commercial lookup request only if the request is in a form or format prescribed by the secretary of state. The secretary of state shall credit fees collected under this subsection to the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b, through October 1, 2027.

(2) To provide an individual, historical boating record, the secretary of state shall create and maintain a computerized central file that includes the information contained on application forms received under this part and the name of each individual who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part. The computerized central file must be interfaced with the law enforcement information network as provided in the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(3) The secretary of state shall not provide an entire computerized central or other file of records maintained under this part to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

(4) A certified copy of an order, record, or paper maintained under this part is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2005, Act 174, Imd. Eff. Oct. 12, 2005;—Am. 2009, Act 100, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 77, Eff. Oct. 1, 2015;—Am. 2019, Act 81, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130a Disclosure of information prohibited; exceptions.

Sec. 80130a. (1) Except as provided in this section and section 80130c, personal information in a record maintained under this part shall not be disclosed, unless the person requesting the information furnishes proof of identity considered satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose identified in this section or in section 80130c. Notwithstanding this section, highly restricted personal information shall be used and disclosed only as expressly permitted by law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, Public Law 85-506, 15 U.S.C. 1231 to 1232 and 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, 106 Stat. 3384, the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and all federal regulations promulgated to implement these federal laws.

(3) Personal information in a record maintained under this act may be disclosed to any person by the secretary of state as follows:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions.

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(b) For use in connection with matters of watercraft and operator safety or watercraft theft; watercraft emissions; watercraft product alterations, recalls, or advisories; performance monitoring of watercraft; watercraft research activities including survey research; and the removal of nonowner records from the original records of watercraft manufacturers.

(c) For use in the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court, administrative agency, or self-regulatory body.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded watercraft.

(h) For use by any licensed private security guard agency or alarm system contractor licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, or a private detective or private investigator licensed under the private detective license act of 1965, 1965 PA 285, MCL 338.821 to 338.851, for any purpose permitted under this section.

(i) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. "News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(j) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2000, Act 194, Eff. Jan. 1, 2001.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130b Resale or redisclosure of personal information; maintenance of records; duration; availability for inspection.

Sec. 80130b. (1) An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 80130a. An authorized recipient of an individual record or records under section 81114a may resell or redisclose personal information for any purpose.

(2) Any authorized recipient who resells or rediscloses personal information shall be required by the secretary of state to maintain for a period of not less than 5 years records as to the information obtained and the permitted use for which it was obtained, and to make such records available for inspection by the secretary of state, upon request.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130c Furnishing list of information to federal, state, or local governmental agency; contract for sale of list of information; insertion of safeguard in agreement or contract; resale or redisclosure of information; disclosure of list based on watercraft operations or sanctions to nongovernmental agency.

Sec. 80130c. (1) Upon request, the secretary of state may furnish a list of information from the records of the department maintained under this part to a federal, state, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Unless otherwise prohibited by law, the secretary of state may charge

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the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this subsection if the cost of preparation exceeds $25.00, and use the revenues received from the service to defray necessary expenses. If the secretary of state sells a list of information under this subsection to a member of the state legislature, the secretary of state shall charge the same fee as the fee for the sale of information under subsection (2) unless the list of information is requested by the member of the legislature to carry out a legislative function. The secretary of state may require the requesting agency to furnish 1 or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this subsection.

(2) The secretary of state may contract for the sale of lists of records maintained under this part in bulk, in addition to those lists distributed at cost or at no cost under this section, for purposes defined in section 80130a(3). The secretary of state shall require each purchaser of information in bulk to execute a written purchase contract. The secretary of state shall fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale shall be used by the secretary of state to defray the costs of list preparation and for other necessary or related expenses.

(3) The secretary of state or any other state agency shall not sell or furnish any list of information under subsection (2) for the purpose of surveys, marketing, and solicitations. The secretary of state shall ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under this part.

(4) The secretary of state may insert any safeguard the secretary considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under this section, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals and of the secretary of state are protected.

(5) An authorized recipient of personal information disclosed under this section who resells or rediscloses the information for any of the permissible purposes described in section 80130a(3) shall do both of the following:

(a) Make and keep for a period of not less than 5 years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(b) Allow a representative of the secretary of state, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(6) The secretary of state shall not disclose a list based on watercraft operation or sanctions to a nongovernmental agency, including an individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2000, Act 194, Eff. Jan. 1, 2001.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80130d Prohibited conduct; violations as felony; penalties.

Sec. 80130d. (1) A person who makes a false representation or false certification to obtain personal information under this part, or who uses personal information for a purpose other than a permissible purpose identified in section 80130a or 80130c, is guilty of a felony.

(2) A person who is convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not less than 2 years or more than 7 years, or by a fine of not less than $1,500.00 or more than $7,000.00, or both.

(3) A person who is convicted of a third or subsequent violation of this section is guilty of a felony punishable by imprisonment for not less than 5 years or more than 15 years, or by a fine of not less than $5,000.00 or more than $15,000.00, or both.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130f Abandonment of vessel prohibited; presumption; violation; civil infraction; "abandoned vessel" defined; determination that vessel not stolen; duties of police agency; notice of abandoned vessel; duties of secretary of state; request for hearing by owner to contest abandonment; redemption of vessel; abandonment of vessel on private property without owner consent; offer of vessel for public sale.

Sec. 80130f. (1) A person shall not abandon a vessel in this state. It is presumed that the last titled owner

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or, if there is no titled owner, the last registered owner of the vessel is responsible for abandoning the vessel unless the person provides a record of the transfer of the vessel to another person. For the purposes of this subsection, the record of transfer must be either a photocopy of the reassigned title or reassigned registration or a form or document that includes the transferee's name, address, driver license number, and signature, the date of transfer of the vessel, and, if applicable, the sale price. A person who violates this subsection and who fails to redeem the vessel before disposition of the vessel under section 80130k is responsible for a state civil infraction as provided in section 8905a.

(2) As used in this section through section 80130p, "abandoned vessel" means any of the following:

(a) A vessel that is on private property without the consent of the property owner.

(b) A vessel that has remained on public property that is not a state trunk line highway as described in section 1 of 1951 PA 51, MCL 247.651, for a period of 48 hours or more without the permission of the governmental unit with custody of the property.

(c) A vessel that meets all of the following requirements:

(*i*) Is stationary on a state trunk line highway as described in section 1 of 1951 PA 51, MCL 247.651.

(*ii*) Is not on a motor vehicle or trailer as described under subdivision (d)(*i*).

(*iii*) is not under the immediate custody of the owner or owner's agent.

(d) A vessel on a motor vehicle or trailer if the motor vehicle or trailer meets all of the following requirements:

(*i*) Displays a valid registration plate under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(*ii*) Has remained parked on a state trunk line highway as described in section 1 of 1951 PA 51, MCL 247.651, for a period of 18 hours or more.

(*iii*) Is not under the immediate custody of the owner of the vessel, motor vehicle, or trailer or the owner's agent.

(3) If a vessel qualifies as abandoned under subsection (2)(b) or (c), a police agency having jurisdiction over the vessel or the agency's designee shall determine whether the vessel has been reported stolen and, if the vessel has not been reported stolen, may have a towing agency take the vessel into custody.

(4) A police agency that has a vessel taken into custody under subsection (3) or that receives notice of a vessel taken into custody under subsection (10) shall do all of the following:

(a) Recheck to determine if the vessel taken into custody under subsection (3) or check if the vessel taken into custody under subsection (10) has been reported stolen.

(b) If the vessel has not been reported stolen, within 24 hours after the vessel is taken into custody, enter the vessel in the law enforcement information network as an abandoned vessel and notify the secretary of state through the law enforcement information network that the vessel has been taken into custody as abandoned. The notification shall contain all of the following information:

(*i*) The year, make, and vessel identification number of the vessel, if available.

(*ii*) The address or approximate location from which the vessel was taken into custody.

(*iii*) The date on which the vessel was taken into custody.

(*iv*) The name and address of the police agency.

(*v*) The name and business address of the custodian of the vessel.

(*vi*) The name of the court that has jurisdiction over the case.

(5) Within 7 days after receiving notice under subsection (4)(b) that a vessel has been taken into custody as abandoned, the secretary of state shall do both of the following:

(a) Send to the last titled owner and secured party, as shown by the records of the secretary of state, or, if there is no titled owner, to the last registered owner, by first-class mail or personal service, notice that the vessel is considered abandoned. Each notice form shall contain all of the following information:

(*i*) The year, make, and vessel identification number of the vessel, if available.

(*ii*) The address or approximate location from which the vessel was taken into custody.

(*iii*) The date on which the vessel was taken into custody.

(*iv*) The name and address of the police agency that had the vessel taken into custody under subsection (3) or received notice of a vessel taken into custody under subsection (10).

(*v*) The name and business address of the custodian of the vessel.

(*vi*) The procedure to redeem the vessel.

(*vii*) The procedure to contest the fact that the vessel is considered abandoned or the reasonableness of the towing fees and daily storage fees.

(*viii*) A form petition that the owner may file in person or by mail with the specified court having jurisdiction to request a hearing on the validity of the grounds for taking custody of the vessel.

(*ix*) A warning that if the vessel is not redeemed or a hearing requested within 20 days after the date of the

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notice, the vessel may be sold and all rights of the owner and the secured party to the vessel or to the proceeds of the sale terminated.

(b) Enter the information described in subdivision (a) on a website maintained by the secretary of state for public use in locating vessels that are taken into custody under this section as abandoned. The secretary of state shall maintain the data on the website for 1 year or until the vessel is disposed of under this part, whichever occurs first.

(6) To contest whether the vessel is abandoned or, unless the towing fees and daily storage fees are established by contract with the local governmental unit or police agency and comply with section 80130m, the reasonableness of the towing fees and daily storage fees, the owner shall request a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice under subsection (5) within 20 days after the date of the notice under subsection (5). If the owner requests a hearing, the matter shall be resolved after a hearing conducted under section 80130j. An owner who requests a hearing may redeem the vessel by posting a towing and storage bond with or paying a fee to the court. The bond or fee shall be equal to $40.00 plus the accrued towing and storage fees.

(7) If the owner does not request a hearing under subsection (6), he or she may redeem the vessel by paying a fee of $40.00 and the accrued towing and storage fees to the custodian of the vessel. The custodian of the vessel shall forward $25.00 of the fee to the secretary of state within 30 days after receipt, in a manner prescribed by the secretary of state. The secretary of state shall deposit the $25.00 into the abandoned vessel, ORV, and snowmobile fund created in section 80130*l*.

(8) If the owner does not redeem the vessel or request a hearing within 20 days after the date of the notice under subsection (5)(a), the secured party may redeem the vessel by paying a $40.00 fee plus the accrued charges to the custodian of the vessel. The custodian of the vessel shall forward $25.00 of the fee to the secretary of state within 30 days after receipt, in a manner prescribed by the secretary of state. The secretary of state shall deposit that portion of the fee into the abandoned vessel, ORV, and snowmobile fund created in section 80130*l*.

(9) If a vessel is on private property without the consent of the property owner, the owner of the private property may have the vessel taken into custody as an abandoned vessel by contacting a local towing agency. A local towing agency is a towing agency whose storage lot is located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vessel.

(10) Before removing the vessel from private property, the towing agency contacted under subsection (9) shall provide reasonable notice by telephone, or otherwise, to a police agency having jurisdiction over the vessel that the vessel is being removed. The police agency shall determine if the vessel has been reported stolen, and if the vessel has not been reported stolen, comply with subsection (4)(b). Verification by the police agency of compliance with this section is not necessary and is not a predicate to entering the vessel in the law enforcement information network. Subsections (5) to (8) apply to a vessel removed from private property.

(11) Not less than 20 days after a determination that the vessel is abandoned in a hearing under subsection (6) or, if a hearing is not requested, not less than 20 days after the date of the notice, the following shall offer the vessel for sale at a public sale under section 80130k:

(a) The police agency, if the abandoned vessel is found on public property.

(b) The custodian of the vessel, if the vessel is found on private property.

(12) If the ownership of a vessel that is considered abandoned under this section cannot be determined either because of the condition of the vessel identification numbers or because a check with the records of the secretary of state as described in section 80310 does not reveal ownership, the police agency may sell the vessel at public sale as provided in section 80130k not less than 30 days after public notice of the sale has been published.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130g Definitions; unregistered abandoned scrap vessel; custody; duties of police agency; release of vessel to towing service; certificate of scrapping; retention of records; abandonment of vessel on private property; notice of abandoned vessel; request for hearing by owner to contest abandonment; redemption of vessel.

Sec. 80130g. (1) As used in this section:

(a) "Registered abandoned scrap vessel" means a vessel that meets all of the following requirements:

(*i*) Is 7 or more years old.

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(*ii*) Is apparently inoperable or is damaged, to the extent that the cost of repairing the vessel to make it operational and safe would exceed the fair market value of that vessel.

(*iii*) Is currently registered or titled in this state or displays a current year registration or current year registration decal from another state.

(b) "Unregistered abandoned scrap vessel" means a vessel that meets all of the following requirements:

(*i*) Is apparently inoperable or is damaged, to the extent that the cost of repairing the vessel to make it operational and safe would exceed the fair market value of that vessel.

(*ii*) Is not currently registered or titled in this state and does not display a current year registration or current year registration decal from another state.

(2) A police agency or the agency's designee or, if the vessel is on private property, the property owner may have an unregistered abandoned scrap vessel taken into custody, in which case the police agency shall determine if the vessel has been reported stolen. If the vessel has not been reported stolen, the police agency shall do all of the following:

(a) Take 2 photographs of the vessel.

(b) Make a report to substantiate the vessel as an unregistered abandoned scrap vessel. The report shall contain the following information:

(*i*) The year, make, and vessel identification number, if available, and a brief description of the vessel.

(*ii*) The date of abandonment.

(*iii*) The location of abandonment.

(*iv*) A detailed listing of the damage or the missing equipment.

(*v*) The reporting officer's name and title.

(*vi*) The location where the vessel is being held.

(c) Within 24 hours after taking the vessel into custody, enter the vessel in the law enforcement information network as an abandoned vessel.

(3) The secretary of state shall furnish the police agency with a release form that includes a certification that the police agency has complied with the requirements of subsection (2)(a) and (b).

(4) If the police agency determined under subsection (2) that a vessel was not reported stolen, then within 24 hours, excluding Saturday, Sunday, and legal holidays, after taking the vessel into custody, the police agency or the agency's designee shall complete a release form and certification and release the vessel to the towing service.

(5) The towing service shall complete the certificate of scrapping on the back of the release form and transfer the form to and dispose of the vessel with a scrap metal processor or landfill operator. The scrap metal processor or landfill operator shall transfer the form to the secretary of state.

(6) The secretary of state shall retain the records relating to an abandoned scrap vessel for not less than 2 years. The police agency or the agency's designee shall retain the 2 photographs taken under subsection (2)(a) for not less than 2 years. After the certificate of scrapping has been issued, the secretary of state shall not reissue a certificate of title for the vessel.

(7) A police agency or the agency's designee or, if the vessel is on private property, the property owner may have a registered abandoned scrap vessel taken into custody, in which case the police agency shall determine if the vessel has been reported stolen. If the vessel has not been reported stolen, the police agency shall do all of the following:

(a) Take 2 photographs of the vessel.

(b) Make a report to substantiate the vessel as a registered abandoned scrap vessel. The report shall contain the following information:

(*i*) The year, make, and vessel identification number, if available.

(*ii*) The date of abandonment.

(*iii*) The location of abandonment.

(*iv*) A detailed listing of the damage or the missing equipment.

(*v*) The reporting officer's name and title.

(*vi*) The location where the vessel is being held.

(c) Within 24 hours after taking the vessel into custody, cause the vessel to be entered in the law enforcement information network as abandoned.

(8) If the police agency determined under subsection (7) that a vessel was not reported stolen, within 7 days after the vessel is taken into custody, the secretary of state shall send to the last titled or registered owner and secured party, as shown by the records of the secretary of state, by first-class mail or personal service, notice that the vessel is considered abandoned. The form for the notice shall be furnished by the secretary of state. Each notice form shall contain the following information:

(a) The year, make, and vessel identification number of the vessel, if available.

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(b) The address or approximate location from which the vessel was taken into custody.

(c) The date on which the vessel was taken into custody.

(d) The name and address of the police agency that had the vessel taken into custody, if applicable.

(e) The name and business address of the custodian of the vessel.

(f) The procedure to redeem the vessel.

(g) The name of the court that has jurisdiction of the case.

(h) The procedure to contest whether the vessel is abandoned or the reasonableness of the towing fees and daily storage fees.

(i) A form that the owner may file in person or by mail with the specified court that requests a hearing on the custody of the vessel.

(j) A warning that if the vessel is not redeemed or a hearing requested within 20 days after the date of the notice, the vessel may be sold and all rights of the owner and the secured party to the vessel or the proceeds of the sale terminated.

(9) To contest designation of the registered vessel as an abandoned scrap vessel or, unless the towing fees and daily storage fees are established by contract with the local governmental unit or police agency and comply with section 80130m, the reasonableness of the towing fees and daily storage fees the registered owner shall request a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice under subsection (8) within 20 days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted under section 80130j. An owner who requests a hearing may redeem the vessel by posting a towing and storage bond with or paying a fee to the court. The bond or fee shall equal $40.00 plus the accrued towing and storage fees.

(10) If the owner does not request a hearing under subsection (9), he or she may redeem the vessel by paying a fee of $40.00 plus the accrued charges to the custodian of the vessel. Within 30 days after receipt of a fee under this subsection, the custodian shall forward $25.00 of the fee to the secretary of state in a manner prescribed by the secretary of state. The secretary of state shall deposit the fee into the abandoned vessel, ORV, and snowmobile fund created in section 80130*l*.

(11) If the owner does not redeem the vessel or request a hearing within 20 days after the date of the notice under subsection (8), the secured party may redeem the vessel by paying a fee of $40.00 plus the accrued charges to the custodian of the vessel. Within 30 days after the receipt of the fee under this subsection, the custodian shall forward $25.00 of the fee to the secretary of state in a manner prescribed by the secretary of state. The secretary of state shall deposit the fee into the abandoned vessel, ORV, and snowmobile fund created in section 80130*l*.

(12) Not less than 20 days after a determination that the vessel is abandoned in a hearing described in subsection (9) or, if a hearing is not requested, not less than 20 days after the date of the notice under subsection (8), the police agency or the agency's designee, scrap metal processor or landfill operator, and secretary of state shall follow the procedures established in subsections (3) to (6).

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130h Determination that vessel not stolen; immediate removal from public or private property; arrival of owner before towing or removal; entering vessel in law enforcement information network as abandoned; release of vessel to owner; authorization required; notice.

Sec. 80130h. (1) After determining under subsection (3) that a vessel has not been reported stolen, a police agency or a governmental agency designated by the police agency may provide for the immediate removal of a vessel from public or private property to a place of safekeeping at the expense of the last titled owner or, if there is no titled owner, the last registered owner of the vessel in any of the following circumstances:

(a) The vessel is in such a condition that the operation of the vessel would constitute an immediate hazard to the public.

(b) The vessel is parked or standing upon a highway, road, or street in a manner that creates an immediate public hazard or an obstruction of traffic.

(c) The vessel is parked in a posted tow-away zone.

(d) There is reasonable cause to believe that the vessel or any part of the vessel is stolen.

(e) The vessel must be seized to preserve evidence of a crime or because there is reasonable cause to believe that the vessel was used in the commission of a crime.

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(f) Removal is necessary in the interest of public safety because of fire, flood, storm, snow, natural or man-made disaster, or other emergency.

(g) The vessel is interfering with the owner's or owner's agent's use of private property or is parked in a manner that impedes the movement of another vessel or vehicle.

(h) The vessel is stopped, standing, or parked in a space designated as parking for persons with disabilities and is not permitted by law to be stopped, standing, or parked in a space designated as parking for persons with disabilities.

(i) The vessel is located in a clearly identified access aisle or access lane immediately adjacent to a space designated as parking for persons with disabilities.

(j) The vessel is interfering with the use of a ramp or a curb-cut by persons with disabilities.

(k) The vessel has been involved in a crash and cannot be safely operated to remove it from the scene of the crash.

(*l*) The vessel is submerged in, partially submerged in, or floating unanchored or untethered upon a public waterway.

(2) Unless the vessel is ordered to be towed by a police agency or a governmental agency designated by a police agency under subsection (1)(a), (d), (e), or (k), if the owner or other person who is legally entitled to possess a vessel to be towed or removed arrives at the vessel's location before the actual towing or removal of the vessel, the vessel shall be disconnected from the tow truck or other towing vehicle, and the owner or other person who is legally entitled to possess the vessel may take possession of the vessel and remove it without interference upon the payment of the reasonable service fee to the towing agency, for which the towing agency shall provide a receipt.

(3) Before authorizing the removal of a vessel under subsection (1), a police agency shall check to determine if the vessel has been reported stolen. Except for vessels removed under subsection (1)(d), (e), or (k), the police agency shall enter the vessel in the law enforcement information network as abandoned not less than 7 days after authorizing the removal and the procedures set forth in section 80130f apply.

(4) The towing agency or custodian shall not release to the vessel owner a vessel removed under subsection (1)(d), (e), or (k) unless the release has been authorized by the police agency that authorized the removal.

(5) Not less than 20 days but not more than 30 days after a vessel has been released by the police agency under subsection (4), the towing agency or custodian shall notify the police agency to enter the vessel in the law enforcement information network as abandoned and the police agency shall follow the procedures set forth in section 80130f if the impounded vessel has not been redeemed.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80130i Courts; jurisdiction; venue; use of bond to pay towing and storage fees; exclusive remedies.

Sec. 80130i. (1) The following courts have jurisdiction to determine if a police agency, towing agency or custodian, or private property owner has acted properly in reporting or processing a vessel under section 80130f, 80130g(7) to (12), or 80130h:

(a) The district court.

(b) A municipal court.

(2) The court specified in the notice prescribed in section 80130f(4)(b) or 80130g(8) shall be the court that has territorial jurisdiction at the location from which the vessel was removed or where it was abandoned. Venue in the district court is governed by section 8312 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8312.

(3) If the owner fails to pay the accrued towing and storage fees, the towing and storage bond posted with the court to secure redemption of the vessel under section 80130f or 80130g shall be used to pay the towing and storage fees.

(4) The remedies under sections 80130f to 80130p are the exclusive remedies for the disposition of abandoned vessels.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80130j Filing of petition by owner of vessel; duties of court; burden of showing compliance with act; decision of court.

Sec. 80130j. (1) Upon the filing of a petition prescribed in section 80130f or 80130g, signed by the owner of the vessel that has been taken into custody, the court shall do both of the following:

(a) Schedule a hearing within 30 days for the purpose of determining whether the police agency, towing agency or custodian, or private property owner acted in accordance with this part.

(b) Notify the owner, towing agency or custodian, police agency, and, if the vessel was removed from private property, the private property owner of the time and place of the hearing.

(2) At the hearing specified in subsection (1), the police agency, towing agency or custodian, and, if the vessel was removed from private property, the private property owner have the burden of showing by a preponderance of the evidence that they have complied with the requirements of this act in reporting or processing the abandoned vessel or vessel removed under section 80130h.

(3) After the hearing, the court shall make a decision that includes 1 or more of the following:

(a) A finding that the police agency complied with the procedures established for the processing of an abandoned vessel or a vessel removed under section 80130f, 80130g, or 80130h, and an order providing a period of 20 days after the decision for the owner to redeem the vessel. If the owner does not redeem the vessel within 20 days, the police agency shall dispose of the vessel under section 80130g or 80130k. Within 30 days after the court's decision, the court shall forward $25.00 of the fee collected under section 80130g or 80130k to the secretary of state in a manner prescribed by the secretary of state. The towing and storage fees and $15.00 of the fee collected under section 80130g or 80130k shall be forwarded to the towing agency.

(b) A finding that the police agency did not comply with the procedures established for the processing of an abandoned vessel or a vessel removed under section 80130f, 80130g, or 80130h and directing all of the following:

(*i*) That the vessel immediately be released to the owner.

(*ii*) That the police agency is responsible for the accrued towing and storage charges.

(*iii*) That any fee or bond posted by the owner be returned.

(c) A finding that the towing fees and daily storage fees were reasonable.

(d) A finding that the towing fees and daily storage fees were unreasonable and directing the towing agency or custodian of the vessel to provide the last titled owner or, if there is no titled owner, the last registered owner of the vessel with an appropriate reduction or refund.

(e) A finding that the owner of the real property complied with section 80130o, if applicable.

(f) A finding that the owner of the real property did not comply with section 80130o, if applicable, and an order requiring the owner of the real property to reimburse the last titled owner of the vessel for the accrued towing and storage charges.

(g) A finding that the towing agency did not comply with the procedures established for the proper removal and reporting of a vessel removed under section 80130f, 80130g, or 80130h and an order directing all of the following:

(*i*) That the vessel immediately be released to the owner.

(*ii*) That the towing agency is responsible for the accrued towing and storage charges.

(*iii*) That any fee or bond posted by the owner be returned.

(h) A finding that the towing agency did comply with the procedures established for the proper removal and reporting of a vessel removed under section 80130f, 80130g, or 80130h.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130k Public sale of abandoned vessel.

Sec. 80130k. (1) A public sale for a vessel, and its contents, that has been determined to be abandoned under section 80130f or 80197 or removed under section 80130h shall comply with all of the following:

(a) Be under the control of the police agency or, if the vessel is being sold under section 80130f(11), the custodian of the vessel. However, a police agency may designate the custodian of the vessel or a third party to conduct the auction.

(b) Be open to the public and consist of open auction bidding or bidding by sealed bids. If sealed bids are received, the police agency or the agency's designee or, if the vessel is being sold under section 80130f(11), the custodian of the vessel shall provide the person submitting a bid with a receipt for the bid.

(c) Except as otherwise provided in section 80130f(11) and (12), be held not less than 5 days after public

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notice of the sale has been published. The public notice shall be published at least once in a newspaper having a general circulation within the county in which the vessel was abandoned or on a publicly accessible website maintained by the secretary of state. The public notice shall give a description of the vessel for sale and shall state the time, date, and location of the sale.

(2) The money received from the public sale of the vessel shall be applied in the following order of priority:

(a) Accrued towing and storage charges. If the money received from the public sale does not satisfy the accrued towing, storage, and disposal fees, the towing company may collect the balance of those unpaid fees from the last titled owner or, if there is no titled owner, the last registered owner, subject to section 80130m(2) and (3).

(b) Expenses incurred by the police agency or the custodian of the vessel, for disposition as described in section 80130j(3)(a).

(c) Payment of the $40.00 in fees under section 80130j(3)(a).

(d) Sent to the department of treasury's unclaimed property division to be disbursed as follows:

(*i*) To the secured party, if any, in the amount of the debt outstanding on the vessel.

(*ii*) Remainder to the owner. A reasonable attempt shall be made to mail the remainder to the last titled owner or, if there is no titled owner, the last registered owner. If delivery of the remainder cannot be accomplished, the remainder shall become the property of the local unit of government whose police agency entered the vessel in the law enforcement information network.

(3) If there are no bidders on the vessel, the police agency or the custodian of the vessel may do 1 of the following:

(a) Turn the vessel over to the towing firm or the custodian of the vessel to satisfy charges against the vessel by completing the release form under section 80130g. However, if the value of the vessel does not satisfy the accrued towing, storage, and disposal fees, the custodian of the vessel may collect the balance of those unpaid fees from the last titled owner or, if there is no titled owner, the last registered owner, subject to section 80130m.

(b) Obtain title to the vessel for the police agency or the unit of government the police agency represents, by doing both of the following:

(*i*) Paying the towing and storage charges.

(*ii*) Applying for title to the vessel.

(c) Holding another public sale under subsection (1).

(4) Upon disposition of the vessel, the police agency or towing agency or custodian shall provide the secretary of state and the police agency, if that police agency did not conduct the sale, with the vessel's disposition and the name of the agency that disposed of it and the police agency shall cancel the entry in the law enforcement information network under section 80130f or 80130h, if applicable.

(5) If by 25 days after the date of notice required under section 80130f the police agency has not provided a copy of the bill of sale by the police agency for the abandoned vessel to the towing agency or custodian or police agency's designee, the towing agency or custodian or police agency designee may obtain an original of the bill of sale by submitting an application to the secretary of state in a form as determined by the secretary of state.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

324.80130l Abandoned vessel, ORV, and snowmobile fund.

Sec. 80130*l*. (1) The abandoned vessel, ORV, and snowmobile fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and other earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of state shall be the administrator of the fund for auditing purposes.

(5) The department of state shall expend money from the fund, upon appropriation, to administer sections 80130f to 80130p, 81151, and 82161 and other provisions of this act relating to abandoned vessels, ORVs and snowmobiles.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80130m Towing or storage fees.

Sec. 80130m. (1) A towing service, custodian of a vessel, or both, may recover towing fees or, subject to subsection (2), storage fees from the last titled owner or, if there is no titled owner, the last registered owner of a vessel considered abandoned under section 80130f or section 80130g or removed under section 80130h.

(2) If a vessel is released for disposition under section 80130g or section 80130k, the amount of storage fees that may be collected is the least of the following:

(a) The daily storage rate established by contract or agreement with the law enforcement agency or unit of government that authorized the towing and storage of the vessel.

(b) The daily storage rate charged by the storage facility.

(c) $1,000.00.

(3) Subsection (2) does not apply to a commercial vessel or a vessel that is owned or leased by an entity other than an individual.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130n Applicability of MCL 324.80130f and 324.80130g.

Sec. 80130n. Sections 80130f and 80130g do not apply to a vessel that is owned by the person who owns the private real property on which the vessel is located and do not prohibit or preempt a local unit of government from regulating the number and placement of vessels on private property.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130o Notice of towing or removal of vessel; posting; requirements; use of term "vehicles."

Sec. 80130o. (1) Except as otherwise provided in section 80130p, an owner or lessor of private real property shall post a notice before authorizing the towing or removal of a vessel from the real property without the consent of the owner or other person who is legally entitled to possess the vessel. The notice shall meet all of the following requirements:

(a) Be prominently displayed at each point of entry for vehicular access to the real property. If the real property lacks curbs or access barriers, not less than 1 notice shall be posted for each 100 feet of road frontage.

(b) Subject to subsection (2), clearly indicate in letters not less than 2 inches high on a contrasting background that unauthorized vessels will be towed away at the owner's expense.

(c) Provide the name and telephone number of the towing service responsible for towing or removing vessels from that property.

(d) Be permanently installed with the bottom of the notice located not less than 4 feet from the ground and continuously maintained on the property for not less than 24 hours before a vessel is towed or removed.

(2) Instead of "vessels", the sign required under subsection (1) may use the term "vehicles", which shall be construed to give notice that vehicles as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79, as well as vessels, may be towed.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80130p Applicability of MCL 324.80130o.

Sec. 80130p. Section 80130o does not apply to any of the following:

(a) Real property that is appurtenant to and obviously part of a single- or dual-family residence.

(b) If notice of both of the following is personally given to the owner or other person legally entitled to control of a vessel:

(*i*) That the area where the vessel is parked is reserved or otherwise unavailable to unauthorized vessels.

(*ii*) That the vessel is subject to towing or removal from the private real property without the consent of the vessel owner or other person legally entitled to control of the vessel.

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(c) A vessel removed from private property under section 80130h.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80131 Violation of part or ordinance; record of charge or citation; forwarding abstracts or report to secretary of state; statement; certification; noncompliance; public inspection; basis for issuing order; transmitting and entering order of reversal; modifying requirements.

Sec. 80131. (1) Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of this part or of a local ordinance corresponding to this part regulating the operation of vessels.

(2) Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating this part or a local ordinance corresponding to this part regulating the operation of vessels, except as provided in subsection (11), the municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to this part, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.

(3) The abstract or report required under this section shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name, address, and date of birth of the person charged or cited.

(b) The date and nature of the violation.

(c) The type of vessel operated at the time of the violation.

(d) The date of the conviction, finding, forfeiture, judgment, or determination.

(e) Whether bail was forfeited.

(f) Any order issued by the court pursuant to this part.

(g) Other information considered necessary to the secretary of state.

(4) As used in subsections (5) to (7), "felony in which a vessel was used" means a felony during the commission of which the person operated a vessel and while operating the vessel presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

(a) The vessel was used as an instrument of the felony.

(b) The vessel was used to transport a victim of the felony.

(c) The vessel was used to flee the scene of the felony.

(d) The vessel was necessary for the commission of the felony.

(5) If a person is charged with a felony in which a vessel was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court:

"You are charged with the commission of a felony in which a vessel was used. If you are convicted and the judge finds that the conviction is for a felony in which a vessel was used, as defined in section 80131 of the natural resources and environmental protection act, the secretary of state will order you not to operate a vessel on the waters of this state.".

(6) If a child is accused of an act the nature of which constitutes a felony in which a vessel was used, the prosecuting attorney or juvenile court shall include the following statement on the petition filed in the probate court:

"You are accused of an act the nature of which constitutes a felony in which a vessel was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a vessel was used, as defined in section 80131 of the natural resources and environmental protection act, the secretary of state will order you not to operate a vessel on the waters of this state.".

(7) If the judge or juvenile court referee determines as part of the sentence or disposition that the felony for which the defendant was convicted or adjudicated and with respect to which notice was given pursuant to subsection (5) or (6) is a felony in which a vessel was used, the clerk of the court shall forward an abstract of the court record of that conviction or adjudication to the secretary of state.

(8) Every person required to forward abstracts to the secretary of state under this section shall certify for

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the period from January 1 through June 30 and for the period from July 1 through December 31 that all abstracts required to be forwarded during the period have been forwarded. The certification shall be filed with the secretary of state not later than 28 days after the end of the period covered by the certification. The certification shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name and title of the person required to forward abstracts.

(b) The court for which the certification is filed.

(c) The time period covered by the certification.

(d) The following statement:

"I certify that all abstracts required by section 80131 of the natural resources and environmental protection act for the period _____ through _____ have been forwarded to the secretary of state.".

(e) Other information the secretary of state considers necessary.

(f) The signature of the person required to forward abstracts.

(9) The failure, refusal, or neglect of a person to comply with this section constitutes misconduct in office and is grounds for removal from office.

(10) Except as provided in subsection (11), the secretary of state shall keep all abstracts received under this section at the secretary of state's main office, and the abstracts shall be open for public inspection during the office's usual business hours. The secretary of state shall enter each abstract upon the boating record of the person to whom it pertains and shall record the information in a manner that makes the information available to peace officers through the law enforcement information network.

(11) The court shall not submit, and the secretary of state shall discard and not enter on the boating record, an abstract for a conviction or civil infraction determination for a violation of this part that could not be the basis for the secretary of state's issuance of an order not to operate a vessel on the waters of this state. The secretary of state shall discard and not enter on the boating record an abstract for a bond forfeiture that occurred outside this state.

(12) The secretary of state shall inform the court of the violations of this part that are used by the secretary of state as the basis for issuance of an order not to operate a vessel on the waters of this state.

(13) If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination.

(14) The secretary of state may permit a city or village department, bureau, person, or court to modify the requirement as to the time and manner of reporting a conviction, civil infraction determination, or settlement to the secretary of state if the modification will increase the economy and efficiency of collecting and utilizing the records. If the permitted abstract of court record reporting a conviction, civil infraction determination, or settlement originates as a part of the written notice to appear, authorized in section 80168, the form of the written notice and report shall be as prescribed by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80132 Applicability of MCL 324.80134 and 324.80135; applicability of section.

Sec. 80132. (1) Sections 80134 and 80135 apply to a vessel operated on waters subject to the jurisdiction of this state when the vessel is either of the following:

(a) Operated by its operator for recreational purposes.

(b) Required to be numbered in this state.

(2) This section does not apply to a vessel required to have a certificate of inspection under chapter I of title 46 of the Code of Federal Regulations.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80133 Casualty involving vessel; assistance to injured persons.

Sec. 80133. (1) The operator of a vessel involved in a collision, accident, or other casualty, and the operator of any other vessel, to the extent that he or she can do so without serious danger to his or her own vessel, crew, and passengers, shall render reasonable assistance to a person affected by the collision, accident,

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or other casualty, including the transporting of the injured person to a physician or surgeon for medical or surgical treatment, if it is apparent that treatment is necessary or when requested by the injured person.

(2) A person who complies with subsection (1), or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of the person assisted, is not liable for civil damages as a result of the rendering of assistance, or for an act or omission in providing or arranging towage, medical treatment, or other assistance, if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80134 Casualties involving vessels; exchange of identification.

Sec. 80134. In the case of collision, accident, or other casualty involving a vessel, the operator shall stop his or her vessel and give his or her name and address and identification of his or her vessel, and the name and address of the owner of the vessel if he or she is not the operator, to the operator or occupants of any other vessel involved or to the owner or his or her agents of any property damaged by the accident.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80134a Accident involving serious impairment of body function or death; remaining at scene of accident; violation as felony; "serious impairment of a body function" defined.

Sec. 80134a. (1) The operator of a vessel who knows or who has reason to believe that he or she has been involved in an accident resulting in serious impairment of a body function or death of a person shall immediately stop his or her vessel at the scene of the accident and shall remain there until the requirements of sections 80133 and 80134 are fulfilled.

(2) Except as provided in subsection (3), a person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or by a fine of not more than $5,000.00, or both.

(3) A person who violates subsection (1) following an accident caused by that person that results in the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(4) As used in this section, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

History: Add. 2003, Act 231, Eff. Apr. 1, 2004.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80135 Casualty involving vessel; report.

Sec. 80135. (1) In the case of collision, accident, or other casualty involving a vessel, the operator shall report the collision, accident, or other casualty to the nearest peace officer, state police post, or the sheriff of the county in which the collision, accident, or other casualty occurred.

(2) A report of a collision, accident, or other casualty involving a vessel that is made to a peace officer other than the sheriff of the county in which the collision, accident, or other casualty occurred shall be reported without delay by the peace officer to the sheriff of the county in which the collision, accident, or other casualty occurred.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80136 Peace officer receiving report or investigating casualty involving vessel; report to department and county sheriff; form and contents.

Sec. 80136. A peace officer receiving a report or investigating the collision, accident, or other casualty involving a vessel shall prepare and submit within 15 days a complete report thereof to the department and the

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sheriff of the county where the collision, accident, or other casualty involving a vessel occurred, in a form and containing such information as the department may require.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80137 Casualty reports involving vessel; use; fee; copies; admissibility in court.

Sec. 80137. All collision, accident, or other casualty reports involving a vessel shall be without prejudice and shall be for the information of the department. Any person upon the payment of $2.00 to the department shall be furnished a copy of the report. The report required in section 80136 is not admissible in a court.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80138 Transmission of information for analytical or statistical purposes.

Sec. 80138. In accordance with a request by an authorized official or agency of the United States or by the department, information compiled or otherwise available to the secretary of state and the department under this part shall be transmitted to the official or agency of the United States or to the department for analytical and statistical purposes.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80139 Rules.

Sec. 80139. The department shall promulgate rules to establish a state vessel collision, accident, or other casualty reporting system in conformity with that established by the United States coast guard.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

Administrative rules: R 281.1221 et seq. of the Michigan Administrative Code.

324.80140 Educational programs; establishment; youthful boat operators training program; certificates of completion; information to be included in program.

Sec. 80140. (1) In order to protect the public interest in the prudent and equitable use of the waters of this state and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of the state, the department shall establish and pursue comprehensive educational programs designed to advance boating and general water safety.

(2) The department shall put into effect a program to train youthful boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the department may designate as its agent any person it considers qualified to act in this capacity. A charge shall not be made for any instruction given or for the award of boating safety certificates.

(3) The department shall include in its educational programs under this section all of the following:

(a) Information on proper marine fueling techniques.

(b) Information on the problems that marine fuel spillage may cause to water bodies.

(c) Information on how and where to report a marine fuel spill.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 95, Imd. Eff. May 7, 2004.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80141 Operation of motorboat by person less than 12 years of age; operation of motorboat by person on or after July 1, 1996; certification required; electronic verification;

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consent to search; liability.

Sec. 80141. (1) In addition to the requirements of subsection (2), a person less than 12 years of age shall not operate a motorboat that is powered by a motor or motors totaling more than 6 horsepower on the waters of this state unless both of the following requirements are met:

(a) He or she is under the direct supervision of a person on board the motorboat who is 16 years of age or older and who, if born on or after July 1, 1996, has been issued a boating safety certificate.

(b) The motorboat is powered by a motor or motors totaling no more than 35 horsepower.

(2) Subject to subsection (4), a person born on or after July 1, 1996 shall not operate a motorboat that is powered by a motor or motors totaling more than 6 horsepower on the waters of this state unless the person has been issued a boating safety certificate.

(3) A person operating or supervising the operation of a motorboat as described in this section shall present the boating safety certificate issued to him or her or, at the person's option, an electronic copy, in a format approved by the department, of a boating safety certificate issued to him or her, upon the demand of a peace officer who identifies himself or herself as a peace officer.

(4) An individual who, under subsection (3), displays an electronic copy of his or her boating safety certificate using an electronic device is not presumed to have consented to a search of the electronic device. This state, an employee of this state, a peace officer, or an entity employing the peace officer is not liable for damage to or loss of an electronic device that occurs as a result of the peace officer's viewing an electronic copy of a boating safety certificate as provided in this section, regardless of whether the peace officer was in possession of the electronic device at the time the damage or loss occurred.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2012, Act 120, Eff. Nov. 1, 2012;—Am. 2018, Act 400, Eff. Mar. 19, 2019.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80142 Wearing of personal flotation device by child required; exception; "charter boat" and "class C vessel" defined; violation; fine.

Sec. 80142. (1) Except as provided in subsection (3), a person shall not operate a vessel on the waters of this state unless each person in an open deck area on board the vessel who is less than 6 years of age is wearing a type I or type II personal flotation device as described in R 281.1234 of the Michigan administrative code.

(2) A parent or guardian of a child less than 6 years of age who accompanies that child on board a vessel that is not a charter boat described in subsection (3) shall ensure that the child is wearing a personal flotation device that complies with this section.

(3) This section does not apply to a charter boat bearing either of the following:

(a) A valid certificate of inspection issued by the United States coast guard that verifies the charter boat's compliance with subchapter H or subchapter T of the code of federal regulations, 46 C.F.R. 70.01-1 to 80.40 and 175.01-1 to 185.30-30.

(b) A valid certificate of inspection issued by the department for a class C vessel that is greater than 45 feet in length.

(4) As used in this section, "charter boat" and "class C vessel" mean those terms as defined in section 44501.

(5) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80143 Barge; lights; number; placement; position; barges moored together; limitation; order to move moored vessel; violation as misdemeanor; penalty; costs; definitions.

Sec. 80143. (1) The owner of a barge shall place his or her name, address, and telephone number on a prominent place on the hull of the barge in letters that are light-reflective, in a contrasting color to the hull, and not less than 6 inches in height.

(2) In addition to the other lighting requirements of this chapter and subject to subsection (3), the operator of a barge shall ensure that the barge is properly lit with 4 or more white lights during the period from sunset

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to sunrise and as practicable during all periods of limited visibility if any of the following apply:

(a) The barge projects into a restricted channel or into a channel established by buoys.

(b) The barge is moored so that it reduces the available navigable width of a channel.

(c) The barge is not parallel to the bank or dock to which it is moored.

(d) The barge is moored as part of a group of 2 or more barges.

(3) The lights on a barge described in subsection (1) shall be placed as follows if either of the following applies:

(a) If the barge or group formation of barges is positioned so that vessels may navigate on 1 or more sides of the barge or group formation of barges, the lights shall be displayed on each outside corner of the barge or group formation of barges.

(b) If the barge projects from a group formation of barges, the lights shall be displayed on the corners of the projecting barge that are outboard of the group.

(4) Lights used under this section shall meet the requirements of R 281.1233 of the Michigan administrative code and shall be positioned in such a manner and be of sufficient intensity as to be visible from any direction for at least 1 nautical mile at night under clear conditions.

(5) A group of barges shall not be moored together if the total width of those barges would exceed 82 feet.

(6) The department or a local authority may order a vessel moored in violation of this section that poses a hazard to navigation to be immediately moved and, if the vessel is not moved as ordered, may move or cause the vessel to be moved, with the owner subject to the payment of costs under subsection (8).

(7) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $10,000.00, or both. For purposes of this subsection, each 24-hour period that a violation exists constitutes a separate violation.

(8) The court shall order a person convicted of violating this section to pay the actual and reasonable costs incurred by this state or a local unit of government in moving a vessel under subsection (6).

(9) As used in this section:

(a) "Barge" means a flat-bottomed displacement vessel that is used to carry cargo or as a work platform, whether or not it operates under its own power.

(b) "Operator" includes a person in command of a barge while it is moored.

History: Add. 2012, Act 59, Eff. Nov. 1, 2012.

Compiler's note: Former MCL 324.80143, which pertained to requirements for operation of personal watercraft, was repealed by Act 263 of 1998, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80143a Carrying, storing, maintaining, and using marine safety equipment onboard vessel; violation as civil infraction; fine.

Sec. 80143a. A person who operates a vessel, or the owner of a vessel who operates or causes or permits the vessel to be operated, on the waters of this state shall carry, store, maintain, and use marine safety equipment onboard the vessel as required by the department. A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

History: Add. 2012, Act 58, Eff. Nov. 1, 2012.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80144 Operation of vessels; rules; violation; fine.

Sec. 80144. (1) When vessels are being operated in such a manner as to make collision imminent or likely, the following apply:

(a) When 2 vessels are approaching each other head-on, or nearly so, the operator of each shall cause his or her vessel to pass on the port side of the other.

(b) When overtaking a vessel proceeding in the same direction, the operator of the overtaking vessel, unless it is not feasible to do so, shall pass on the port side of the vessel ahead.

(c) When 2 vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when 1 vessel is overtaking another, the operator of the vessel that has the other on his or her own port side shall hold his or her course and speed, and the operator of the vessel that has the other on his or her own starboard side shall give way to the other by directing his or her course to starboard so as to cross the

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stern of the other vessel or, if necessary to do so, shall slacken his or her speed, stop, or reverse.

(d) When a motorboat and a vessel under sail are proceeding in a manner that involves a risk of collision, the operator of the motorboat shall give way to the vessel under sail.

(e) When a motorboat and a vessel not propelled by sail or mechanical means are proceeding in a manner that involves risk of collision, the operator of the motorboat shall give way to the other vessel.

(f) When, by any of the rules provided in this section, the operator of a vessel is required to give way to the other, the operator of the other vessel shall maintain his or her direction and speed.

(2) This section does not relieve the operator of a vessel otherwise privileged by this section from the duty to operate with due regard for the safety of all persons using the waters of this state.

(3) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80145 Operation of vessels; speed; interference with use of waters by others; violation; fine.

Sec. 80145. A person operating or propelling a vessel upon the waters of this state shall operate it in a careful and prudent manner and at such a rate of speed so as not to endanger unreasonably the life or property of any person. A person shall not operate any vessel at a rate of speed greater than will permit him or her, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. A person shall not operate a vessel in a manner so as to interfere unreasonably with the lawful use by others of any waters. A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80146 Maximum or unlimited vessel speed; rules; maximum vessel speed where limits not established; exceptions; resolution requesting reduction in maximum speed limit; emergency conditions; temporary speed limit requirements; time limitations; declaration of state emergency; requiring slow—no wake speed or minimum speed; violation; fine; exceptions; waiver.

Sec. 80146. (1) The department may promulgate rules to establish maximum vessel speed limits or to allow unlimited vessel speed on the waters of this state.

(2) On waters of this state for which a vessel speed limit is not established under subsection (1), for which the department has not established an unlimited vessel speed limit, and for which stricter speed restrictions are not established pursuant to another act, the maximum speed limit is 55 miles per hour, except as follows:

(a) In an emergency as determined by local government authority.

(b) For conservation officers and other peace officers when engaged in official duties.

(c) In the Great Lakes and Lake St. Clair, except for an area within 1 mile of the shoreline measured at a right angle from the shoreline.

(3) Upon receipt of a resolution by the governing body of a local unit of government having jurisdiction over waters of this state requesting a reduction in the maximum speed limit on those waters, the department, pursuant to sections 80108 and 80109 to 80113, may establish a maximum speed limit not to exceed 40 miles per hour on those waters.

(4) Upon receipt of a resolution of the governing body of a county or municipality requesting a reduction in the maximum vessel speed limit to protect life and property during emergency conditions, the department, the county emergency management coordinator, or the county sheriff may establish a temporary reduced maximum vessel speed limit on waters of this state located in the county or municipality. In that case, the department, emergency management coordinator, or sheriff, respectively, shall do all of the following:

(a) Specify a maximum fine for violating the temporary speed limit. The maximum fine shall not be greater than $100.00 for a first violation of a temporary speed limit established by that authority or $500.00 for a second or subsequent violation.

(b) Notify the other authorities authorized to issue temporary speed limits under this subsection of the

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temporary speed limit.

(c) Post the temporary speed limit, the maximum fine, and a description of the affected waters on its website.

(d) Subject to section 80159, place buoys sufficient to advise vessel operators of the temporary speed limit.

(5) A person who violates a temporary speed limit established by the department under subsection (4) is responsible for a state civil infraction and subject to a civil fine as specified pursuant to subsection (4). A person who violates a temporary speed limit established by an emergency management coordinator or sheriff is responsible for a municipal civil infraction and subject to a civil fine as specified pursuant to subsection (4).

(6) A temporary speed limit under subsection (4) shall remain in effect for not more than 14 days. A temporary speed limit may be reissued once per calendar year. However, a temporary speed limit may be reissued twice per calendar year if, before adopting the resolution requesting the second reissuance, the county or municipality submitted to the department an application and resolution for a temporary ordinance under section 80112a in lieu of the temporary speed limit under subsection (4). Temporary speed limits under subsection (4) shall only be in effect during the period from September 1 to June 20. However, a temporary speed limit may be in effect during the period from June 21 to June 30 if it is the first or second reissuance of a temporary speed limit and if, before adopting the resolution requesting that reissuance, the county or municipality submitted to the department an application and resolution for a temporary ordinance under section 80112a in lieu of the temporary speed limit under subsection (4).

(7) A temporary speed limit under subsection (4) shall not prohibit the use of any type of vessel.

(8) During a state of emergency or disaster declared by the governor pursuant to law, the governor may establish restricted wake zones if necessary and appropriate to address emergency or disaster conditions.

(9) A person shall not operate a vessel on the waters of this state at a speed greater than slow—no wake speed or the minimum speed necessary for the vessel to maintain forward movement when within 100 feet of the shoreline where the water depth is less than 3 feet, as determined by vertical measurement, except in navigable channels not otherwise posted.

(10) A person who violates subsection (2) or (3) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00, unless 1 of the following conditions exists:

(a) The requirements of this section have been waived as described under subsection (11).

(b) The person violates this section in a manner that constitutes reckless operation of a vessel as described in section 80147.

(11) The department may waive the requirements of this section and section 80156 for marine events authorized by the department under section 80164.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007;—Am. 2020, Act 70, Imd. Eff. Apr. 2, 2020.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80147 Reckless operation of vessels; penalty.

Sec. 80147. (1) If a person carelessly and heedlessly operates a vessel upon the waters of this state in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a vessel and is subject to the penalties described in subsection (3).

(2) If a person, while being towed on water skis, a water sled, a surfboard, or a similar contrivance upon the waters of this state, carelessly and heedlessly navigates, steers, or controls himself or herself in disregard of the rights or safety of others or without due caution and circumspection and in a manner that endangers or is likely to endanger a person or property, then that person is guilty of reckless operation of the contrivance that he or she controls is subject to the penalties described in subsection (3).

(3) Upon a person's conviction under this section, the court may issue an order prohibiting that person from operating a vessel on the waters of this state for a period of not more than 2 years. Upon a person's subsequent conviction under this section, the court shall order that person to participate in and complete a marine safety educational program approved by the department. An order issued pursuant to this subsection is in addition to any other penalty authorized under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80148 Operating motorboat at more than slow—no wake speed; prohibitions; exceptions.

Sec. 80148. (1) Subject to the exceptions described in subsection (2), a person shall not operate a motorboat at more than slow—no wake speed if any of the following circumstances exist:

(a) A person is located on or in the bow of the motorboat, and that motorboat is not manufactured to provide bow seating.

(b) A person or a portion of a person's body extends beyond the exterior port or starboard walls of the hull of the motorboat.

(2) This section does not apply to either of the following:

(a) A person engaged in the operation of a sailboat that is not being powered by a motor.

(b) A person on board a vessel who is attempting to anchor, moor, dock, or otherwise secure the vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80149 Operation of vessels in counter-clockwise fashion; distance between persons being towed and other objects; exception; violation as misdemeanor; violation as civil infraction; fine.

Sec. 80149. (1) A person operating a vessel on the waters of this state in areas not marked by well defined channels, canals, rivers, or stream courses shall operate the vessels in a counter-clockwise fashion to the extent that it is reasonably possible. These persons and persons being towed on water skis or on a water sled, kite, surfboard, or similar contrivance shall maintain a distance of 100 feet from any dock, raft, buoyed or occupied bathing area, or vessel moored or at anchor, except when the vessel is proceeding at a slow—no wake speed or when water skiers are being picked up or dropped off, if that operation is otherwise conducted with due regard to the safety of persons and property and in accordance with the laws of this state. Except as otherwise provided in subsection (2), a person who violates this section is guilty of a misdemeanor.

(2) A person who violates this section while on any of the following bodies of water in this state is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00:

(a) The Great Lakes.

(b) Lake St. Clair.

(c) The St. Clair river.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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324.80150 Operation of vessels; prohibited in certain areas.

Sec. 80150. A person shall not operate a vessel on any of the waters of this state within a lawfully authorized restricted area clearly marked by buoys, beacons, or other distinguishing devices as being prohibited to vessels.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80151 Towing of persons; prohibited time; violation; fine.

Sec. 80151. (1) A person operating a vessel shall not have in tow or otherwise be assisting in the propulsion of a person on water skis or on a water sled, surfboard, or other similar contrivance during the period of 1 hour after sunset to 1 hour prior to sunrise.

(2) A person shall not permit himself or herself to be towed on water skis or on a water sled, surfboard, or similar contrivance in violation of this part.

(3) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

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Popular name: Marine Safety Act

Popular name: NREPA

324.80152 Towing or assisting person prohibited; exceptions; violation; fine; subsections (1) and (3) inapplicable under certain conditions; standards; rules; certification; information to be provided; specification of bodies of water for use in practice.

Sec. 80152. (1) Except as otherwise provided in this section, a person shall not operate a vessel on the waters of this state while towing or otherwise assisting a person being towed unless both of the following conditions are met:

(a) A person capable of communicating to the vessel operator the condition and needs of the person being towed or assisted is on board the vessel and positioned to observe the person being towed or assisted.

(b) The person being towed is wearing the proper type I, type II, or type III personal flotation device, as applicable. The wearing of an inflatable personal flotation device does not satisfy this requirement.

(2) A person who violates subsection (1) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

(3) A person shall not permit himself or herself to be towed or otherwise assisted by a vessel on the waters of this state unless he or she complies with the conditions listed in subsection (1).

(4) A person who violates subsection (3) who is 16 years of age or older is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

(5) Subsections (1) and (3) do not apply to any of the following:

(a) A person who operates or who is towed by a vessel used by a ski school in the giving of instructions or a vessel used in sanctioned ski tournaments, competitions, expositions, or trials if the vessel is equipped with a 170-degree wide-angle rearview mirror affixed in a manner that will permit the operator to observe the progress of the person being towed.

(b) A person being towed by a motorboat less than 16 feet in length that is actually operated by the person being towed if the vessel is constructed to be incapable of carrying the operator in or on the motorboat.

(c) A vessel operator or the person being towed if the vessel operator is towing a person preparing for a specific water ski tournament and if all of the following conditions are met:

(*i*) The vessel operator is certified as provided in subsection (6).

(*ii*) The person being towed is certified as provided in subsection (7).

(*iii*) Towing is conducted so that, on average, not more than 1 vessel approaches within 300 feet of the towing vessel during any 5-minute period.

(*iv*) The vessel is equipped with all of the following:

(A) A center-mounted tow pylon.

(B) A large clear rearview mirror capable of allowing the vessel operator to distinguish hand signals at a distance of 75 feet.

(C) Markings that identify the vessel as a vessel that is being operated in conformance with this subdivision.

(6) The department shall adopt standards for water ski tournament boat operation established by U.S.A. water ski in "Trained Boat Driver Program", April 1997, and by the American water ski association in "Drivers' Policy Manual". However, the department may promulgate rules providing for alternative standards under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall certify each individual who satisfies the standards described in this subsection as a tournament water ski vessel operator and issue proof of that certification to the individual.

(7) The department shall adopt standards for tournament water skiers established by the Michigan water ski association in "Guidelines for Training Permit Eligibility", proposed revision 125 of 1996. However, the department may promulgate rules providing for alternative standards under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall certify each individual who satisfies the standards described in this subsection as a tournament water skier and issue proof of that certification to the individual.

(8) The Michigan water ski association shall provide annually to the department and the Michigan sheriffs association both of the following:

(a) A list of the individuals whom the organization considers qualified for tournament water skiing.

(b) The names of not more than 3 bodies of water on which each of those individuals may be authorized to practice for tournament water skiing.

(9) The department shall specify the body or bodies of water upon which a water skier may practice upon each certificate issued under subsection (7).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1999, Act 19, Imd. Eff. Apr. 30, 1999;—Am. 2012, Act 58, Eff. Nov. 1,

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2012.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80153 Vessels; use of portions unintended for occupancy prohibited; exceptions.

Sec. 80153. Any occupant or operator of any vessel under way on the waters of this state shall not sit, stand, or walk upon any portion of the vessel not specially designed for that purpose, except when immediately necessary for the safe and reasonable navigation or operation of the vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80154 Interference with operation of vessel by nonoccupant.

Sec. 80154. A person not in a boat shall not intentionally rock, tip, jostle, or otherwise interfere with the operation of any vessel, except under supervised training.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80155 Divers; marking point of submergence; distance from diver's flag.

Sec. 80155. Any person diving or submerging in any of the waters of this state with the aid of a diving suit or other mechanical diving device shall place a buoy or boat in the water at or near the point of submergence. The buoy or boat shall bear a red flag not less than 14 inches by 16 inches with a 3-1/2 inch white stripe running from 1 upper corner to a diagonal lower corner. The flag shall be in place only while actual diving operations are in progress. A vessel shall not be operated within 200 feet of a buoyed diver's flag unless it is involved in tendering the diving operation. A person diving shall stay within a surface area of 100 feet of the diver's flag.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80156 Motorboat; muffler or underwater exhaust system required; maximum sound levels; test and maximum decibel levels; new motorboat to comply with prescribed sound levels; exceptions; "dB(A)" defined; violation and penalties.

Sec. 80156. (1) Subject to subsection (2), a person shall not operate a motorboat on the waters of this state unless the motorboat is equipped and maintained with an effective muffler or underwater exhaust system that does not produce sound levels in excess of 90 dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005 or a sound level in excess of 75 dB(A) when subjected to a shoreline sound level measurement procedure as described by SAE J1970. The operator of a motorboat shall present the motorboat for a sound level test as prescribed by SAE J2005 upon the request of a peace officer. If a motorboat is equipped with more than 1 motor or engine, the test shall be performed with all motors or engines operating. To determine whether a person is violating this subsection, a peace officer may measure sound levels pursuant to procedures prescribed in SAE J1970, issued 1991-92.

(2) The department may by rule establish a motorboat sound level test and set a maximum decibel level or levels permitted for motorboat operation that replace the tests and maximum decibel levels permitted under subsection (1). If a test and maximum decibel level or levels are established pursuant to this subsection, all of the following apply:

(a) A person shall not operate a motorboat on the waters of this state if the motorboat produces sound levels that exceed the maximum decibel level or levels established under this subsection.

(b) The operator of a motorboat shall present the motorboat for the sound level test established pursuant to this subsection upon the request of a peace officer.

(c) A motorboat equipped with more than 1 motor or engine shall be tested with all motors or engines operating.

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(3) A person shall not manufacture, sell, or offer for sale a motorboat for use on the waters of this state unless that motorboat is equipped and maintained with an effective muffler or underwater exhaust system that complies with the applicable sound levels permitted under subsection (1) or (2).

(4) Subsections (1) and (2) do not apply to any of the following:

(a) A motorboat tuning up or testing for or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate unit of government.

(b) A motorboat being operated by a boat or marine engine manufacturer for the purpose of testing or development.

(c) A motorboat that qualifies as an historic vessel.

(5) As used in this section, "dB(A)" means decibels on the "A" scale on a sound meter having characteristics of a general purpose sound meter as defined by American national standards institute S1.4-1983.

(6) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00. A person who violates this section a second or subsequent time is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days and a fine of not less than $100.00 or more than $500.00. Additionally, before putting the motorboat back in use, a person who violates this section is required to install an effective muffler or underwater exhaust system that meets the requirements of this section on the motorboat in violation at his or her expense.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 274, Imd. Eff. June 17, 1996;—Am. 2022, Act 23, Eff. June 8, 2022.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80157 Liability of vessel owner for negligent operation; presumption of consent to use.

Sec. 80157. The owner of a vessel is liable for any injury occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the statutes of this state, or in the failure to observe such ordinary care in the operation as the rules of the common law require. The owner is not liable unless the vessel is being used with his or her expressed or implied consent. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80158 Responsibility of vessel owner for damage caused by vessel wake.

Sec. 80158. The owner of any vessel operated upon the waters of this state is personally responsible for any damage to life or property resulting from a wake or swell created by the negligent operation or propulsion of the vessel, if the vessel is being operated with his or her consent.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80159 Buoys or beacons; permit for placement; application; revocation; removal.

Sec. 80159. A person shall not place a beacon or buoy, other than a mooring buoy, in the waters of this state except as authorized by a permit issued by the department pursuant to part 13. The department may issue a permit for the placing of buoys or beacons in the waters of this state to mark obstruction to navigation, to designate bathing areas, to designate vessel anchorages, or for any other purpose if it will promote safety or navigation. An application for a permit shall contain information required by the department. If buoys or beacons are placed in the waters of this state without a permit having been issued, the department may order their removal. If, in the judgment of the department, buoys or beacons authorized by the department are found to be improperly placed, the reason for their placement no longer exists, or the buoys or beacons do not conform to the uniform system of marking established by state regulation, the department may revoke the permit authorizing their placement and may order their removal. Revocation of permits and orders of removal shall be by written notice to the person placing the buoys or beacons or to the person to whom the permit was

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issued at his or her last known address, directing the removal within a specified time. The person to whom the notice is directed shall remove the buoys or beacons in accordance with the instructions. If the person fails to remove the buoys or beacons within the specified time, the department may cause their removal, and the cost and expense of the removal shall be charged against the person authorized to place the buoys or beacons or, where authorization has not been granted, the person placing such buoys or beacons and shall be recoverable through any court of competent jurisdiction.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80160 Buoys or beacons; uniform marking system.

Sec. 80160. The department shall establish a uniform waterway marking system for the marking of all buoys and beacons authorized by this part to be placed in the waters of this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80161 Buoys or beacons; compliance with federal law or regulations; permits.

Sec. 80161. Sections 80159 and 80160 do not exempt any person from compliance with applicable federal law or regulation, and sections 80159 and 80160 do not require the securing of a state revocable permit if a permit therefor has been obtained from an authorized agency of the United States.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80162 Buoys or beacons; use as moorings; moving, removal or damaging.

Sec. 80162. A person shall not moor or fasten a vessel to a lawfully placed buoy or beacon, except mooring buoys, or willfully move, remove, or damage such a buoy or beacon.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80163 Anchored raft or other item or material; relocation or removal as navigation hazard; costs; failure to pay; lien.

Sec. 80163. (1) If an anchored raft or other item or material, whether floating free or attached to the bottomland or a shoreline, presents a hazard to navigation, the department or a peace officer with jurisdiction over the body of water where the anchored raft or other item or material is located may relocate or remove it or may order its relocation or removal.

(2) The person who owns or who caused a navigational hazard that is relocated or removed under subsection (1) is liable to pay the actual and reasonable costs of relocation or removal. The department or the law enforcement agency with jurisdiction over the body of water where the navigational hazard was located may send written notice of the relocation or removal under subsection (1) and the associated costs to the person determined to own or to have caused the navigational hazard. If the owner or person who caused the navigational hazard fails to pay the costs within 30 days of the date the written notice is mailed, the costs may become a lien against the person's property.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2010, Act 101, Imd. Eff. June 22, 2010.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80164 Regattas; rules; permit; authorization; applications.

Sec. 80164. The department may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions, or trials for those events, on any waters of this state. The department

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shall promulgate and may amend rules concerning the conduct of such marine events. Whenever a regatta, motorboat or other boat race, marine parade, tournament, or exhibition, or trials for those events, is proposed to be held, the person in charge of the event, at least 30 days prior to the event, shall file an application with the department for permission to hold the regatta, motorboat or other boat race, marine parade, tournament, exhibition, or trials. The application shall set forth the date, time, and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without the written authorization of the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80164a Personal flotation device and throwable flotation device; exception from requirements.

Sec. 80164a. The requirements for having a personal flotation device and a throwable flotation device in a vessel do not apply to a person in a racing shell or rowing scull.

History: Add. 2010, Act 298, Imd. Eff. Dec. 16, 2010.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80165 Regattas, races, or trials; compliance with federal law or regulation; permit; waiver.

Sec. 80165. Section 80164 does not exempt a person from compliance with an applicable federal law or regulation, and it shall not be construed to require the securing of a state permit if a permit for an event, exhibition, or trial described in section 80164 has been obtained from an authorized agency of the United States. The department in its permit may waive the provisions of sections 80122, 80144, 80146, 80149, 80151, 80152, and 80156, as well as the registration provisions of the laws of this state, and any of the rules promulgated by the department under this part, to the extent that they apply to vessels participating in races, regattas, or trials sanctioned by the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80166 Peace officers; stopping of vessels; duty of operator; reasonable suspicion; furnishing false information as misdemeanor; arrest without warrant.

Sec. 80166. (1) Upon the direction of a peace officer acting in the lawful performance of his or her duty, the operator of a vessel moving on the waters of this state shall immediately bring the vessel to a stop or maneuver it in a manner that permits the peace officer to come beside the vessel. The operator of the vessel shall do the following upon the request of the peace officer:

(a) Provide his or her correct name and address.

(b) Exhibit the certificate of number awarded for the vessel.

(c) If the vessel does not bear a decal described in section 80166a or an equivalent decal issued by or on behalf of another state, submit to a reasonable inspection of the vessel and to a reasonable inspection and test of the equipment of the vessel.

(2) A peace officer shall not stop and inspect a vessel bearing the decal described in section 80166a or an equivalent decal issued by or on behalf of another state during the period the decal remains in effect unless that peace officer has a reasonable suspicion that the vessel or the vessel's operator is in violation of a marine law or is otherwise engaged in criminal activity.

(3) A person who is detained for a violation of this part or of a local ordinance substantially corresponding to a provision of this part and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor.

(4) A peace officer who observes a marine law violation or the commission of a crime may immediately arrest the person without a warrant or issue to the person a written or verbal warning.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2002, Act 636, Imd. Eff. Dec. 23, 2002;—Am. 2012, Act 62, Eff. Nov. 1, 2012.

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Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80166a Agreement with United States coast guard.

Sec. 80166a. (1) The department may enter into an agreement with the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by the United States coast guard or the United States coast guard auxiliary to provide for vessel safety checks of a vessel and its equipment. An agreement entered into under this subsection shall not preclude the department, or any peace officer within his or her jurisdiction, from performing an inspection of a vessel or the vessel's equipment for enforcement purposes or courtesy purposes.

(2) An agreement entered into under this section shall specify that the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by the United States coast guard or the United States coast guard auxiliary shall provide the department with a sufficient number of vessel safety check decals for conservation officers and those counties that participate in the marine safety program. In addition to any other information that is included on a vessel safety check decal, each vessel safety check decal shall bear the likeness of the state seal of Michigan. The vessel safety check decal shall display the year in which the decal was issued and during which it is valid.

(3) Upon the completion of an inspection of a vessel or the vessel's equipment by a peace officer, the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by the United States coast guard or the United States coast guard auxiliary, the peace officer or person performing the inspection shall affix to the vessel the vessel safety check decal provided for in this section.

History: Add. 2002, Act 636, Imd. Eff. Dec. 23, 2002.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80167 Arrest without warrant; cases in which arrested person arraigned by magistrate or judge.

Sec. 80167. If a person is arrested without a warrant for any of the following, the arrested person shall, without unreasonable delay, be arraigned by a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

(a) The person is arrested upon a charge of negligent homicide.

(b) The person is arrested under section 80176(1), (3), (4), or (5), or a local ordinance substantially corresponding to section 80176(1) or (3).

(c) The person is arrested under section 80147 or a local ordinance substantially corresponding to section 80147. If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by section 80168.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80168 Arrest without warrant; notice to appear in court; time; place; appearance; acceptance of pleas.

Sec. 80168. (1) When a person is arrested without a warrant for a violation of this part punishable as a misdemeanor, or of a provision of any local ordinance or rule established in conformity with this part, under conditions not referred to in section 80167, the arresting officer shall prepare in duplicate a written notice to appear in court containing the name and address of the person, the offense charged, and the time and place when and where the person shall appear in court. If the arrested person so demands, he or she shall be arraigned by a magistrate or a district court judge as provided in section 80167 in lieu of being given the notice.

(2) The time specified in the notice to appear shall be within a reasonable time after the arrest unless the person arrested demands an earlier hearing.

(3) The place specified in the notice to appear shall be before a magistrate or a district court judge who is within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.

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(4) Appearance may be made in person, by representation, or by mail. When appearance is made by representation or mail, the magistrate or the district court judge may accept the plea of guilty or not guilty for purposes of arraignment, with the same effect as though the person personally appeared before him or her. The magistrate or the district court judge, by giving notice 5 days prior to the date of appearance, may require appearance in person at the time and place designated in the notice.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80169 Arrest without warrant; nonresidents; recognizance; receipt and summons; failure to appear; deposit of money; report; embezzlement.

Sec. 80169. (1) If a person not a resident of this state is arrested without a warrant for a violation of this part under conditions not referred to under section 80167, the officer making the arrest, upon demand of the arrested person, shall immediately take the person for arraignment by a magistrate or a district court judge in the vicinity to answer to the complaint made against him or her. If a magistrate or a district court judge is not available or an immediate trial cannot be had, the person arrested may recognize to the officer for his or her appearance by leaving with him or her not more than $200.00.

(2) The officer making the arrest shall give a receipt to the person arrested for the money deposited with him or her under subsection (1), together with a written summons as provided in section 80168.

(3) If the offender fails to appear as required, the deposit shall be forfeited as in other cases of default in bail, in addition to any other penalty provided in this part.

(4) Not more than 48 hours after taking a deposit under this section, the officer shall deposit the money with the magistrate or the district court judge named in the notice to appear, together with a report stating the facts relating to the arrest. Failure to make the report and deposit the money is embezzlement of public money.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80170 Violation by officer, magistrate, or district court judge as misconduct in office; removal from office; applicability and construction of MCL 324.80168 and 324.80169.

Sec. 80170. (1) Any officer, magistrate, or district court judge violating section 80168 or 80169 is guilty of misconduct in office and is subject to removal from office.

(2) Sections 80168 and 80169 govern all peace officers in making arrests without a warrant for violations of this part and do not prevent the execution of a warrant for the arrest of the person as in other cases of misdemeanors when it may be necessary.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80171 Violation of part or rules; penalties.

Sec. 80171. Unless otherwise specified under this part, a violation of this part or rules promulgated under this part is a misdemeanor. A political subdivision having adopted a local ordinance in conformity with this part may provide that any violation of the ordinance is a misdemeanor. Any person convicted of reckless operation of a vessel as defined in section 80147, or of operating a motorboat while under the influence of alcoholic liquor or narcotic drugs, or with any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214, in his or her body, in addition to any other penalty, may be refused by the court having jurisdiction of the violation the right of operating any motorboat on any of the waters of this state for a period of not more than 2 years.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

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324.80172 Negligent crippling or death; penalty.

Sec. 80172. A person who, by the operation of any vessel at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, injures so as to cripple or cause the death of another is guilty of a misdemeanor, and shall be imprisoned for not more than 2 years, or fined not more than $2,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80173 Felonious operation of watercraft; penalty.

Sec. 80173. A person who operates any vessel carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injures so as to cripple any person, but not causing death, is guilty of the offense of felonious operation, and shall be imprisoned for not more than 2 years, or fined not more than $2,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80174 Negligent homicide included in charge of manslaughter.

Sec. 80174. The crime of negligent homicide is included within every crime of manslaughter charged to have been committed in the operation of any vessel, and where a defendant is charged with manslaughter committed in the operation of any vessel, if the jury finds the defendant not guilty of the crime of manslaughter, the jury may render a verdict of negligent homicide.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80175 Nonresidents; secretary of state as attorney for service of summons; service; procedure; sufficiency; death; appointment of secretary of state as attorney; abatement of actions; costs; applicability to all courts.

Sec. 80175. (1) The operation by a nonresident of a vessel upon the waters of this state, or the operation on the waters of this state of a vessel owned by a nonresident if operated with his or her consent, expressed or implied, is the appointment by the nonresident of the secretary of state as his or her true and lawful attorney, upon whom may be served the summons in any action against him or her, growing out of any accident or collision in which the nonresident may be involved while operating a vessel on the waters of this state, or in which the vessel may be involved while being so operated. The operation is a signification of his or her agreement that any summons against him or her that is so served has the same legal force and validity as if served on him or her personally within this state. Service of summons shall be made by leaving a copy of the summons with the secretary of state, or his or her deputy, who shall keep a record of each process and the day and hour of service. Service shall be sufficient service upon the nonresident, if notice of the service and a copy of the summons are forthwith either served upon the defendant personally by the sheriff or constable of the county in which he or she resides or sent by certified mail by the plaintiff or his or her attorney to the defendant. If personal service of the notice and copy of summons is had upon the defendant, the officer making the service shall so certify in his or her return, which shall be filed with the court having jurisdiction of the cause. If service is made by certified mail, then the plaintiff or his or her attorney shall make an affidavit showing that he or she has made service of the notice and summons upon the defendant by certified mail, and the affiant shall attach to the affidavit a true copy of the summons and notice so served and the return receipt of the defendant and shall file the affidavit and attached papers with the court having jurisdiction of the cause. The court in which the action is pending may order such extension of time as is necessary to afford the defendant reasonable opportunity to defend the action.

(2) The death of a nonresident does not revoke the appointment by him or her of the secretary of state as his or her true and lawful attorney upon whom may be served the summons in an action against him or her

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growing out of any such accident or collision, and any action growing out of such accident or collision may be commenced or prosecuted against his or her executor or administrator duly appointed by the state, territory, or district of the United States or foreign country in which the nonresident was domiciled at the time of his or her death. Service of the summons shall be made upon the secretary of state, and personal service of such notice and the copy of the summons be upon his or her executor or administrator, in like manner, with the same force and effect as service upon the nonresident during his or her lifetime.

(3) Any action or proceeding pending in any court of this state, in which the court has obtained jurisdiction of the nonresident pursuant to this section, shall not abate by reason of the death of the nonresident, but his or her executor or administrator duly appointed in the state, territory, or district of the United States or foreign country in which he or she was domiciled at the time of his or her death, upon the application of the plaintiff in the action and upon such notice as the court may prescribe, shall be brought in and substituted in the place of the decedent, and the action or proceeding shall continue.

(4) The court shall include as taxable costs, in addition to other legal costs against the plaintiff in case the defendant prevails in the action, the actual traveling expenses of the defendant from his or her residence to the place of trial and return, not to exceed the sum of $100.00.

(5) This section applies to actions commenced in all courts of this state having civil jurisdiction, including justice courts.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80176 Operation of or authorizing operation of motorboat while under influence of alcoholic liquor or controlled substance prohibited; visible impairment; violation as felony; penalty; "serious impairment of a body function" defined; operation by person less than 21 years of age; "any bodily alcohol content" defined; requirements; "operate" defined.

Sec. 80176. (1) A person shall not operate a motorboat on the waters of this state if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance, or both.

(b) The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214.

(2) The owner of a motorboat or a person in charge or in control of a motorboat shall not authorize or knowingly permit the motorboat to be operated on the waters of this state by a person if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance, or both.

(b) The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate the motorboat is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(3) A person shall not operate a motorboat on the waters of this state when, due to the consumption of an alcoholic liquor or a controlled substance, or both, the person's ability to operate the motorboat is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person who operates a motorboat on the waters of this state in violation of subsection (1) or (3) and by the operation of that motorboat causes the death of another person is guilty of a felony, punishable by imprisonment for not more than 15 years, or a fine of not less than $2,500.00 or more than $10,000.00, or both.

(5) A person who operates a motorboat on the waters of this state in violation of subsection (1) or (3) and by the operation of that motorboat causes a serious impairment of a body function of another person is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than $1,000.00 or more than $5,000.00, or both. As used in this subsection, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

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(6) A person who is less than 21 years of age, whether licensed or not, shall not operate a motorboat on the waters of this state if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(7) A person, whether licensed or not, is subject to the following requirements:

(a) He or she shall not operate a motorboat in violation of subsection (1), (3), (4), or (5) while another person who is less than 16 years of age is occupying the motorboat.

(b) He or she shall not operate a motorboat in violation of subsection (6) while another person who is less than 16 years of age is occupying the motorboat.

(8) As used in this section, "operate" means to be in control of a vessel propelled wholly or in part by machinery while the vessel is underway and is not docked, at anchor, idle, or otherwise secured.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996;—Am. 2001, Act 12, Eff. July 1, 2001;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80177 Violation of MCL 324.80176(1); sanctions; costs.

Sec. 80177. (1) If a person is convicted of violating section 80176(1), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor and shall be punished by 1 or more of the following:

(*i*) Community service for not more than 45 days.

(*ii*) Imprisonment for not more than 93 days.

(*iii*) A fine of not less than $100.00 or more than $500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to a fine of not less than $200.00 or more than $1,000.00 and either of the following:

(*i*) Community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year.

(*ii*) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs after 2 or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years or a fine of not less than $500.00 or more than $5,000.00, or both.

(2) A term of imprisonment imposed under subsection (1)(b)(*ii*) or (1)(c) shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program. A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(3) In addition to the sanctions prescribed under subsection (1) and section 80176(4) and (5), the court may, under chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1 to 769.36, order the person to pay the costs of the prosecution. The court shall also impose sanctions under sections 80185 and 80186.

(4) A person who is convicted of violating section 80176(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days or a fine of not less than $100.00 or more than $500.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 12, Eff. July 1, 2001;—Am. 2014, Act 402, Eff. Mar. 31, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80178 Violation of MCL 324.80176(3); sanctions; costs.

Sec. 80178. (1) If a person is convicted of violating section 80176(3), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

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(*i*) Community service for not more than 45 days.

(*ii*) Imprisonment for not more than 93 days.

(*iii*) A fine of not more than $300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(*i*) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(*ii*) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs after 2 or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(*i*) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(*ii*) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(2) In addition to the sanctions prescribed in subsection (1), the court may, under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, order the person to pay the costs of the prosecution. The court shall also impose sanctions under sections 80185 and 80186.

(3) A person sentenced to perform service to the community under this section shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 12, Eff. July 1, 2001;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

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324.80178a Violation of MCL 324.80176(6); sanctions; costs.

Sec. 80178a. (1) If a person is convicted of violating section 80176(6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(*i*) Community service for not more than 360 hours.

(*ii*) A fine of not more than $250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, including a prior conviction for section 80176(6), the person may be sentenced to 1 or more of the following:

(*i*) Community service for not more than 60 days.

(*ii*) A fine of not more than $500.00.

(*iii*) Imprisonment for not more than 93 days.

(2) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(3) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80178b Violation of MCL 324.80176(7)(a) or 324.80176(7)(b); sanctions; costs.

Sec. 80178b. (1) A person who violates section 80176(7)(a) is guilty of a crime punishable as follows:

(a) Except as provided in subdivision (b), a person who violates section 80176(7)(a) is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(*i*) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this term of imprisonment shall be served consecutively. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(*ii*) Community service for not less than 30 days or more than 90 days.

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(b) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates section 80176(7)(a) is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:

(*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this term of imprisonment shall be served consecutively. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(2) A person who violates section 80176(7)(b) is guilty of a misdemeanor punishable as follows:

(a) Except as provided in subdivision (b), a person who violates section 80176(7)(b) may be sentenced to 1 or more of the following:

(*i*) Community service for not more than 60 days.

(*ii*) A fine of not more than $500.00.

(*iii*) Imprisonment for not more than 93 days.

(b) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates section 80176(7)(b) shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(*i*) Imprisonment for not less than 5 days or more than 1 year. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(*ii*) Community service for not less than 30 days or more than 90 days.

(3) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1 to 769.36.

(4) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 2014, Act 402, Eff. Mar. 31, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Popular name: Act 451

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324.80179 Enhanced sentencing based on prior convictions; conditions; attempted violation of MCL 324.80176(1), MCL 324.80176(3), or local ordinance.

Sec. 80179. (1) If the prosecuting attorney intends to seek an enhanced sentence under section 80177 or 80178 based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information filed in district court, circuit court, recorder's court, municipal court, or probate court a statement listing the defendant's prior convictions.

(2) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) A copy of the defendant's boating record.

(c) An admission by the defendant.

(3) A person who is convicted of an attempted violation of section 80176(1) or (3), or a local ordinance substantially corresponding to section 80176(1) or (3), shall be punished as if the offense had been completed.

(4) When issuing an order under this part, the secretary of state and the court shall treat a conviction of an attempted violation of section 80176(1) or (3), former section 171(1) or (3) of the marine safety act, a local ordinance substantially corresponding to section 80176(1) or (3), or a law of another state substantially corresponding to section 80176(1) or (3) the same as if the offense had been completed.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80180 Peace officer; arrest without warrant; reasonable cause; conditions; returning

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motorboat and occupants to shore; effect of not charging person receiving citation.

Sec. 80180. (1) A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vessel involved in the accident in this state while in violation of section 80176(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 80176(1), (3), or (6).

(2) A peace officer who has reasonable cause to believe that a person was operating a motorboat on the waters of this state, and that, by the consumption of alcoholic liquor, the person may have affected his or her ability to operate a motorboat, may require the person to submit to a preliminary chemical breath analysis. The following apply with respect to a preliminary chemical breath analysis:

(a) Only a peace officer who has successfully completed a training course taught by a state-certified instructor in the administration of the preliminary chemical breath analysis may administer that test.

(b) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(c) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime described in section 80187(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(d) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 80187 to 80190 for the purposes of chemical tests described in those sections.

(e) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(3) A peace officer making an arrest under this part shall take measures to assure that the motorboat and its occupants are safely returned to shore.

(4) If, not more than 60 days after the issuance of a citation for a state civil infraction under this section, the person to whom the citation is issued is not charged with a violation of section 80176(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 80176(1), (3), or (6), the citation issued for the state civil infraction is void. Upon application of the person to whom the citation is issued, money paid by the person as a fine, costs, or otherwise shall be immediately returned.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996;—Am. 2007, Act 8, Imd. Eff. May 11, 2007;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80181 Chemical test and analysis of blood, urine, or breath; collection of sample or specimen; application of administrative rules.

Sec. 80181. (1) The following apply with respect to a chemical test and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 80187(1) shall be advised of all of the following:

(*i*) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this part and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.

(*ii*) That if the person refuses the request of a peace officer to take a test described in subparagraph (*i*), the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(*iii*) That the person's refusal of the request of a peace officer to take a test described in subparagraph (*i*) will result in issuance of an order that the person not operate a vessel on the waters of this state for at least 6 months.

(2) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a

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peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in this subsection. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with this part is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner.

(3) A rule relating to a chemical test for alcohol or a controlled substance promulgated under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, applies to a chemical test administered under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80182 Chemical test; administration at request of peace officer, during medical treatment, or by medical examiner if operator of vessel is deceased; procedures.

Sec. 80182. (1) A chemical test described in section 80181 shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 80187(1). A person who takes a chemical test administered at the request of a peace officer, as provided in section 80181, shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in section 80181 within a reasonable time after the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

(2) If, after an accident, the operator of a vessel involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(3) If, after an accident, the operator of a vessel involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80183 Chemical test; introduction of other competent evidence; availability of test results.

Sec. 80183. (1) The provisions of sections 80181 and 80182 relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, alcoholic liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or whether the person had any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214, in his or her body.

(2) If a chemical test described in sections 80181 and 80182 is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996;—Am. 2014, Act 402, Eff. Mar.

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31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80184 Refusal to submit to chemical test as admissible evidence.

Sec. 80184. A person's refusal to submit to a chemical test as provided in sections 80181 and 80182 is admissible in a criminal prosecution for a crime described in section 80187(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80185 Advising defendant of penalties and sanctions; ordering screening, assessment, and rehabilitative services.

Sec. 80185. (1) Before accepting a plea of guilty or nolo contendere under sections 80176 to 80179, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to section 80130 or other evidence of a prior conviction as provided in section 80179.

(2) Before imposing sentence, other than court-ordered operating sanctions, for a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80186 Sentencing as multiple offender; consideration of prior convictions; sanctions.

Sec. 80186. Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 80176(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 80176(1), (3), or (6), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently entered upon the boating record of the person or other evidence of prior convictions established under section 80179, except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

(a) For a conviction under section 80176(4) or (5), the court shall order with no expiration date that the person not operate a motorboat on the waters of this state.

(b) For a conviction under section 80176(1) or a local ordinance substantially corresponding to section 80176(1):

(*i*) If the court finds that the person has no prior convictions within 7 years, the court may order that the person not operate a motorboat on the waters of this state for not less than 1 year or more than 2 years.

(*ii*) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate a motorboat on the waters of this state for not less than 2 years.

(*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order with no expiration date that the person not operate a motorboat on the waters of this state.

(c) For a conviction under section 80176(3) or a local ordinance substantially corresponding to section 80176(3):

(*i*) If the court finds that the convicted person has no prior conviction within 7 years, the court may order that the person not operate a motorboat on the waters of this state for not less than 6 months or more than 1

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year.

(*ii*) If the court finds that the person has 1 prior conviction within 7 years, the court shall order that the person not operate a motorboat on the waters of this state for not less than 1 year or more than 2 years.

(*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order with no expiration date that person not to operate a motorboat on the waters of this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80187 Consent to chemical tests of blood, breath, or urine; circumstances; exception; administration.

Sec. 80187. (1) A person who operates a motorboat on the waters of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

(a) The person is arrested for a violation of section 80176(1), (3), (4), (5), (6), or (7), or a local ordinance substantially corresponding to section 80176(1), (3), or (6).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a motorboat, and the peace officer had reasonable grounds to believe that the person was operating the motorboat in violation of section 80176.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) A chemical test described in subsection (1) shall be administered as provided in sections 80181 and 80182.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80188 Refusal to submit to chemical test at request of peace officer; obtaining court order; forwarding report to secretary of state.

Sec. 80188. (1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 80181 or 80182, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) If a person refuses a chemical test offered pursuant to section 80181 or 80182, the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state. The report shall state that the officer had reasonable grounds to believe the person committed a crime described in section 80187(1) and that the person refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80189 Refusal to submit to chemical test; notice of right to request hearing.

Sec. 80189. (1) If a person refuses to submit to a chemical test pursuant to section 80181 or 80182, the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in section 80190. The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a vessel on the waters of this state. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel is permitted to represent the person at the hearing.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80190 Refusal to submit to chemical test; failure to request hearing; manner and conditions of hearing if requested; record of proceedings; order; petitions to review order or to review determination of hearing officer.

Sec. 80190. (1) If a person who refuses to submit to a chemical test under section 80181 or 80182 does not request a hearing within 14 days of the date of notice under section 80189, the secretary of state shall issue an order that the person not operate a motorboat on the waters of this state for 1 year or, for a second or subsequent refusal within 7 years, for 2 years.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, 1949 PA 300, MCL 257.322. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 80188, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and, except for delay attributable to the unavailability of the defendant, a witness, or material evidence or to an interlocutory appeal or exceptional circumstances, but not for delay attributable to docket congestion, shall be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 80187(1).

(b) Whether the person was placed under arrest for a crime described in section 80187(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of his or her rights under section 80181.

(3) The hearing officer shall make a record of proceedings held under subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification of the filing of a petition for judicial review under section 80194 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a motorboat on the waters of this state for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. The person may file a petition in the circuit court of the county in which the arrest was made to review the order as provided in section 80194. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 80188 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 80194.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 402, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80191 Order not to operate vessel on waters of state; convictions requiring issuance of order by secretary of state; effectiveness of order if more than 1 conviction resulting from same incident.

Sec. 80191. (1) Notwithstanding a court order issued under section 80176(1), (3), (4), or (5), section 80185 or 80186, former section 171(1), (3), (4), or (5), 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1) or (3), section

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80185 or 80186, or former section 73 or 73b of the marine safety act, if a court has not ordered a person not to operate a vessel as authorized by this part, the secretary of state shall issue an order that the person not operate a vessel on the waters of this state for not less than 6 months or more than 2 years, if the person has the following convictions within a 7-year period, whether under the law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) One conviction under section 80176(1), former section 171(1) of the marine safety act, or former section 73 of the marine safety act.

(b) Any combination of 2 convictions under section 80176(3), former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(c) One conviction under section 80176(1), former section 171(1) or the marine safety act, or former section 73 of the marine safety act and 1 conviction under section 80176(3), former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(d) One conviction under section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act followed by 1 conviction under section 80176(3) or former section 171(3) of the marine safety act.

(2) If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident, an order not to operate shall be issued solely for that violation for which an order could be effective for the longest period of time under this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Compiler's note: In subsection (1)(c), "former section 171(1) or the marine safety act" evidently should read "former section 171(1) of the marine safety act."

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80192 Convictions requiring order with no expiration date; terminating order; multiple convictions from same incident; judicial review.

Sec. 80192. (1) Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a vessel on the waters of this state to a person having any of the following convictions, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Four convictions under section 80147, former section 74 of the marine safety act, or a local ordinance substantially corresponding to section 80147 within 7 years.

(b) Two convictions of a felony involving the use of a vessel within 7 years.

(c) Any combination of 2 convictions within 7 years for 1 or more of the following:

(*i*) A violation of section 80176(1) or former section 171(1) of the marine safety act.

(*ii*) A violation of former section 73 of the marine safety act.

(*iii*) A violation of section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act.

(d) One conviction under section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act.

(e) Any combination of 3 convictions within 10 years for 1 or more of the following:

(*i*) A violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) of the marine safety act.

(*ii*) A violation of former section 73 or former section 73b of the marine safety act.

(2) The secretary of state shall issue an order with no expiration date that a person not operate a vessel on the waters of this state notwithstanding a court order issued under section 80176, section 80185 or 80186, former section 73, 73b, 171, 181, or 182 of the marine safety act, or a local ordinance substantially corresponding to section 80176, section 80185 or 80186, or former section 73 or 73b of the marine safety act.

(3) The secretary of state shall not terminate an order with no expiration date issued under this part until both of the following occur:

(a) The later of the following:

(*i*) The expiration of not less than 1 year after the order was issued.

(*ii*) The expiration of not less than 5 years after the date of a subsequent issuance of an order with no expiration date occurring within 7 years after the date of a prior order.

(b) The person meets the requirements of the department.

(4) Multiple convictions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under this section.

(5) Judicial review of an administrative sanction under this section is governed by the law in effect at the time the offense was committed or attempted.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80193 Failure to answer citation or notice to appear in court or comply with judgment or order; notice of issuance of order without expiration date; conditions terminating order.

Sec. 80193. (1) If a person is charged with, or convicted of, a violation of section 80176(1), (2), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1), (2), or (3), and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue an order with no expiration date that the person not operate a vessel on the waters of this state. If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address.

(2) An order imposed under subsection (1) remains in effect until both of the following occur:

(a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.

(b) The person has paid to the court a $25.00 administrative order processing fee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80194 Petition for review of determination; order setting cause for hearing; service; authority and duty of court; applicability of section.

Sec. 80194. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 80190, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 80190 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to section 80190, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as provided in subsections (4) and (6), the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a vessel on the waters of this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 80190, the court shall confine its consideration to a review of the record prepared pursuant to section 80190 to determine whether the hearing officer properly determined the issues enumerated in section 80190.

(5) This section does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under section 80176, section 80185 or 80186, former sections 171, 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), or former section 73 or 73b of the marine safety

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(6) In reviewing a determination resulting in issuance of an order under section 80192(1)(c), (d), or (e), the court shall confine its consideration to a review of the record prepared pursuant to section 80190 or the boating record. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

(a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.

(b) In excess of the statutory authority or jurisdiction of the secretary of state.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80195 Petition for stay of order; entering ex parte order; terms and conditions; exception.

Sec. 80195. (1) Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under this part may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a vessel on the waters of this state for an order staying the order. Except as provided in subsection (2), the court may enter an ex parte order staying the order subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper.

(2) The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80196 Person subject to order not to operate vessel on waters of state; prohibited conduct; violation of subsection (1) as misdemeanor; penalty; extending length of order; obtaining and furnishing boating record; applicability of section; confiscating certificate of number and cancelling registration numbers.

Sec. 80196. (1) A person who is ordered not to operate a vessel on the waters of this state and who has been notified of the order by personal service or first-class mail shall not operate a vessel on the waters of this state. A person shall not knowingly permit a vessel owned by the person to be operated on the waters of this state by a person who is subject to such an order. A person who violates this subsection is guilty of a misdemeanor punishable as follows:

(a) By imprisonment for not more than 90 days or by a fine of not more than $500.00, or both.

(b) For a second or subsequent violation punishable under this subsection, by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) Upon receiving a record of the conviction of a person upon a charge of unlawful operation of a vessel while the person is subject to an order not to operate a vessel on the waters of this state, the secretary of state shall immediately extend the length of the order for an additional like period. If the secretary of state receives records of more than 1 conviction resulting from the same incident, all of the convictions shall be treated as a single violation for purposes of extending the length of an order under this subsection.

(3) Before a person is arraigned before a judge or district court magistrate on a charge of violating this section, the arresting officer shall obtain the boating record of the person from the secretary of state and shall furnish the record to the court. The boating record of the person may be obtained from the secretary of state's computer information network.

(4) This section does not apply to a person who operates a vessel solely for the purpose of protecting human life or property, if the life or property is endangered and the summoning or giving of prompt aid is essential.

(5) If a person is convicted of violating subsection (1), the court shall order confiscation of the vessel's

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certificate of number and cancellation of the vessel's registration numbers, unless the vessel was stolen or permission to use the vessel was not knowingly given. The secretary of state shall not assign a registration number to or issue a certificate of number for a vessel whose number is canceled and certificate confiscated until after the expiration of 90 days after the cancellation or confiscation, whichever is later.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80197 Impoundment of vessel; order; execution; liability for expenses; rights of conditional vendor, chattel mortgagee, or lessor of vessel.

Sec. 80197. (1) When a person is convicted under section 80196(1), the vessel, if it is owned in whole or in part by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment. An order of impoundment issued pursuant to this subsection is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vessel to the storage for insurance coverage purposes.

(2) The owner of a vessel impounded pursuant to this section is liable for expenses incurred in the removal and storage of the vessel whether or not the vessel is returned to him or her. The vessel shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vessel is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the vessel, the vessel shall be considered abandoned.

(3) Nothing in this section affects the rights of a conditional vendor, chattel mortgagee, or lessor of a vessel registered in the name of another person as owner who becomes subject to this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80197a Conviction based on plea of nolo contendere.

Sec. 80197a. A conviction based on a plea of nolo contendere shall be treated in the same manner as a conviction based on a plea of guilty or a finding of guilt for all purposes under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80198 Administrative order processing fee; disposition and allocation.

Sec. 80198. Whether with or without an expiration date, an order not to operate a vessel on the waters of this state or to operate a vessel with restrictions does not expire until the person subject to the order pays an administrative order processing fee of $125.00 to the secretary of state. The state treasurer shall deposit $10.00 of the fee in the drunk driving prevention equipment and training fund created under section 625h of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws, and $30.00 in the drunk driving caseflow assistance fund created under section 625h of Act No. 300 of the Public Acts of 1949. The state treasurer shall allocate the balance of the fee to the department of state for the administration of orders issued under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80198a Public dock, pier, wharf, or retaining wall; entry or use prohibited under certain wind conditions; barricades; notice.

Sec. 80198a. (1) When wind conditions on the Great Lakes attain a magnitude whereby 1/3 of the waves resulting from the conditions cause any public dock, pier, wharf, or retaining wall to be awash, it constitutes a state not conducive to the orderly and safe use and occupancy of those structures.

(2) When the conditions described in subsection (1) exist, any harbormaster, peace or police officer, or other authorized official may rope off or barricade entry to these structures or post in a conspicuous manner

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notices that entry on those structures for the purpose of fishing, swimming, or other recreational activity is prohibited.

(3) A person shall not knowingly enter or remain upon any public dock, pier, wharf, or retaining wall for the purpose of fishing, swimming, or other recreational activity when the structure is roped, cabled, or otherwise barricaded in a manner designed to exclude intruders, when notice against entry is given by posting in a conspicuous manner, or when notice to leave or stay off is personally communicated to that person by a peace or police officer or other authorized official of the local unit of government.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80198b Public bathing beaches; buoys required; prohibited swimming area; exception; violation; fine.

Sec. 80198b. (1) The owner or person in charge of a bathing beach maintained primarily for public use shall not knowingly permit a person to bathe or swim from the bathing beach unless buoys outlining a safe bathing or swimming area are established in accordance with section 80159.

(2) A person who is bathing or swimming from a bathing beach maintained primarily for public use shall not bathe or swim in waters that are within 100 feet beyond the buoyed bathing or swimming area. This subsection does not apply to persons swimming from adjacent privately owned beaches that are not open to the general public.

(3) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2007, Act 8, Imd. Eff. May 11, 2007.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

324.80199 Part not to affect owner's rights under laws of United States.

Sec. 80199. This part does not affect any of the rights of an owner under the laws of the United States.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Marine Safety Act

Popular name: NREPA

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PART 802
PERSONAL WATERCRAFT

324.80201 Definitions.

Sec. 80201. As used in this part:

(a) "Associated equipment" means any of the following that are not radio equipment:

(*i*) An original system, part, or component of a personal watercraft at the time that boat was manufactured, or a similar part or component manufactured or sold for replacement.

(*ii*) Repair or improvement of an original or replacement system, part, or component.

(*iii*) An accessory or equipment for, or appurtenance to, a personal watercraft.

(*iv*) A marine safety article, accessory, or equipment intended for use by a person on board a boat.

(b) "Boat livery" means that term as defined in section 44501.

(c) "Boating safety certificate" means either of the following:

(*i*) The document issued by the department under this part that certifies that the individual named in the document has successfully completed a boating safety course and passed an examination approved and administered as required under section 80211.

(*ii*) A document issued by the United States coast guard auxiliary that certifies that the individual named in the document has successfully completed a United States coast guard auxiliary course concerning boating safety.

(*iii*) A written rental agreement provided to an individual named in the rental agreement entered into under section 44522 only on the date or dates indicated on the rental agreement while the named individual is operating a personal watercraft leased, hired, or rented from a boat livery.

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(d) "Boating safety course" means a course that meets both of the following requirements:

(*i*) Provides instruction on the safe operation of a personal watercraft that meets or exceeds the minimum course content for boating or personal watercraft education established by the national association of state boating law administrators education committee (October 1996).

(*ii*) Is approved by the department.

(e) "Channel" means either of the following:

(*i*) The deepest part of a stream, bay, or straight through which the main current flows.

(*ii*) The part of a body of water deep enough for navigation through an area otherwise not suitable for navigation that is marked by a single or double line of navigational aids or range markers.

(f) "Dealer" means a person and an authorized representative of that person who annually purchases from a manufacturer, or who is engaged in selling or manufacturing, 6 or more personal watercraft that require certificates of number under part 801.

(g) "Department" means the department of natural resources.

(h) "Director" means the director of the department of natural resources.

(i) "Manufacturer" means a person engaged in any of the following:

(*i*) The manufacture, construction, or assembly of personal watercraft or associated equipment.

(*ii*) The manufacture or construction of components for personal watercraft and associated equipment to be sold for subsequent assembly.

(*iii*) The importation of a personal watercraft or associated equipment into the state for sale.

(j) "Operate" means to be in control of a personal watercraft while the personal watercraft is under way and is not docked or at anchor or secured in another way.

(k) "Operator" means the person who is in control or in charge of a personal watercraft while that vessel is under way.

(*l*) "Owner" means a person who claims or is entitled to lawful possession of a personal watercraft by virtue of that person's legal title or equitable interest in a personal watercraft.

(m) "Peace officer" means 1 or both of the following:

(*i*) A law enforcement officer as that term is defined in section 2 of the commission on law enforcement standards act, 1965 PA 203, MCL 28.602.

(*ii*) A deputy who is authorized by a sheriff to enforce this act and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(n) "Person" means an individual, corporation, limited liability company, partnership, association, governmental entity, or other legal entity.

(o) "Personal watercraft" means a vessel that meets all of the following requirements:

(*i*) Uses a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion.

(*ii*) Is designed without an open load carrying area that would retain water.

(*iii*) Is designed to be operated by 1 or more persons positioned on, rather than within, the confines of the hull.

(p) "Political subdivision" means a county, metropolitan authority, municipality, or combination of those entities in this state.

(q) "Slow--no wake speed" means the use of a vessel at a very slow speed so that the resulting wake or wash is minimal.

(r) "Use" means operate, navigate, or employ.

(s) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

(t) "Waters of this state" means any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Compiler's note: In subdivision (e)(*i*), the word “straight” should evidently read “strait.”

Popular name: Act 451

Popular name: NREPA

324.80202 Scope.

Sec. 80202. (1) This part applies to personal watercraft and associated equipment used on the waters of this state.

(2) Except where expressly indicated otherwise, this part does not apply to a personal watercraft that is all of the following:

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(a) Owned by a state or political subdivision of a state other than this state and its political subdivisions.

(b) Used principally for governmental purposes.

(c) Clearly marked and identifiable as personal watercraft that is used principally for governmental purposes.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80203 Administration of part.

Sec. 80203. Except as otherwise provided in this part, the department is responsible for the administration of this part.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80204 Rules.

Sec. 80204. The department shall promulgate rules authorized by this part under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall publish the approved rules in a convenient form.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80205 Operation of personal watercraft; requirements; violation; fine; exception.

Sec. 80205. (1) A person shall not operate a personal watercraft on the waters of this state unless each person riding on or being towed behind the personal watercraft is wearing a type I, type II, or type III personal flotation device as described in R 281.1234 of the Michigan Administrative Code.

(2) A person shall not operate a personal watercraft on the waters of this state unless each person on board the personal watercraft is wearing a personal flotation device that is not inflatable.

(3) A person shall not operate a personal watercraft on the waters of this state if a child who is under 7 years of age is on board or being towed behind the personal watercraft unless the child is in the company of his or her parent or guardian or a designee of the parent or guardian.

(4) While operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch on the waters of this state, a person shall have the lanyard attached to his or her person, clothing, or personal flotation device as is appropriate for the personal watercraft.

(5) A person shall not operate a personal watercraft on the waters of this state during the period that begins at sunset and ends at 8 a.m. As used in this subsection, "sunset" means that time as determined by the National Weather Service.

(6) A person operating a personal watercraft on the waters of this state shall not cross within 150 feet behind another vessel, other than a personal watercraft, unless the person is operating the personal watercraft at slow—no wake speed. A person who violates this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(7) A person shall not operate a personal watercraft on the waters of this state where the water depth is less than 2 feet, as determined by vertical measurement, unless 1 or both of the following circumstances exist:

(a) The personal watercraft is being operated at slow—no wake speed.

(b) The personal watercraft is being docked or launched.

(8) A person who violates subsection (7) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(9) A person shall operate a personal watercraft in a reasonable and prudent manner. A maneuver that unreasonably or unnecessarily endangers life, limb, or property, including, but not limited to, all of the following, constitutes reckless operation of a personal watercraft under section 80208:

(a) Weaving through congested vessel traffic.

(b) Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed.

(c) Waiting until the last possible moment before swerving to avoid a collision.

(10) A person shall not operate a personal watercraft on the waters of this state carrying more persons than the personal watercraft is designed to carry.

(11) A violation of subsection (10) is prima facie evidence of reckless operation of a watercraft under

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section 80208.

(12) A person operating a personal watercraft in excess of the speeds established under part 801 is guilty of reckless operation of a personal watercraft under section 80208.

(13) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with section 80164 under a permit issued by the department and at the time and place specified in the permit.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000;—Am. 2004, Act 27, Imd. Eff. Mar. 16, 2004;—Am. 2007, Act 8, Imd. Eff. May 11, 2007;—Am. 2008, Act 178, Eff. Mar. 31, 2009;—Am. 2012, Act 61, Eff. Nov. 1, 2012;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

324.80206 Operation of personal watercraft; prohibition; violation as civil infraction; fine.

Sec. 80206. (1) A person shall not operate a personal watercraft on the waters of this state outside of a channel or in an area where aquatic rooted vegetation is visible above the surface of the water in the deltaic wetlands of a lake that is greater than 32 square miles and less than 144 square miles in area.

(2) A person who violates subsection (1) is responsible for a state civil infraction punishable by a fine of $25.00.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80207 Liability of personal watercraft owner; negligence; presumption of consent.

Sec. 80207. The owner of a personal watercraft is liable for any injury occasioned by the negligent operation of the personal watercraft, whether the negligence consists of a violation of the statutes of this state, or in the failure to observe the ordinary care in the operation that the rules of the common law require. The owner is not liable unless the personal watercraft is being used with his or her expressed or implied consent. It shall be rebuttably presumed that the personal watercraft is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80208 Reckless operation of personal watercraft; violation; penalty; impoundment; storage cost.

Sec. 80208. (1) If a person carelessly and heedlessly operates a personal watercraft upon the waters of this state in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a personal watercraft and is subject to the penalties described in subsection (2) or (3), or both, as applicable.

(2) Upon a person's conviction under this section, the court may issue an order prohibiting the person from operating a personal watercraft on the waters of this state for a period of not more than 2 years and shall order the person to participate in and complete a boating safety course. An order issued pursuant to this subsection is in addition to any other penalty authorized under section 80219 or subsection (3).

(3) A person who violates this section twice within a 3-year period is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $1,000.00, or both. A person who violates this section 3 or more times within a 5-year period is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $2,000.00, or both. Upon a person's second or subsequent conviction under this section, the court may issue an order impounding the personal watercraft that the person was operating at the time the person violated subsection (1) for a period of not more than 1 year, if either of the following conditions exists:

(a) The person is an owner of the personal watercraft.

(b) The person is the minor child of an owner of the personal watercraft.

(4) The cost of storage for an impoundment ordered under subsection (3) shall be paid by the owner of the personal watercraft.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

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Popular name: NREPA

324.80209 Operation of personal watercraft; distance requirements; exceptions.

Sec. 80209. (1) Except when traveling at slow--no wake speed perpendicular to the shoreline, a person who operates a personal watercraft on 1 of the Great Lakes that is under the jurisdiction of this state shall maintain a distance of 200 feet from the shoreline.

(2) Except as provided in subsection (4), a person who operates a personal watercraft or a person who is being towed by a personal watercraft on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment on the waters of this state shall maintain a distance of not less than 100 feet from a dock, raft, or buoyed or occupied bathing or swimming area, a person in the water or on the water in a personal flotation device, or a vessel moored, anchored, drifting, or sitting in dead water.

(3) A person who operates a personal watercraft or a person who is being towed by a personal watercraft on a water sled, kite, surfboard, parachute, tube, water ski, or similar equipment on the waters of this state shall maintain a distance of not less than 200 feet from a submerged diver, vessel engaged in underwater diving activities, or a flotation device displaying the international diving insignia.

(4) Subsection (2) does not apply under either of the following conditions:

(a) The personal watercraft being operated or the person being towed is proceeding at a slow--no wake speed.

(b) The personal watercraft being operated or the person being towed is in a navigable channel, canal, river, or stream not otherwise posted.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80210 Repealed. 2018, Act 400, Eff. Mar. 19, 2019.

Compiler's note: The repealed section pertained to the possession of a boating safety certificate.

Popular name: Act 451

Popular name: NREPA

324.80211 Advancement of boating safety; educational programs.

Sec. 80211. (1) In order to protect the public interest in the prudent and equitable use of the waters of this state and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of this state, the department shall establish and pursue comprehensive educational programs designed to advance boating safety.

(2) The department shall put into effect a program to train boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the department may designate as its agent any person it considers qualified to act in this capacity. The department or its agent may offer a video or home study boating safety course. A charge shall not be made for any instruction given or for the award of boating safety certificates by any of the following:

(a) The department or another state agency.

(b) A law enforcement agency of this state or of a political subdivision of this state.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80212 Boating safety certificate; issuance; use of LEIN.

Sec. 80212. (1) The department shall issue a boating safety certificate to each individual who successfully completes a boating safety course as described in section 80211 and passes an examination prescribed by the department.

(2) The department shall consider the number of examinations that are administered under this section when calculating the state aid to counties under section 80117.

(3) The department shall not issue a boating safety certificate to an individual unless the individual has successfully completed a boating safety course and passed an examination as described in subsection (1). A boating safety certificate issued under this section is valid, unless revoked, for the life of the person who earned the certificate.

(4) The department of natural resources shall develop and, in conjunction with the department of state police, implement a process using the L.E.I.N., or any other appropriate system that limits access to law

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enforcement, to allow law enforcement agencies of this state to verify that an individual has obtained a boating safety certificate.

(5) As used in this section, "L.E.I.N." means the law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000;—Am. 2012, Act 120, Eff. Nov. 1, 2012;—Am. 2018, Act 400, Eff. Mar. 19, 2019.

Popular name: Act 451

Popular name: NREPA

324.80213 Boating safety certificate; electronic copy; consent to search; liability; display.

Sec. 80213. (1) An individual who is required to complete a boating safety course under this part and who operates a personal watercraft on the waters of this state shall display his or her boating safety certificate or, at the individual's option, an electronic copy, in a format approved by the department, of the boating safety certificate upon the demand of a peace officer who identifies himself or herself as a peace officer. Not later than March 31, 2019, the department shall approve 1 or more formats for an individual to display an electronic copy of his or her boating safety certificate.

(2) A peace officer shall not stop a personal watercraft solely for the purpose of determining whether the operator has in his or her possession either of the following:

(a) A boating safety certificate.

(b) An electronic copy of a boating safety certificate in a format approved by the department.

(3) An individual who, under subsection (1), displays an electronic copy of his or her boating safety certificate using an electronic device is not presumed to have consented to a search of the electronic device. This state, an employee of this state, a peace officer, or an entity employing the peace officer is not liable for damage to or loss of an electronic device that occurs as a result of the peace officer's viewing an electronic copy of a boating safety certificate under subsection (1), regardless of whether the peace officer was in possession of the electronic device at the time the damage or loss occurred.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000;—Am. 2018, Act 402, Eff. Mar. 19, 2019.

Popular name: Act 451

Popular name: NREPA

324.80214 Modification or suspension of boating safety certificate requirements.

Sec. 80214. The director may by written authorization modify or suspend the boating safety certificate requirements under this part if the modification or suspension of those certificate requirements is for individuals engaged in a marine event authorized by the director or for which the director receives a copy of a United States coast guard authorization.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80215 Operation of personal watercraft; graduated age provisions; amendatory act known and cited as "Ashleigh Iserman's law."

Sec. 80215. (1) Until October 1, 2011, except as provided in subsection (2), a person under the age of 14 shall not operate a personal watercraft on the waters of this state.

(2) Until October 1, 2011, a person who is 12 or more and less than 14 years of age may operate a personal watercraft on the waters of this state if all of the following circumstances exist:

(a) The person is accompanied solely by the person's parent or legal guardian.

(b) Both the person and the parent or legal guardian have obtained a boating safety certificate.

(c) The personal watercraft is equipped by the manufacturer with a lanyard-type engine cutoff switch, and the parent or legal guardian has the lanyard attached to his or her person, clothing, or personal flotation device.

(d) The personal watercraft is designed to carry not less than 2 persons.

(3) A person who was born after December 31, 1978 shall not operate a personal watercraft upon the waters of this state unless he or she first obtains a boating safety certificate.

(4) Beginning October 1, 2011, a person under the age of 16 shall not operate a personal watercraft on the waters of this state unless the person is not less than 14 years of age and 1 of the following circumstances applies:

(a) The person is riding the personal watercraft with his or her parent or guardian or an individual 21 years of age or older designated by the parent or guardian.

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(b) The person is operating or riding a personal watercraft at a distance of not more than 100 feet from his or her parent or guardian or an individual 21 years of age or older designated by the parent or guardian.

(5) The owner of a personal watercraft or a person having charge over or control of a personal watercraft shall not authorize or knowingly permit the personal watercraft to be operated in violation of this section.

(6) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with section 80164 under a permit issued by the department and at the time and place specified in the permit.

(7) The amendatory act that added subdivisions (4)(a) and (b) shall be known and may be cited as "Ashleigh Iserman's Law".

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000;—Am. 2008, Act 178, Eff. Mar. 31, 2009.

Compiler's note: In subsection (7), the citation to "subdivisions (4)(a) and (b)" evidently should read "subsection (4)(a) and (b)".

Popular name: Act 451

Popular name: NREPA

324.80217 Dealers of personal watercraft; advising buyer about sources of boating safety courses; violation; fine.

Sec. 80217. (1) A dealer of a new or used personal watercraft shall advise each person who buys a personal watercraft from the dealer of the sources of boating safety courses in the area.

(2) A dealer who violates this section is responsible for a state civil infraction and shall be ordered to pay a civil fine in the amount of $100.00.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80218 Creation and availability of documents by department; documents provided by dealer to buyer; violation; fine.

Sec. 80218. (1) The department shall create and make available to dealers of personal watercraft both of the following:

(a) A document that summarizes the laws that pertain exclusively to personal watercraft.

(b) A document that summarizes the safety features of personal watercraft. This document may be a generic document and shall not represent the safety features of a particular style or brand of personal watercraft.

(2) A dealer shall provide a copy of each of the documents described in subsection (1) to each person who buys a personal watercraft from the dealer. A dealer who violates this subsection is responsible for a state civil infraction and shall be ordered to pay a civil fine in the amount of $100.00.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80219 Violation of part; penalty.

Sec. 80219. Unless otherwise specified in this part, a person who violates this part is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both. In addition, a person who violates this part may be required to participate in and complete a boating safety course.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

324.80220 Tracking offenses; duties of secretary of state.

Sec. 80220. (1) Not later than April 30, 2000, the secretary of state shall begin tracking individual offenses of this part.

(2) In order to accomplish the tracking requirement described in subsection (1), the secretary of state shall do both of the following:

(a) Pursue and implement a comprehensive technology system.

(b) Work cooperatively with the appropriate departments of this state.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

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Popular name: NREPA

324.80221 Enforcement.

Sec. 80221. Peace officers shall enforce this part. If a person has received a citation for a violation of a certification requirement prescribed in section 80213 or 80215, the court shall waive any fine and costs upon receipt, not more than 10 days after the citation is issued, of proof of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid boating safety certificate, or an electronic copy thereof, in a format approved by the department, that was valid on the date the violation occurred.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000;—Am. 2018, Act 401, Eff. Mar. 19, 2019.

Popular name: Act 451

Popular name: NREPA

324.80222 Compliance.

Sec. 80222. Except as otherwise provided in this part, a personal watercraft operator shall comply with part 801.

History: Add. 2000, Act 229, Imd. Eff. June 27, 2000.

Popular name: Act 451

Popular name: NREPA

PART 803
WATERCRAFT TRANSFER AND CERTIFICATE OF TITLE

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324.80301 Additional definitions.

Sec. 80301. As used in this part:

(a) "Highly restricted personal information" means an individual's photograph or image, social security number, digitized signature, and medical and disability information.

(b) "Personal information" means information that identifies an individual, including an individual's driver identification number, name, address not including zip code, and telephone number.

(c) "Watercraft" means a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80302 Exceptions; appropriate forms.

Sec. 80302. (1) This part does not apply to any of the following:

(a) A boat from a jurisdiction other than this state temporarily using the waters of this state.

(b) A boat whose owner is the United States, a state, or political subdivision thereof.

(c) A ship's lifeboat.

(d) Watercraft less than 20 feet in length that do not have permanently affixed engines unless the owner, lessee, or operator voluntarily wishes to become subject to this part.

(e) Watercraft documented by an agency of the United States government.

(2) The various certificates, applications, and assignments necessary to provide certificates of title for watercraft shall be made upon appropriate forms approved by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80303 Rules; cancellation of improperly issued certificate of title.

Sec. 80303. (1) The secretary of state shall promulgate rules to implement this part.

(2) If it appears that a certificate of title is improperly issued, the secretary of state shall cancel the certificate. The secretary of state shall notify the person to whom the certificate of title was issued, as well as any lienholders appearing on the certificate of title, of the cancellation, and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of a lien noted on the certificate of title. The

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holder of the certificate of title shall return it to the secretary of state immediately.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80304 Sale, purchase, or other disposition or acquisition of watercraft; certificate of title required.

Sec. 80304. (1) Subject to section 80320(4), and except as provided in section 80306, a person shall not sell or otherwise dispose of a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title with such assignment on the certificate of title as is necessary to show title in the purchaser.

(2) Subject to 80320(4), a person shall not purchase or otherwise acquire a watercraft without obtaining a certificate of title for it in the person's name pursuant to this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80305 Acquisition of watercraft from owner; certificate of title or manufacturer's or importer's certificate required; waiver or estoppel; judicial recognition of right, title, claim, or interest.

Sec. 80305. (1) Subject to section 80320(4), a person acquiring a watercraft from the owner of the watercraft, whether the owner is a manufacturer, importer, dealer, or otherwise, shall not acquire any right, title, claim, or interest in or to the watercraft until that person has issued to him or her a certificate of title to the watercraft, or delivered a manufacturer's or importer's certificate for the watercraft. A waiver or estoppel shall not operate in favor of that person against a person having possession of the certificate of title, or manufacturer's or importer's certificate for the watercraft, for a valuable consideration.

(2) A court shall not recognize the right, title, claim, or interest of a person in or to a watercraft sold or disposed of, or mortgaged or encumbered, unless the right, title, claim, or interest is 1 of the following:

(a) Subject to section 80320(4), evidenced by a certificate of title or a manufacturer's or importer's certificate issued pursuant to this part.

(b) Evidenced by admission in the pleadings or stipulation of the parties.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80306 Sale or other disposition of new watercraft to dealer for display or resale; manufacturer's or importer's certificate required; contents; assignment.

Sec. 80306. (1) A manufacturer, importer, dealer, or other person shall not sell or otherwise dispose of a new watercraft to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's or importer's certificate executed in accordance with this section and with those assignments on the certificate as are necessary to show title in the purchaser of the watercraft. A dealer shall not purchase or acquire a new watercraft without obtaining from the seller of the watercraft the manufacturer's or importer's certificate.

(2) A manufacturer's or importer's certificate of the origin of a watercraft shall contain, in the form and together with the information the secretary of state requires, the following information:

(a) A description of the watercraft, including, if applicable, make, year, length, series of model, hull type, and hull identification number.

(b) Certification of the date of transfer of the watercraft to a distributor, dealer, or other transferee, and the name and address of the transferee.

(c) Certification that this transaction is the first transfer of the new watercraft in ordinary trade and commerce.

(d) Signature and address of a representative of the transferor.

(3) An assignment of a manufacturer's or importer's certificate shall be printed on the reverse side of the manufacturer's or importer's certificate in the form to be prescribed by the secretary of state. The assignment form shall include the name and address of the transferee, a certification that the watercraft is new, and a

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warranty that the title at the time of delivery is subject only to the liens and encumbrances that are set forth and described in full in the assignment.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80307 Certificate of title; application; form; fee; evidence of ownership; certificate of hull identification number; duties of secretary of state; surety bond; name in which certificate of title to be obtained.

Sec. 80307. (1) An application for a certificate of title for a watercraft shall be on a form prescribed by the secretary of state. The application shall be filed with the secretary of state within 15 days after the date of purchase or transfer. At the request of the applicant, an application shall be processed on an expedited basis. The application shall be accompanied by the fee or fees prescribed in section 80311, and if a certificate of title was previously issued for the watercraft, it shall be accompanied by the certificate of title duly assigned, unless otherwise provided in this part. Unless otherwise provided in this part, if a certificate of title was not previously issued for the watercraft in this state, the application shall be accompanied by a manufacturer's or importer's certificate, by a certificate of ownership, or a certificate of number issued under part 801 or former 1967 PA 303, if purchased by the applicant on or before July 1, 1976, or by a certificate of title, bill of sale, or other evidence of ownership required by the law of another state from which the watercraft is brought into this state. Evidence of ownership of a watercraft for which a Michigan certificate of title was not previously issued, and that does not have permanently affixed to it a hull identification number, shall be accompanied by the certificate of hull identification number assigned by the secretary of state as provided in section 80308. The secretary of state shall retain the evidence of title presented by the applicant and upon which the certificate of title is issued, and shall use reasonable diligence in ascertaining whether the facts in the application are true by checking the application and documents accompanying the application with the secretary of state's records of watercraft. Subject to section 80320(4), if satisfied that the applicant is the owner of the watercraft and that the application is in the proper form, the secretary of state shall issue a certificate of title.

(2) If the secretary of state is not satisfied as to the ownership of a watercraft having a value of more than $2,500.00, before registering the watercraft and issuing a certificate of title, the secretary of state may require the applicant to file a properly executed surety bond in a form prescribed by the secretary of state and executed by the applicant and a company authorized to conduct a surety business in this state. The bond shall be in an amount equal to twice the value of the watercraft as determined by the secretary of state and shall be conditioned to indemnify or reimburse the secretary of state, any prior owner, and any subsequent purchaser and their successors in interest against any expense, loss, or damage, including reasonable attorney fees, incurred as a result of the issuance of a certificate of title for the watercraft or any defect in the right, title, or interest of the applicant in the watercraft. An interested person has a right of action to recover on the bond for a breach of the conditions of the bond, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of 3 years, or before 3 years if the watercraft is no longer registered in this state and the currently valid certificate of title is surrendered to the secretary of state, unless the secretary of state has received notification of the pendency of an action to recover on the bond. If the secretary of state is not satisfied as to the ownership of a watercraft that is worth $2,500.00 or less, the secretary of state shall require the applicant to certify that the applicant is the owner of the watercraft and entitled to register and title the watercraft.

(3) Subject to section 80320(4), when a watercraft is sold by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. In other cases, the certificate shall be obtained by the purchaser.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 271, Imd. Eff. Dec. 19, 2005;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80308 Application for watercraft certificate of title; certification; contents; permanent or assigned hull identification number; affixing or imprinting assigned hull identification number.

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Sec. 80308. (1) An application for a watercraft certificate of title shall include a certification. The owner or purchaser of the watercraft shall sign the application or, if the application is filed electronically, provide information requested by the secretary of state to verify the owner's or purchaser's identity. The application shall contain, in the form and together with other information that the secretary of state requires, the following information:

(a) Name and address of the applicant.

(b) Name and address of the previous owner.

(c) A statement of liens, mortgages, or other encumbrances on the watercraft, and the name and address of the holder of the liens, mortgages, or other encumbrances.

(d) If a lien, mortgage, or other encumbrance is not outstanding, a statement of that fact.

(e) A description of the watercraft, including, if applicable, the make, year, length, series or model, hull type, and hull identification number.

(2) If the watercraft contains a permanent hull identification number placed on the watercraft by the manufacturer of the watercraft, this number shall be used as the hull identification number. If there is not a manufacturer's hull identification number, or if the manufacturer's hull identification number is removed or obliterated, the secretary of state, upon a prescribed application that includes information indicating proof of ownership, shall assign a hull identification number to the watercraft. This assigned hull identification number shall be permanently affixed to, or imprinted by the applicant, at the place and in the manner designated by the secretary of state, upon the watercraft to which the hull identification number is assigned.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80309 Certificate of title; refusal; issuance; contents; assignment form.

Sec. 80309. (1) The secretary of state may refuse to issue a watercraft certificate of title under the circumstances provided in section 80320(4).

(2) Subject to subsection (1), the secretary of state shall issue a certificate of title containing the information required in the application for a certificate of title, as prescribed by section 80308, except for the name and address of the previous owner. The certificate of title shall also contain space for the notation and cancellation of a lien, mortgage, or encumbrance. An assignment of certificate of title shall appear on the certificate of title in the form to be prescribed by the secretary of state. The assignment form shall include a warranty that the signer is the owner of the watercraft and that a mortgage, lien, or encumbrance is not on the watercraft, except as noted on the face of the certificate of title.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 271, Imd. Eff. Dec. 19, 2005;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80310 Certificate of title; uniform method of numbering; indexes; destruction by secretary of state; furnishing information to law enforcement and conservation officers.

Sec. 80310. (1) The secretary of state shall prescribe a uniform method of numbering certificates of title, and shall maintain in his or her office indexes for the certificates of title.

(2) The secretary of state may destroy a certificate of title or supporting evidence of a certificate of title covering a watercraft which was on file for 10 years after the date of its filing.

(3) The secretary of state shall furnish information on a title without charge to authorized law enforcement and conservation officers when engaged in official duties.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80311 Fee for processing application for certificate of title or duplicate; additional fee; check or draft not paid on first presentation as delinquent fee; liability; notice or demand; suspension of certificate; penalty.

Sec. 80311. (1) The secretary of state shall charge a fee of $5.00 for the processing of an application for a

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certificate of title or a duplicate certificate of title. The secretary of state shall charge an additional fee of $5.00 for the processing of an application on an expedited basis.

(2) If a check or draft in payment of a fee payable to the secretary of state under this section is not paid on its first presentation, the fee is delinquent as of the date the check or draft was tendered. The person tendering the check or draft remains liable for the payment of each fee and any penalty.

(3) The secretary of state may suspend a certificate of title if the secretary of state determines that a fee prescribed in this section has not been paid and remains unpaid after reasonable notice or demand.

(4) If a fee is still delinquent 15 days after the secretary of state gives notice to a person who tendered the check or draft, a $5.00 penalty shall be assessed and collected in addition to the fee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80312 Certificate of title for watercraft; issuance; compliance; transfer of ownership; requirements; petition for watercraft not owned; proof of ownership and right of possession; statement of lien.

Sec. 80312. (1) The secretary of state may issue a certificate of title for a watercraft to a person who complies with subsection (2) or (3) if the transfer of ownership of that watercraft is any of the following:

(a) By operation of law including, but not limited to, inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution of sale.

(b) By sale to satisfy a storage or repair charge.

(c) By repossession upon default in performance of the terms of a security agreement.

(d) As provided in subsection (3).

(2) A person applying for a certificate of title under this section shall do all of the following:

(a) Surrender to the secretary of state either a valid certificate of title or the manufacturer's or importer's certificate for the watercraft or, if surrender of a certificate for that watercraft is not possible, present proof satisfactory to the secretary of state of the applicant's ownership of and right of possession to the watercraft.

(b) Pay the fee prescribed in section 80311.

(c) Present to the secretary of state an application for certificate of title.

(3) A person may petition the secretary of state for a certificate or certificates of title for 1 or more registered watercraft that the person does not own, if all of the following circumstances exist:

(a) The record owner of the registered watercraft dies without leaving other property that requires the procurement of letters under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.

(b) On the date of the petition, the total value of the deceased owner's interest in all watercraft subject to the petition for a certificate or certificates of title under this section does not exceed the following dollar amount, as applicable:

(*i*) For calendar years through 2023, $100,000.00.

(*ii*) For the 2024 and 2025 calendar years, $300,000.00.

(*iii*) For the 2026 calendar year and each calendar year thereafter, a dollar amount equal to the product of the dollar amount applicable for the immediately preceding calendar year multiplied by the cost-of-living adjustment factor, rounded to the nearest $1,000.00. Beginning with the dollar amount for the 2026 calendar year, and annually thereafter, the department of treasury shall certify and publish the adjusted dollar amount applicable for each calendar year by September 1 of the prior calendar year. As used in this subparagraph:

(A) "Cost-of-living adjustment factor" means a fraction, the numerator of which is the United States Consumer Price Index for the year before the prior calendar year and the denominator of which is the United States Consumer Price Index for 2023.

(B) "United States Consumer Price Index" means the annual average of the United States Consumer Price Index for All Urban Consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics, or its successor agency.

(c) The petitioner is 1 of the following, in the following order of priority:

(*i*) The surviving spouse of the watercraft owner.

(*ii*) A person entitled to the certificate or certificates of title in the order specified in section 2103 of the estates and protected individuals code, 1998 PA 386, MCL 700.2103.

(d) The petitioner furnishes the secretary of state with proof satisfactory to the secretary of state of all of the following:

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(*i*) The death of the owner of each watercraft for which a certificate of title is sought.

(*ii*) The petitioner's priority to receive the decedent's interest in each watercraft for which a certificate of title is sought.

(4) A certification by the person, or agent of the person, to whom possession of the watercraft passed, that sets forth the facts entitling that person to possession and ownership of the watercraft, together with a copy of the journal entry, court order, instrument, or other document upon which the claim of possession and ownership is founded, are satisfactory proof of ownership and right of possession. If the applicant cannot produce proof of ownership, the applicant may apply to the secretary of state for a certificate of title and submit evidence that establishes that person's ownership interest in the watercraft. If the secretary of state finds the evidence sufficient, the secretary of state may issue to that person a certificate of title for that watercraft. The office of secretary of state shall examine the records in its possession and, if it determines from that examination that a lien is on the watercraft, and if the applicant fails to provide satisfactory evidence of extinction of the lien, the secretary of state shall furnish a certificate of title that contains a statement of the lien.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2000, Act 65, Eff. Apr. 1, 2000;—Am. 2024, Act 4, Eff. May 21, 2024.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80313 Dismantling, destroying, or changing watercraft; surrender, cancellation, and destruction of certificate of title.

Sec. 80313. (1) An owner of a watercraft and a person mentioned as owner in the last certificate of title, when the watercraft is dismantled, destroyed, or changed in such manner that it loses its character as a watercraft, or changed in such manner that it is not the watercraft described in the certificate of title, shall surrender the certificate of title to the secretary of state, and the secretary of state shall, with the consent of a holder of a lien noted on the certificate of title, enter a cancellation upon his or her records.

(2) Upon the cancellation of a certificate of title in the manner prescribed by subsection (1), the secretary of state may cancel and destroy the certificates.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80314 Loss, mutilation, or illegibility of certificate of title; application and fee for duplicate copy; issuance and contents of duplicate copy; rights and indemnification of purchaser; surrender and cancellation of original certificate; conditions not requiring duplicate of lost watercraft certificate of title at time of transfer; record; definitions.

Sec. 80314. (1) If a certificate of title is lost, mutilated, or becomes illegible, the person to whom that certificate of title was issued may apply to the secretary of state for a duplicate copy of the certificate of title upon a form prescribed by the secretary of state and accompanied by the fee prescribed by section 80311. The applicant shall certify the application. Upon an applicant's compliance with this section, the secretary of state shall issue to that applicant a duplicate copy of the certificate of title that contains the legend, "This is a duplicate certificate and may be subject to the rights of a person under the original certificate.". As provided under section 80320(4), the department of state is not required to issue a duplicate certificate of title to the owner of a watercraft if the title is subject to a security interest. A purchaser of watercraft who obtains title to the watercraft through a duplicate copy of the watercraft's certificate of title acquires only those rights in the watercraft that the holder of the duplicate certificate of title had. At the time of purchase, a watercraft purchaser may require the seller to indemnify the purchaser and subsequent purchasers of the watercraft against a loss that the purchaser or subsequent purchasers may suffer by reason of a claim presented upon the original certificate of title. If the original certificate of title is recovered by the owner, the owner shall immediately surrender it to the secretary of state for cancellation.

(2) The secretary of state is not required to issue a duplicate of a lost watercraft certificate of title when ownership of the watercraft is being transferred if all of the following conditions are met:

(a) The transferor personally appears before an authorized representative of the secretary of state and does all of the following:

(*i*) Provides evidence of the transferor's identity and ownership interest in the watercraft that is satisfactory to the authorized representative of the secretary of state.

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(*ii*) Pays the fee required under section 80311.

(b) The transferee or the transferee's representative accompanies the transferor in appearing before the authorized agent of the secretary of state and does all of the following:

(*i*) Applies for an original certificate of title for the watercraft.

(*ii*) Provides evidence of the transferee's identity that is satisfactory to the authorized representative of the secretary of state.

(*iii*) Pays the fee required under section 80311.

(3) If a duplicate certificate of title is not required for the transfer of a watercraft under subsection (2), the secretary of state shall maintain a record specifying that ownership of the watercraft was transferred without a surrender of the watercraft's certificate of title.

(4) As used in this section, "transfer" or "transferred" includes a conveyance, assignment, and gift.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80315 Records available to the public; commercial lookup service of watercraft title records; disposition of fees; computerized central file; creation; maintenance; providing to nongovernmental person or entity; payment; admissibility in evidence.

Sec. 80315. (1) The secretary of state shall make available to the public records maintained under this part, other than those declared to be confidential by law or that are restricted by law from disclosure to the public, under procedures prescribed in this part and the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The secretary of state may provide a commercial lookup service of watercraft title records maintained under this part. For each individual record looked up, the secretary of state shall charge a fee of $15.00 per record. The secretary of state shall process a commercial lookup request only if the request is in a form or format prescribed by the secretary of state. The secretary of state shall credit fees collected under this subsection to the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b, through October 1, 2027.

(3) The secretary of state shall create and maintain a computerized central file that includes the information contained on application forms received under this part. The computerized central file must be interfaced with the law enforcement information network as provided in the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(4) The secretary of state shall not provide an entire computerized central or other file of records maintained under this part to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

(5) A certified copy of an order, record, or paper maintained under this part is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2005, Act 174, Imd. Eff. Oct. 12, 2005;—Am. 2009, Act 100, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 77, Eff. Oct. 1, 2015;—Am. 2019, Act 81, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80315a Disclosure of personal information; uses.

Sec. 80315a. (1) Except as provided in this section and section 80315c, personal information in a record maintained under this part shall not be disclosed, unless the person requesting the information furnishes proof of identity considered satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose identified in this section or in section 80315c. Notwithstanding this section, highly restricted personal information shall be used and disclosed only as expressly permitted by law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, Public Law 85-506, 15 U.S.C. 1231 to 1232 and 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, 106 Stat. 3384, the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492,

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7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and all federal regulations promulgated to implement these federal laws.

(3) Personal information in a record maintained under this part may be disclosed as follows:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions.

(b) For use in connection with matters of watercraft and operator safety or watercraft theft; watercraft emissions; watercraft product alterations, recalls; or advisories; performance monitoring of watercraft; watercraft research activities, including survey research; and the removal of nonowner records from the original records of watercraft manufacturers.

(c) For use in the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court, administrative agency, or self-regulatory body.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded watercraft.

(h) For use by any licensed private security guard agency or alarm system contractor licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, or a private detective or private investigator licensed under the private detective license act of 1965, 1965 PA 285, MCL 338.821 to 338.851, for any purpose permitted under this section.

(i) For use by a watercraft rental business or its employees, agents, contractors, or service firms for the purpose of making rental decisions.

(j) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. "News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(k) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80315b Resale or redisclosure of information; maintenance of records; duration; availability for inspection.

Sec. 80315b. (1) An authorized recipient of personal information under section 80315a may resell or redisclose the information for any use permitted under section 80315a.

(2) Any authorized recipient who resells or rediscloses personal information shall be required by the secretary of state to maintain for a period of not less than 5 years records as to the information obtained and the permitted use for which it was obtained, and to make such records available for inspection by the secretary of state, upon request.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

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324.80315c Furnishing list of information to federal, state, or local governmental agency; contract for sale of list of information; insertion of safeguard in agreement or contract; resale or redisclosure of information; duties of recipient.

Sec. 80315c. (1) Upon request, the secretary of state may furnish a list of information from the records of the department maintained under this part to a federal, state, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Unless otherwise prohibited by law, the secretary of state may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this subsection if the cost of preparation exceeds $25.00, and use the revenues received from the service to defray necessary expenses. If the secretary of state sells a list of information under this subsection to a member of the state legislature, the secretary of state shall charge the same fee as the fee for the sale of information under subsection (2) unless the list of information is requested by the member of the legislature to carry out a legislative function. The secretary of state may require the requesting agency to furnish 1 or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this subsection.

(2) The secretary of state may contract for the sale of lists of records maintained under this part in bulk, in addition to those lists distributed at cost or at no cost under this section, for purposes defined in section 80315a(3) as well as for surveys, marketing, and solicitations. The secretary of state shall require each purchaser of information in bulk to execute a written purchase contract. The secretary of state shall fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale shall be used by the secretary of state to defray the costs of list preparation and for other necessary or related expenses.

(3) The secretary of state or any other state agency shall not sell or furnish any list of information under subsection (2) for the purpose of surveys, marketing, and solicitations. The secretary of state shall ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under this part.

(4) The secretary of state may insert any safeguard the secretary considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under this section, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals and of the secretary of state are protected.

(5) An authorized recipient of personal information disclosed under this section who resells or rediscloses the information for any of the permissible purposes described in section 80315a(3) shall do both of the following:

(a) Make and keep for a period of not less than 5 years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(b) Allow a representative of the secretary of state, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2000, Act 194, Eff. Jan. 1, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80315f Electronic lien title system; participation of secured parties; inclusion of secured interest or other information in electronic file; execution of release; delivery; assignment of ownership by watercraft dealer; admissibility as evidence of security interest; determination of requirements by secretary of state; establishment, implementation, and operation by February 16, 2021; definitions.

Sec. 80315f. (1) The secretary of state may enter into 1 or more contracts under this section to establish, implement, and operate an electronic lien title system to process the notification and release of security interests in watercraft through electronic file transfers, or as otherwise determined by the secretary of state, in lieu of the issuance and maintenance of paper documents otherwise required by law. Any such contract shall require the protection of proprietary information in the electronic lien title system and provide for the protection of a competitive free market.

(2) Except for persons who are not normally engaged in the business or practice of financing watercraft, all secured parties are required to participate in the electronic lien title system.

(3) For the purposes of this part, any requirement that a security interest or other information appear on a certificate of title is satisfied by the inclusion of that information in an electronic file maintained in an

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electronic lien title system. The satisfaction of a security interest may be electronically transmitted to the secretary of state. A secured party shall execute a release of its security interest in a watercraft in a manner prescribed by the department not more than 14 days after the secured party receives the payment in satisfaction of the security interest. If the certificate of title is in the possession of the watercraft owner, the secured party shall deliver the release to the watercraft owner or as otherwise directed by the owner. However, if the certificate of title is held electronically as provided under section 80320(4), the secured party shall deliver the release of security interest to the department of state, and the department of state shall cancel the security interest. If the secured party fails to comply with these requirements for the release of a secured interest, the secured party is liable to the watercraft owner for all damages sustained by the owner because of the failure to comply. The electronic lien title system shall provide a mechanism by which a watercraft dealer may assign ownership of a watercraft without proof that the prior security interest was satisfied existing on the electronic lien title system. However, in the event of such an assignment, the dealer warrants that the title is free and clear of all liens and assumes responsibility for the satisfaction of the security interest.

(4) A certified copy of the secretary of state's electronic record of a security interest is admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence of the security interest. If a certificate of title is maintained in the electronic lien title system, a certified copy of the secretary of state's electronic record of the certificate of title is admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence and contents of the certificate of title.

(5) The secretary of state may determine any requirements necessary to carry out this section, including, but not limited to, 1 or more of the following:

(a) Monitoring the reasonable fees charged by service providers or a contractor for the establishment and maintenance of the electronic lien title system.

(b) The qualifications of service providers for participation in the electronic lien title system.

(c) The qualifications for a contractor to enter into a contract with the secretary of state to establish, implement, and operate the electronic lien title system.

(d) Program specifications that a contractor must adhere to in establishing, implementing, and operating the electronic lien title system.

(6) The electronic lien title system under this section shall be established, implemented, and operational by February 16, 2021.

(7) By February 16, 2021, the department shall require a person to enter evidence of security interests and any related information into the electronic lien title system in lieu of paper documents.

(8) As used in this section:

(a) "Contractor" means a person who enters into a contract with the secretary of state to establish, implement, and operate the electronic lien title system described in this section.

(b) "Electronic lien title system" means a system to process the notification and release of security interests through electronic file transfers that is established and implemented under this section.

(c) "Service provider" means a person who provides secured parties with software to manage electronic lien and title data as provided under this section.

History: Add. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80316 Authorized agents.

Sec. 80316. Manufacturers and importers shall appoint and authorize agents who shall sign manufacturer's or importer's certificates. The secretary of state may require that a certified copy of a list containing the names and the facsimile signatures of authorized agents be furnished to him or her. The secretary of state may prescribe the form of authorization to be used by manufacturers or importers and the method of certification of the names of agents.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80317 Stolen or converted watercraft; information; record; report; notice of recovery; removal of record from file.

Sec. 80317. (1) Upon receiving knowledge of a stolen watercraft, a law enforcement agency shall

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immediately furnish the sheriff's department of the county in which the watercraft was stolen and the department of state police with full information concerning the theft.

(2) The law enforcement agency receiving the initial report of the theft or conversion of a watercraft shall notify the department and the secretary of state, and shall furnish the secretary of state with a distinctive record of the initial report, including the make of the stolen watercraft and its manufacturer's hull identification number or assigned hull identification number. The secretary of state shall file the record in the numerical order of the manufacturer's hull identification number or assigned hull identification number with the index records of the watercraft. The secretary of state shall prepare a report listing watercraft stolen and recovered as disclosed by the reports submitted to the secretary of state, to be distributed as the secretary of state considers advisable.

(3) If a stolen or converted watercraft is recovered, the owner or recovering agency shall immediately notify the law enforcement agency which received the initial theft report, which shall immediately notify the department, the sheriff of the county from which the watercraft was stolen, the department of state police, and the secretary of state. The secretary of state shall remove the record of the theft or conversion from the file in which the report is recorded.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80318 Prohibited conduct generally.

Sec. 80318. A person shall not do any of the following:

(a) Operate in this state a watercraft for which a certificate of title is required without having a certificate as prescribed by this part.

(b) Operate in this state a watercraft for which a certificate of title is required for which the certificate of title is canceled.

(c) Fail to surrender a certificate of title upon cancellation of the certificate by the secretary of state and notice of the cancellation as prescribed in this part.

(d) Fail to surrender the certificate of title to the secretary of state, as provided in this part, if the watercraft is destroyed, dismantled, or changed in such manner that it is not the watercraft described in the certificate of title.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

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324.80319 Additional prohibited conduct; violation as misdemeanor; penalty; payment of restitution.

Sec. 80319. (1) A person shall not do any of the following:

(a) Reproduce, alter, counterfeit, forge, or duplicate a certificate of title, or a manufacturer's or importer's certificate, to a watercraft, an assignment of either, or a cancellation of a lien on a watercraft.

(b) Hold or use a certificate, assignment, or cancellation knowing it is reproduced, altered, counterfeited, forged, or duplicated.

(c) Procure or attempt to procure a certificate of title to a watercraft, or pass or attempt to pass a certificate of title or an assignment of title to a watercraft, knowing or having reason to believe that the watercraft is stolen.

(d) Sell or offer for sale in this state a watercraft on which the manufacturer's or assigned hull identification number is destroyed, removed, covered, altered, or defaced, with knowledge of the destruction, removal, covering, alteration, or defacement of the manufacturer's or assigned hull identification number.

(e) Use a false or fictitious name, give a false or fictitious address, or make a false statement in an application or certificate required under this part, or in a bill of sale or sworn statement of ownership, or otherwise commit a fraud in an application.

(f) Fraudulently indicate on a certificate of title that there is no security interest on record for a watercraft.

(g) Forge or counterfeit a letter, receipt, or other document from the holder of a security interest in a watercraft indicating that the security interest has been released.

(h) Sell or transfer a watercraft without delivering to the purchaser or transferee of the watercraft a certificate of title, or a manufacturer's or importer's certificate to the watercraft, assigned to the purchaser as

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provided for in this part.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than $5,000.00, or both.

(3) A person who is convicted of a violation of subsection (1)(f) or (g), in addition to any other penalty, shall pay restitution to the holder of a security interest in the watercraft in the amount of the outstanding lien on the watercraft.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80319a Prohibited conduct; violations as felony; penalties.

Sec. 80319a. (1) A person who makes a false representation or false certification to obtain personal information under this part, or who uses personal information for a purpose other than a permissible purpose identified in section 80315a or 80315c, is guilty of a felony.

(2) A person who is convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not less than 2 years or more than 7 years, or by a fine of not less than $1,500.00 or more than $7,000.00, or both.

(3) A person who is convicted of a third or subsequent violation of this section is guilty of a felony punishable by imprisonment for not less than 5 years or more than 15 years, or by a fine of not less than $5,000.00 or more than $15,000.00, or both.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80320 Secured interest in watercraft; notation; discharge; perfection; electronic transactions; requirements.

Sec. 80320. (1) A party with a secured interest in a watercraft, upon presentation of a properly completed application for certificate of title to the secretary of state, together with the fee prescribed by section 80311, may have a notation of the security interest made on the face of the certificate of title to be issued by the secretary of state. The secretary of state shall enter the notation and the date and shall note the security interest and the date in his or her files. However, as provided in subsection (5), the secretary of state is not required to issue a certificate of title to the owner of a vehicle if the title is subject to a security interest.

(2) When the security interest is discharged, the holder shall note the discharge on the certificate of title over his or her signature.

(3) Receipt by the secretary of state of a properly tendered application for a certificate of title on which a security interest in a watercraft is to be indicated is a condition of perfection of a security interest in the watercraft, unless, under subsection (4), the department of state does not issue certificates of title for watercraft subject to a security interest, and is equivalent to filing a financing statement under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994, with respect to the watercraft. When a security interest in a watercraft is perfected, it has priority over the rights of a lien creditor as lien creditor is defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

(4) The department of state may require that all transactions concerning watercraft title liens and security interests be conducted by electronic means, as determined by the department of state. In that case, if a watercraft is subject to a security interest, the department of state is not required to issue a certificate of title to the owner of the watercraft or a lienholder if it maintains a record of title electronically. After all liens have been terminated, or for purposes of retitling the watercraft in another state or any other purpose considered appropriate by the department of state, the department of state may issue a paper copy of the watercraft title to the watercraft owner.

(5) A watercraft sale transaction in which a security interest is entered by electronic means shall include a document recording entry of the electronic security interest and information regarding the financial institution that holds the security interest. When a secured party is presented with payment in satisfaction of the security interest, a secured receipt in a form approved by the department of state may be produced and submitted to the department of state in lieu of the certificate of title for purposes of transferring ownership in the watercraft.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 37, Imd. Eff. June 7, 2005;—Am. 2018, Act 678, Eff. Mar.

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29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80321 Watercraft acquired prior to January 1, 1977.

Sec. 80321. A watercraft acquired by the owner prior to January 1, 1977, is not the subject of a certificate of title until it is mortgaged, sold, or transferred, or, subject to section 80320(4), a lien is placed on the watercraft.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 678, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

324.80322 Violation; penalty.

Sec. 80322. A person who violates sections 80301 to 80319 or rules promulgated under this part is guilty of a misdemeanor, and shall be imprisoned for not more than 90 days, or fined not more than $100.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Watercraft Title Act

SUBCHAPTER 6

MOTORIZED RECREATIONAL VEHICLES

OFF-ROAD RECREATION VEHICLES

PART 811

OFF-ROAD RECREATION VEHICLES

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324.81101 Definitions.

Sec. 81101. As used in this part:

(a) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

(b) "ATV" means a vehicle with 3 or more wheels that is designed for off-road use, has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 1,000cc gasoline engine or an engine of comparable size using other fuels.

(c) "Code" means the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(d) "County road" means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655, or a segment thereof.

(e) "Dealer" means a person engaged in the sale, lease, or rental of an ORV as a regular business or, for purposes of selling licenses under section 81116, any other person authorized by the department to sell licenses or permits, or both, under this act.

(f) "Designated", unless the context implies otherwise, means posted by the department, with appropriate signs, as open for ORV use.

(g) "Farm vehicle" means either of the following:

(*i*) An implement of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(*ii*) A vehicle used in connection with a farm operation as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(h) "Forest road" means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for road use. Forest road does not include a street, county road, or highway.

(i) "Forest trail" means a designated path or way that is not a route.

(j) "Highway" means a state trunk line highway or a segment of a state trunk line highway.

(k) "Highly restricted personal information" means an individual's photograph or image, Social Security number, digitized signature, and medical and disability information.

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(*l*) "Late model ORV" means an ORV manufactured in the current model year or the 5 model years immediately preceding the current model year.

(m) "Law of another state" means a law or ordinance enacted by any of the following:

(*i*) Another state.

(*ii*) A local unit of government in another state.

(*iii*) Canada or a province or territory of Canada.

(*iv*) A local unit of government in a province or territory of Canada.

(n) "Local unit of government" means a county, township, or municipality.

(o) "Maintained portion" means the roadway and any shoulder of a street, county road, or highway.

(p) "Manufacturer" means a person, partnership, corporation, or association engaged in the production and manufacture of ORVs as a regular business.

(q) "Municipality" means a city or village.

(r) "Off-road vehicle account" means the off-road vehicle account of the Michigan conservation and recreation legacy fund established in section 2015.

(s) "Operate" means to ride in or on, and be in actual physical control of, the operation of an ORV.

(t) "Operator" means an individual who operates or is in actual physical control of the operation of an ORV.

(u) "ORV" or, unless the context implies a different meaning, "vehicle" means a motor-driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation may be an ORV. An ATV is an ORV. ORV or vehicle does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

(v) "ORV safety certificate" means an ORV safety certificate issued under section 81130 or, except as used in section 81130, a comparable safety certificate issued under the authority of another state or province of Canada.

(w) "Owner" means any of the following:

(*i*) A vendee or lessee of an ORV that is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.

(*ii*) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.

(*iii*) A person who holds legal ownership of an ORV.

(x) "Peace officer" means any of the following:

(*i*) A sheriff.

(*ii*) A sheriff's deputy.

(*iii*) A deputy who is authorized by a sheriff to enforce this part and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(*iv*) A village or township marshal.

(*v*) An officer of the police department of a municipality.

(*vi*) An officer of the department of state police.

(*vii*) The director and conservation officers employed by the department.

(y) "Person with a disability" means an individual who has 1 or more of the following physical characteristics:

(*i*) Blindness.

(*ii*) Inability, during some time of the year, to ambulate more than 200 feet without having to stop and rest.

(*iii*) Loss of use of 1 or both legs or feet.

(*iv*) Inability to ambulate without the prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.

(*v*) A lung disease from which the individual's expiratory volume for 1 second, measured by spirometry, is less than 1 liter, or from which the individual's arterial oxygen tension is less than 60 mm/hg of room air at rest.

(*vi*) A cardiovascular disease that causes the individual to measure between 3 and 4 on the New York heart classification scale, or that results in a marked limitation of physical activity by causing fatigue, palpitation, dyspnea, or anginal pain.

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(*vii*) Other diagnosed disease or disorder including, but not limited to, severe arthritis or a neurological or orthopedic impairment that creates a severe mobility limitation.

(z) "Personal information" means information that identifies an individual, including an individual's driver identification number, name, address not including zip code, and telephone number, but does not include information on ORV operation or equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally related information.

(aa) "Prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(*i*) A violation or an attempted violation of section 81134(1), (3), (4), (5), (6), or (7), except that only 1 violation or attempted violation of section 81134(6), a local ordinance substantially corresponding to section 81134(6), a law of another state substantially corresponding to section 81134(6), or a law of the United States substantially corresponding to section 81134(6) may be used as a prior conviction other than for enhancement purposes as provided in section 81134(11)(b).

(*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of an ORV, or an attempt to commit any of those crimes.

(*iii*) Former section 81135.

(bb) "Public agency" means the department or a local or federal unit of government.

(cc) "Roadway" means the portion of a street, county road, or highway improved, designed, or ordinarily used for travel by vehicles registered under the code. Roadway does not include the shoulder.

(dd) "Route" means a forest road or other road that is designated for purposes of this part by the department.

(ee) "Safety chief instructor" means an individual who has been certified by a nationally recognized ORV organization to certify instructors and to do on-sight evaluations of instructors.

(ff) "Shoulder" means that portion of a street, county road, or highway contiguous to the roadway and generally extending the contour of the roadway, not designed for vehicular travel but maintained for the temporary accommodation of disabled or stopped motor vehicles otherwise permitted on the roadway.

(gg) "Southern county" means Muskegon, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer, or Macomb County, or a county lying south of the territory constituted by these counties.

(hh) "Specialty court program" means a program under any of the following:

(*i*) A drug treatment court, as defined in section 1060 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060, in which the participant is an adult.

(*ii*) A DWI/sobriety court, as defined in section 1084 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1084.

(*iii*) A hybrid of the programs under subparagraphs (*i*) and (*ii*).

(*iv*) A mental health court as defined in section 1090 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1090.

(*v*) A veterans treatment court, as defined in section 1200 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1200.

(ii) "Street" means a city or village major street or city or village local street as described in section 9 of 1951 PA 51, MCL 247.659, or a segment thereof.

(jj) "Traffic lane" means a clearly marked lane on a roadway.

(kk) "Unmaintained portion" means the portion of a street, county road, or highway that is not the maintained portion.

(*ll*) "Visual supervision" means the direct observation of the operator with the unaided or normally corrected eye by an observer who is able to come to the immediate aid of the operator.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 2003, Act 111, Eff. Oct. 1, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2009, Act 196, Imd. Eff. Dec. 28, 2009;—Am. 2009, Act 200, Imd. Eff. Dec. 29, 2009;—Am. 2012, Act 246, Imd. Eff. July 2, 2012;—Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013;—Am. 2013, Act 249, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 405, Eff. Mar. 31, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021;—Am. 2023, Act 210, Eff. Feb. 13, 2024.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

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324.81102 Repealed. 2013, Act 119, Imd. Eff. Sept. 25, 2013.

Compiler's note: The repealed section pertained to vehicles exempt from licensure requirements.

324.81103 Subject to MCL 324.81109(5); ORV; certificate of title generally.

Sec. 81103. (1) This section is subject to section 81109(5).

(2) After April 1, 1991, every ORV sold by a dealer to a retail purchaser shall be subject to the certificate of title provisions of this part.

(3) After April 1, 1991, a person who purchases or otherwise acquires an ORV shall apply for a certificate of title as provided in this part.

(4) After April 1, 1991, the owner of an ORV that has not been titled pursuant to subsection (2) or (3) or the code may apply for and, if otherwise eligible, receive a certificate of title issued under this part. If the ORV was previously titled under the code, it is not eligible for titling under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81104 Application for title to ORV under code.

Sec. 81104. The owner of an ORV that has been and is titled under this part may apply for and, if otherwise eligible, receive a title to the ORV under the code. If the owner applies for a title under the code, any certificate of title issued under this part shall at that time be surrendered to the department of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81105 ORV; sale or assignment of ownership; purchase or acquisition; requirements; exception if subject to a security interest.

Sec. 81105. (1) Subject to subsection (2), after an ORV has been titled under this part, both of the following apply:

(a) The owner, except as provided in section 81104, shall not sell or otherwise assign ownership in the ORV without delivering to the transferee a certificate of title showing assignment of the ORV in the transferee's name.

(b) A person shall not purchase or otherwise acquire an ORV without obtaining a certificate of title to it in the person's name pursuant to either this part or the code.

(2) As provided under section 81109(5), the department of state is not required to issue a certificate of title to the owner of an ORV if the title is subject to a security interest.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81106 ORV exempt from MCL 257.1101 to 257.1133 and MCL 500.3101 to 500.3179.

Sec. 81106. An ORV is exempt from the motor vehicle accident claims act, Act No. 198 of the Public Acts of 1965, being sections 257.1101 to 257.1133 of the Michigan Compiled Laws, and from sections 3101 to 3179 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3101 to 500.3179 of the Michigan Compiled Laws.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

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324.81107 Manufacturer's certificate of origin.

Sec. 81107. (1) A person shall not sell or otherwise transfer an ORV to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's certificate of origin executed in accordance with this section. A dealer shall not purchase or otherwise acquire a new ORV without obtaining a manufacturer's certificate of origin.

(2) A manufacturer's certificate of origin shall contain the following information:

(a) A description of the ORV, including year, make, model or series, and vehicle identification number.

(b) Certification of the date of the transfer of the ORV to the dealer.

(c) The dealer's name and address.

(d) Certification that this transaction is the first transfer of the new ORV in ordinary commerce.

(e) The transferor's signature and address.

(3) An assignment of a manufacturer's certificate of origin shall be printed on the reverse side of the certificate. The assignment shall include the name and address of the transferee, a certification that the ORV is new, and a warranty that the title at the time of delivery is subject only to the secured interests set forth in the assignment.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81108 Application for ORV certificate of title; form; contents; security agreement; perfection of security interest; priority.

Sec. 81108. (1) An application for an ORV certificate of title shall be on a form prescribed by the department of state. The application shall include a certification. The owner or purchaser shall sign the application or, if the application is filed electronically, provide information requested by the department of state to verify the owner's identity. The application shall contain, in addition to other information required by the department of state, the following information:

(a) The applicant's name and address.

(b) A statement of any security interest or other liens on the ORV, along with the name and address of any lienholder.

(c) If a lien is not outstanding, a statement of that fact.

(d) A description of the ORV, including the year, make, model or series, and vehicle identification number.

(2) An application for an ORV certificate of title that indicates the existence of a security interest in the ORV shall, if requested by the security interest holder, be accompanied by a copy of the security agreement, which may be unsigned. The department of state shall indicate on the copy the date and place of filing and shall return the copy to the person who filed the application. The filer shall forward the copy to the security interest holder identified in the application.

(3) Receipt by the secretary of state of a properly tendered application for an ORV certificate of title that indicates the existence of a security interest in the ORV is a condition of perfection of a security interest in the ORV, unless, under section 81109(5), the department of state does not issue certificates of title for ORVs subject to a security interest, and is equivalent to filing a financing statement under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994, with respect to the ORV. When a security interest in an ORV is perfected, it has priority over the rights of a lien creditor as lien creditor is defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 39, Imd. Eff. June 7, 2005;—Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81109 Making application to department of state for issuance of ORV certificate of title; transactions by electronic means required; security interest.

Sec. 81109. (1) The purchaser or other transferee of an ORV subject to the titling provisions of this part shall, except as provided in subsection (2), apply to the department of state for issuance of a certificate of title

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to the ORV. The application shall be filed within 15 days after the date of purchase or transfer.

(2) A dealer selling ORVs at retail, within 15 days after delivering an ORV to a retail purchaser, shall apply to the department of state for issuance of an ORV certificate of title in the purchaser's name. The purchaser of the ORV shall sign the application and other papers necessary to enable the dealer to secure the title from the department of state. If the ORV was not previously titled, the application shall be accompanied by a manufacturer's certificate of origin.

(3) At the request of the applicant, the department of state shall process an application for an ORV certificate of title on an expedited basis.

(4) An application filed with the department of state pursuant to this section shall be accompanied by the fee or fees prescribed in section 81110.

(5) The department of state may require that all transactions concerning ORV security interests be conducted by electronic means, as determined by the department of state. In that case, if an ORV is subject to a security interest, the department of state is not required to issue a certificate of title to the owner of the ORV or a lienholder if it maintains a record of title electronically. After all security interests have been terminated, or for purposes of retitling the ORV in another state or any other purpose considered appropriate by the department of state, the department of state may issue a paper copy of the ORV title to the ORV owner.

(6) An ORV sale transaction in which a security interest is entered by electronic means shall include a document recording entry of the electronic security interest and information regarding the financial institution that holds the security interest. When a secured party is presented with payment in satisfaction of the security interest, a secured receipt in a form approved by the department of state may be produced and submitted to the department of state in lieu of the certificate of title for purposes of transferring ownership in the ORV.

(7) Beginning January 1, 1992, a person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81110 Fee for processing application for ORV certificate of title.

Sec. 81110. (1) The department of state shall charge a fee of $11.00 for processing an application for an ORV certificate of title or a duplicate ORV certificate of title. The department of state shall charge an additional fee of $5.00 for processing an application on an expedited basis.

(2) If a check or draft in payment of a required fee is not paid on its first presentation, the fee is delinquent as of the date the check or draft was tendered. The person tendering the check or draft remains liable for the payment of each fee and any penalty.

(3) The department of state may suspend an ORV certificate of title if the department of state determines that a fee prescribed in this section has not been paid and remains unpaid after reasonable notice or demand.

(4) If a fee is still delinquent 15 days after the department of state has given notice to a person who tendered the check or draft, a $10.00 penalty shall be assessed and collected in addition to the fee.

(5) The revenue collected from the fees imposed under this section shall be used to support the administrative costs of the secretary of state required by this section. Annual revenue collected in excess of these administrative costs shall be credited to the off-road vehicle account. Amounts appropriated for administrative costs but unexpended shall be credited to the off-road vehicle account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

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324.81111 Refusal to issue ORV certificate of title; grounds; issuance and delivery; requiring certification of ownership.

Sec. 81111. (1) The department of state may refuse to issue an original or duplicate ORV certificate of title

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under the circumstances provided in section 81109(5) or if any of the following occur:

(a) The applicant fails to furnish all required information or reasonable additional information requested by the department of state.

(b) The required fee has not been paid.

(c) The applicant is not entitled to an ORV certificate of title under this part.

(d) The ORV is titled under the code.

(e) The application contains a false or fraudulent statement.

(f) The department of state has reasonable grounds to believe that the ORV was stolen or embezzled.

(2) Subject to subsection (1), if satisfied that the applicant is the owner of the ORV and is otherwise entitled to an ORV certificate of title, the department of state shall issue an ORV certificate of title in the applicant's name. The certificate shall be mailed or otherwise delivered to the owner of the ORV or to another person specified by the owner in a separate instrument, in a form prescribed by the department of state.

(3) If the secretary of state is not satisfied as to the ownership of an ORV which is not a late model ORV and whose value does not exceed $1,500.00, the secretary of state shall require the applicant to certify that the applicant is the owner of the ORV and therefore entitled to make application for a certificate of title for the ORV.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81112 Manufacturing requirements for ORV certificate of title; uniform method of numbering; contents; prohibited acts; penalties.

Sec. 81112. (1) An ORV certificate of title shall be manufactured in a manner to prevent as nearly as possible the reproduction, alteration, counterfeiting, forging, or duplication of the certificate without ready detection. An ORV certificate of title shall contain on its face the information set forth in the application, including a notation of all secured interests in the ORV, the date on which the application was filed, and other information required by the department of state.

(2) The department of state shall prescribe a uniform method of numbering ORV certificates of title.

(3) An ORV certificate of title shall contain a form for assignment and warranty of title by the owner with space for the notation of a security interest in the ORV. The ORV certificate of title may also contain other forms that the department of state considers necessary to facilitate the effective administration of this part. The certificate shall bear the coat of arms of this state.

(4) A person shall not do any of the following:

(a) Reproduce, alter, counterfeit, forge, or duplicate an ORV certificate of title or hold or use an ORV certificate of title knowing it is reproduced, altered, counterfeited, forged, or duplicated.

(b) Fraudulently indicate on an ORV certificate of title that there is no security interest on record for the ORV.

(c) Forge or counterfeit a letter, receipt, or other document from the holder of a security interest in an ORV indicating that the security interest has been released.

(5) A person who violates subsection (4) is subject to the following penalties:

(a) If the intent of the violation was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the violation is guilty of a misdemeanor punishable by imprisonment for a period equal to that which could be imposed for the commission of the offense the person had the intent to aid or commit or a fine of not more than $5,000.00, or both.

(b) If the intent of the violation was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the violation is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(6) A person who is convicted of a violation of subsection (4)(b) or (c), in addition to any other penalty, shall pay restitution to the holder of a security interest in the ORV in the amount of the outstanding lien on the ORV.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 271, Imd. Eff. Dec. 19, 2005;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

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324.81113 Loss, mutilation, or illegibility of ORV certificate; application for and issuance of duplicate; legend; indexes.

Sec. 81113. (1) If an ORV certificate of title or duplicate certificate of title is lost or mutilated or becomes illegible, the person entitled to possession of the certificate, or the legal representative or successor in interest to the titleholder of record, may apply to the department of state for a duplicate ORV certificate of title. Upon receipt of the application, the fee prescribed in section 81110, and information satisfactory to the department of state to establish entitlement to the duplicate, the department of state may issue a duplicate ORV certificate of title to the applicant. As provided under section 81109(5), the department of state is not required to issue a duplicate certificate of title to the owner of an ORV if the title is subject to a security interest.

(2) A duplicate ORV certificate of title shall contain the legend: "This is a duplicate certificate of title and may be subject to the rights of a person under the original certificate.".

(3) The secretary of state shall maintain 1 or more indexes pertaining to ORV certificates of title. Upon receiving an application for an ORV certificate of title, the secretary of state may check the information in the application and accompanying documents against the indexes of titled, registered, stolen, and recovered ORVs and against other records maintained by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2018, Act 519, Eff. Mar. 29, 2019.

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324.81114 Records available to public; commercial lookup service of ORV operation, title, and registration; disposition of fees; computerized central file; purging records; providing records to nongovernmental person or entity; payment; admissibility in evidence.

Sec. 81114. (1) The secretary of state shall make available to the public records maintained under this part, other than those declared to be confidential by law or that are restricted by law from disclosure to the public, under procedures prescribed in this part and the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The secretary of state may provide a commercial lookup service of ORV operation, title, and registration records maintained under this part. For each individual record looked up, the secretary of state shall charge a fee of $15.00 per record. The secretary of state shall process a commercial lookup request only if the request is in a form or format prescribed by the secretary of state. The secretary of state shall credit fees collected under this subsection to the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b, through October 1, 2027.

(3) The secretary of state shall create and maintain a computerized central file that includes the information contained on application forms received under this part and the name of each individual who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part. The computerized central file must be interfaced with the law enforcement information network as provided in the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(4) The secretary of state may purge a record of an ORV certificate of title and any record pertaining to it 7 years after the title was issued or the record was made or received.

(5) The secretary of state shall not provide an entire computerized central or other file of records maintained under this part to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

(6) A certified copy of an order, record, or paper maintained under this part is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2005, Act 174, Imd. Eff. Oct. 12, 2005;—Am. 2009, Act 100, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 77, Eff. Oct. 1, 2015;—Am. 2017, Act 199, Eff. Mar. 15, 2018;—Am. 2019, Act 81, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

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324.81114a Disclosure of personal information; uses.

Sec. 81114a. (1) Except as provided in this section and in section 81114c, personal information in a record maintained under this part shall not be disclosed, unless the person requesting the information furnishes proof of identity considered satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose identified in this section or in section 81114c. Notwithstanding this section, highly restricted personal information shall be used and disclosed only as expressly permitted by law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, Public Law 85-506, 15 U.S.C. 1231 to 1232 and 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, 106 Stat. 3384, the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and all federal regulations promulgated to implement these federal laws.

(3) Personal information in a record maintained under this part may be disclosed as follows:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions.

(b) For use in connection with matters of ORV and operator safety or ORV theft; ORV emissions; ORV product alterations, recalls, or advisories; performance monitoring of ORVs; ORV research activities, including survey research; and the removal of nonowner records from the original records of ORV manufacturers.

(c) For use in the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court, administrative agency, or self-regulatory body.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded ORV.

(h) For use by any licensed private security guard agency or alarm system contractor licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, or a private detective or private investigator licensed under the private detective license act of 1965, 1965 PA 285, MCL 338.821 to 338.851, for any purpose permitted under this section.

(i) For use by an ORV rental business, or its employees, agents, contractors, or service firms, for the purpose of making rental decisions.

(j) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. "News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(k) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

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324.81114b Resale or redisclosure of personal information; maintenance of records; duration; availability for inspection.

Sec. 81114b. (1) An authorized recipient of personal information under section 81114a may resell or redisclose the information for any use permitted under section 81114a.

(2) Any authorized recipient of personal information disclosed under section 81114a who resells or rediscloses personal information shall be required by the secretary of state to maintain for a period of not less than 5 years records as to the information obtained and the permitted use for which it was obtained, and to make such records available for inspection by the secretary of state, upon request.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81114c Furnishing list of information to federal, state, or local governmental agency; contract for sale of lists of records; surveys, marketing, and solicitations; insertion of safeguards in agreement or contract; resale or redisclosure of information; disclosure of list based on ORV operation or sanctions to nongovernmental agency.

Sec. 81114c. (1) Upon request, the secretary of state may furnish a list of information from the records of the department maintained under this part to a federal, state, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Unless otherwise prohibited by law, the secretary of state may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this subsection if the cost of preparation exceeds $25.00, and use the revenues received from the service to defray necessary expenses. If the secretary of state sells a list of information under this subsection to a member of the state legislature, the secretary of state shall charge the same fee as the fee for the sale of information under subsection (2) unless the list of information is requested by the member of the legislature to carry out a legislative function. The secretary of state may require the requesting agency to furnish 1 or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this subsection.

(2) The secretary of state may contract for the sale of lists of records maintained under this part in bulk, in addition to those lists distributed at cost or at no cost under this section, for purposes defined in section 81114a(3). The secretary of state shall require each purchaser of information in bulk to execute a written purchase contract. The secretary of state shall fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale shall be used by the secretary of state to defray the costs of list preparation and for other necessary or related expenses.

(3) The secretary of state or any other state agency shall not sell or furnish any list of information under subsection (2) for the purpose of surveys, marketing, and solicitations. The secretary of state shall ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under this part.

(4) The secretary of state may insert any safeguard the secretary considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under this section, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals and of the secretary of state are protected.

(5) An authorized recipient of personal information disclosed under this section who resells or rediscloses the information for any of the permissible purposes described in section 81114a(3) shall do both of the following:

(a) Make and keep for a period of not less than 5 years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(b) Allow a representative of the secretary of state, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(6) The secretary of state shall not disclose a list based on ORV operation or sanctions to a nongovernmental agency, including an individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2000, Act 194, Eff. Jan. 1, 2001.

Popular name: Act 451

Popular name: NREPA

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Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81114f Electronic lien title system; notification and release of security interests in ORVs; participation required; electronic transfers; admissibility in civil, criminal, or administrative proceedings; requirements; definitions.

Sec. 81114f. (1) The secretary of state may enter into 1 or more contracts under this section to establish, implement, and operate an electronic lien title system to process the notification and release of security interests in ORVs through electronic file transfers, or as otherwise determined by the secretary of state, in lieu of the issuance and maintenance of paper documents otherwise required by law. Any such contract shall require the protection of proprietary information in the electronic lien title system and provide for the protection of a competitive free market.

(2) Except for persons who are not normally engaged in the business or practice of financing ORVs, all secured parties are required to participate in the electronic lien title system.

(3) For the purposes of this part, any requirement that a security interest or other information appear on a certificate of title is satisfied by the inclusion of that information in an electronic file maintained in an electronic lien title system. The satisfaction of a security interest may be electronically transmitted to the secretary of state. A secured party shall execute a release of its security interest in an ORV in a manner prescribed by the department not more than 14 days after the secured party receives the payment in satisfaction of the security interest. If the certificate of title is in the possession of the ORV owner, the secured party shall deliver the release to the ORV owner or as otherwise directed by the owner. However, if the certificate of title is held electronically as provided under section 81109(5), the secured party shall deliver the release of security interest to the department of state, and the department of state shall cancel the security interest. If the secured party fails to comply with these requirements for the release of a secured interest, the secured party is liable to the ORV owner for all damages sustained by the owner because of the failure to comply. The electronic lien title system shall provide a mechanism by which an ORV dealer may assign ownership of an ORV without proof that the prior security interest was satisfied existing on the electronic lien title system. However, in the event of such an assignment, the dealer warrants that the title is free and clear of all liens and assumes responsibility for the satisfaction of the security interest.

(4) A certified copy of the secretary of state's electronic record of a security interest is admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence of the security interest. If a certificate of title is maintained in the electronic lien title system, a certified copy of the secretary of state's electronic record of the certificate of title is admissible in any civil, criminal, or administrative proceeding in this state as evidence of the existence and contents of the certificate of title.

(5) The secretary of state may determine any requirements necessary to carry out this section, including, but not limited to, 1 or more of the following:

(a) Monitoring the reasonable fees charged by service providers or a contractor for the establishment and maintenance of the electronic lien title system.

(b) The qualifications of service providers for participation in the electronic lien title system.

(c) The qualifications for a contractor to enter into a contract with the secretary of state to establish, implement, and operate the electronic lien title system.

(d) Program specifications that a contractor must adhere to in establishing, implementing, and operating the electronic lien title system.

(6) The electronic lien title system under this section shall be established, implemented, and operational by February 16, 2021.

(7) By February 16, 2021, the department shall require a person to enter evidence of security interests and any related information into the electronic lien title system in lieu of paper documents.

(8) As used in this section:

(a) "Contractor" means a person who enters into a contract with the secretary of state to establish, implement, and operate the electronic lien title system described in this section.

(b) "Electronic lien title system" means a system to process the notification and release of security interests through electronic file transfers that is established and implemented under this section.

(c) "Service provider" means a person who provides secured parties with software to manage electronic lien and title data as provided under this section.

History: Add. 2018, Act 519, Eff. Mar. 29, 2019.

Popular name: Act 451

Popular name: NREPA

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Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81115 Licensing of ORV required; exceptions; reciprocal agreement.

Sec. 81115. (1) Subject to subsection (2), a person shall not operate an ORV under any of the following conditions unless the ORV is licensed with the department or a dealer as provided under this part:

(a) Except as otherwise provided by law, on or over land, snow, ice, or other natural terrain.

(b) Except as otherwise provided in this part, on a forest trail or in a designated area.

(c) On a street, county road, or highway, except if the vehicle is registered under the code.

(2) An ORV is not required to be licensed under this part under any of the following circumstances:

(a) The ORV is used exclusively in a comprehensive program for training as required in section 81129.

(b) The ORV is operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner.

(c) The ORV is being operated on a free ORV-riding day. The department shall designate as free ORV-riding days each year a Saturday and the following Sunday that are also designated as free fishing days under section 43534. In addition, the department may designate 1 other day or 2 other consecutive days each year as free ORV-riding days. A person operating an unlicensed ORV during a free ORV-riding day has the same privileges and is subject to the same rules and regulations as a person operating an ORV licensed as required under subsection (1).

(d) If and to the extent the department waives the requirement pursuant to a reciprocal agreement with another state.

(3) The department is authorized to enter a reciprocal agreement described in subsection (2)(d).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 111, Eff. Oct. 1, 2003;—Am. 2008, Act 240, Imd. Eff. July 17, 2008;—Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81116 Application for license by owner or dealer of ORV; filing; form; application fee; false information prohibited; issuance of license; validity; permit fees; purchase and resale of ORV licenses; refunds; records; attachment of license to vehicle; license not required for vehicle used and stored outside state; lost or destroyed license.

Sec. 81116. (1) To obtain a license required under this part, the owner of an ORV shall file an application with the department or a dealer on forms provided by the department. If an ORV is sold by a dealer, the application for a license shall be submitted to the department by the dealer in the name of the owner. The application shall include a certification. The owner of the vehicle shall sign the application or, if the application is filed electronically, provide information requested by the department to verify the owner's identity. The application shall be accompanied by a fee as provided in subsection (2). A person shall not file an application for a license that contains false information. Upon receipt of the application in approved form and payment of the appropriate fee, the department or dealer shall issue to the applicant a license. A license is valid for the 12-month period beginning April 1 and ending the following March 31.

(2) The fee for a license is as follows:

(a) Except as provided in subdivision (b), $26.25.

(b) If the license authorizes operation of the ORV on state ORV trails, $36.25.

(3) A dealer may purchase from the department ORV licenses for resale to owners of vehicles that require a license under this part. The department shall refund to a dealer the purchase price of any ORV licenses returned within 90 days after the end of the 12-month period for which they were valid. A dealer shall maintain and provide to the department records of ORV license sales on forms provided by the department. In addition to the sale of ORV licenses, a dealer engaged in the sale, lease, or rental of ORVs as a regular business may sell any other license or permit authorized by the department to be sold by other dealers under the statutes of this state.

(4) Before a vehicle that requires an ORV license is operated, the owner shall ensure that a license is permanently attached to the vehicle in the manner prescribed by and, subject to this subsection, in the location designated by the department. The license for a 2-wheel vehicle shall be attached as provided in either of the following:

(a) Centered on the exposed surface of the rear fender.

(b) Located at a visible place facing forward on a front suspension fork.

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(5) If, when a vehicle that otherwise requires a license under this part is sold, the purchaser certifies on a form provided by the department that the vehicle will be used and stored outside of this state and will not be returned by the purchaser to this state for use, a license is not required for the vehicle.

(6) If a license acquired by the owner of an ORV is lost or destroyed, the department shall provide that person with a replacement license free of charge. The department may require a person requesting a replacement license to supply sufficient evidence of the loss or destruction of the original license.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1995, Act 99, Imd. Eff. June 22, 1995;—Am. 2003, Act 111, Eff. Oct. 1, 2003;—Am. 2006, Act 477, Imd. Eff. Dec. 21, 2006;—Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012;—Am. 2013, Act 75, Imd. Eff. June 25, 2013;—Am. 2017, Act 199, Eff. Mar. 15, 2018;—Am. 2022, Act 57, Eff. Mar. 29, 2023;—Am. 2023, Act 217, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81117 Off-road vehicle account.

Sec. 81117. (1) Money in the off-road vehicle account shall be used only for the following:

(a) Signage for and improvement, maintenance, and construction of ORV trails, routes, or areas.

(b) The administration and enforcement of this part.

(c) The leasing of land.

(d) The acquisition of easements, permits, or other agreements for the use of land for ORV trails, routes, or areas.

(e) The restoration of any of the natural resources of this state on public land that are damaged due to ORV use in conjunction with the plan required by section 81123.

(f) One dollar of the revenue from each fee collected under section 81116 shall be used for the purposes of sections 81129 and 81130.

(2) All revenue from each fee collected under section 81116 shall be deposited in the off-road vehicle account.

(3) All funds allocated under this part shall be for projects that are open to the public.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 111, Eff. Oct. 1, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81118 Repealed. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: The repealed section pertained to creation of safety education fund.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81119 Distribution of revenue in form of grants.

Sec. 81119. (1) Not less than 50% of the money in the off-road vehicle account shall be distributed each year in the form of grants for the purpose of planning, improving, constructing, signing, and maintaining ORV trails, areas, and routes and access to those trails, areas, and routes, the leasing of land, the acquisition of easements, permits, or other agreements for the use of land for ORV trails, areas, and routes, to public agencies and nonprofit incorporated clubs and organizations.

(2) An application by a public agency or a nonprofit incorporated club or organization shall include a plan for restoration of any of the natural resources of this state on public land that are damaged due to ORV use. The public agencies or nonprofit incorporated clubs or organizations shall indicate on their application that their use of grant money is consistent with, and meets the requirements of, the plan developed by the department pursuant to section 81123, and the trail, route, or area is available to the public. The department shall not approve a grant unless the application meets the requirements of the plan. The department shall

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make application forms available and consider grant requests on a yearly basis.

(3) A grant shall not be made for a trail, route, or area unless the trail, route, or area is available for ORV use and is approved by the department. A grant for the cost of leasing of land and the acquisition of easements, permits, or other agreements may equal 100% of incurred expense. Specifications shall be prescribed by the department.

(4) Not less than 31-1/4% of the money in the off-road vehicle account shall be used each year for enforcement of this part or the purchase of any necessary equipment used for enforcement of this part. Of the amount available for enforcement, the department shall make available 24% of the funds for distribution in the form of grants by the department to the county sheriffs' departments. The balance of the funds available shall be used by the department for the enforcement of this part or for the purchase of any necessary equipment used for the enforcement of this part. In making grants available for distribution under this subsection, the department shall consider the following factors:

(a) The number of miles of ORV trails, routes, or areas within the county.

(b) The number of sheriff's department employees available for enforcement of this part.

(c) The estimated number of ORVs within the county and that are brought into the county for ORV use.

(d) The estimated number of days that ORVs may be used within that county.

(e) Any other factors considered appropriate by the department. The department shall require a county sheriff receiving a grant under this subsection to maintain records and submit an annual report to verify expenditure of grant money received.

(5) Not less than 12-1/2% of the revenue in the off-road vehicle account shall be distributed each year in the form of grants to public agencies and nonprofit incorporated clubs and organizations for the restoration of damage that is caused by ORV use to natural resources on public land. A grant under this subsection may be in addition to a grant under subsection (1). An application for a grant under this subsection shall comply with subsection (2).

(6) Not more than 3-1/8% of the revenue in the off-road vehicle account in any year shall be used for administration of this part. The department may use revenue from the funds for personnel to operate the program under this part.

(7) The remaining 3-1/8% of the revenue in the off-road vehicle account may be used for the purposes described in subsections (1) and (4), except that 25 cents of each fee for a license sold by a dealer shall be retained by the dealer as a commission for services rendered. If the remainder of the money in the off-road vehicle account is used for the purposes described in subsection (4), it shall be allocated as provided in subsection (4).

(8) Grants under this section shall remain available until expended once a contract or commitment has been entered into under this section. A contract shall be for a period of not more than 2 years. A grant not expended within the contract period may be renewed by the department by entering into a new contract.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81120 Prohibited conduct; violations as felony; penalties.

Sec. 81120. (1) A person who makes a false representation or false certification to obtain personal information under this part, or who uses personal information for a purpose other than a permissible purpose identified in section 81114a or 81114c, is guilty of a felony.

(2) A person who is convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not less than 2 years or more than 7 years, or by a fine of not less than $1,500.00 or more than $7,000.00, or both.

(3) A person who is convicted of a third or subsequent violation of this section is guilty of a felony punishable by imprisonment for not less than 5 years or more than 15 years, or by a fine of not less than $5,000.00 or more than $15,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

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Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81121 Renting, leasing, or furnishing ORV; maintaining safe operating condition; explanation of operation; liability insurance.

Sec. 81121. (1) A dealer shall maintain in safe operating condition an ORV rented, leased, or furnished by the dealer. The dealer, dealer's agents, or employees shall explain the operation of the vehicle being rented, leased, or furnished, and if the dealer, dealer's agent, or employee believes the person to whom the vehicle is to be rented, leased, or furnished is not competent to operate the vehicle with safety to that person or others, the dealer, dealer's agent, or employee shall refuse to rent, lease, or furnish the vehicle.

(2) A dealer renting, leasing, or furnishing a vehicle shall carry a policy of liability insurance subject to limits, exclusive of interest and costs, with respect to the vehicle, as follows: $20,000.00 because of bodily injury to, or death of, 1 person in any 1 accident, and $40,000.00 because of bodily injury to, or death of, 2 or more persons in any 1 accident, and $10,000.00 because of injury to, or destruction of, property of others in any 1 accident, or alternatively, the dealer shall demand and be shown proof that the person renting, leasing, or being furnished a vehicle carries a liability policy of at least the type and coverage as specified above.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81122 Prohibited operation of unregistered ORV; permit not required; operator as prima facie negligent.

Sec. 81122. (1) A person shall not operate an ORV that is not registered under the code upon a street, county road, or highway, except as provided in section 81131 or under the following conditions and circumstances:

(a) The operator of a vehicle may cross a street, county road, or highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a street, county road, or highway, and shall yield the right-of-way to oncoming traffic.

(b) A vehicle may be operated on a street, county road, or highway for a special event of limited duration and conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. Subject to subsection (2), a special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the department.

(c) A farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on a street, county road, or highway while traveling to or from the farmer's residence or work location or field during the course of farming operations. An ORV shall not be operated pursuant to this subdivision during the period of 30 minutes before sunset to 30 minutes after sunrise or when visibility is substantially reduced due to weather conditions. The individual shall operate the ORV in the same manner and on the same portion of the street, county road, or highway as required under section 81131(9). The state transportation department and all of its employees are immune from tort liability for injury or damages sustained by any person arising in any way by reason of the operation or use of an ORV for the limited purposes allowed under this subdivision. An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the street, county road, or highway and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches.

(2) The department shall not require a permit under this part merely for organized group recreational ORV riding on department lands, or for an ORV event on the frozen surface of public waters, if conducted in compliance with applicable statutes, rules, and orders. Within 90 days after the effective date of the amendatory act from the 2013-2014 legislative session that added this subsection, the department shall develop and establish, in consultation with representatives of the Michigan snowmobile and trails advisory committee and other interested parties, policy criteria for determining circumstances under which notice to the department or a permit is required for ORV events on department lands.

(3) In a court action in this state if competent evidence demonstrates that a vehicle that is permitted to operate on a highway pursuant to the code is in a collision on a roadway with an ORV that is not registered under the code, the operator of the ORV involved in the collision shall be considered prima facie negligent.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81123 Comprehensive plan for management of ORV use of certain areas, routes, and trails; revision; approval; designation of ORV trails and areas for nonconflicting recreation trail use; designated scramble area; maps of trails.

Sec. 81123. (1) The department shall, by October 1, 1991, develop a comprehensive plan for the management of ORV use of areas, routes, and trails maintained by or under the jurisdiction of the department or a local unit of government pursuant to section 81131. The plan shall, as a minimum, set forth the following methods and timetable:

(a) The inventorying, by appropriate means, of all areas, forest roads, and forest trails used by or suitable for use by ORVs.

(b) The identification and evaluation of the suitability of areas, forest roads, and forest trails to sustain ORV use.

(c) The designation of areas, forest roads, and forest trails for ORV use, including use by persons with disabilities.

(d) The development of resource management plans to maintain areas, forest roads, or forest trails and to restore or reconstruct damaged areas, forest roads, or forest trails. The plans shall include consideration of the social, economic, and environmental impact of ORV use.

(e) Specifications for trails and areas.

(2) The plan developed under subsection (1) shall be revised every 2 years. The plan shall be submitted to the legislature for approval. The legislature shall approve the plan without amendment by concurrent resolution adopted by both standing committees of the house of representatives and senate that consider natural resources matters and both houses of the legislature by recorded vote. The department shall submit any subsequent revisions to the plan to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date of the revisions. If both standing committees of the house of representatives and senate that consider natural resources matters fail to reject the revisions within those 20 session days, the revisions shall be considered approved.

(3) The plan may designate where bicyclists, hikers, equestrians, and other nonconflicting recreation trail users may use ORV trails or areas.

(4) By May 7, 1992, the department shall designate an appropriate area in the northern Lower Peninsula and an appropriate area in southeast Michigan as a scramble area.

(5) Copies of maps of trails shall be prepared and made available by the department in sufficient quantities to accompany each ORV certificate of title issued by the secretary of state and to place in each county sheriff's office and each department of natural resources field office.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81124 Rules.

Sec. 81124. If the department finds that rules are necessary to implement the regulatory provisions of this part or to clarify the intent of this part, the department shall promulgate rules.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81125 Repealed. 2003, Act 111, Eff. Oct. 1, 2003.

Compiler's note: The repealed section pertained to ORV trails advisory committee.

Popular name: Act 451

Popular name: NREPA

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Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81126 Repealed. 2016, Act 288, Imd. Eff. Sept. 28, 2016.

Compiler's note: The repealed section pertained to applicability of MCL 324.81123, 324.81125, and 324.81127 to the Upper Peninsula and submission of a report to legislative committees.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81127 Comprehensive system; ORV use on forest roads and other state owned land; revisions; needs of hunters, senior citizens, and individuals with disabilities.

Sec. 81127. (1) Under the comprehensive system previously approved and implemented under former section 16d of 1975 PA 319, all forest roads shall be open to ORV use as provided in section 72118. All other state owned land under the jurisdiction of the department shall be closed to ORV use except the following:

(a) Designated roads that are not forest roads.

(b) Designated trails.

(c) Designated areas.

(2) The commission shall approve any subsequent revisions to the system and shall establish an effective date for the revisions. The department shall submit the revisions approved by the commission to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date determined by the commission.

(3) In developing the system, the department shall consider the needs of hunters, senior citizens, and individuals with disabilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 2016, Act 288, Imd. Eff. Sept. 28, 2016.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81128 Repealed. 2013, Act 119, Imd. Eff. Sept. 25, 2013.

Compiler's note: The repealed section pertained to citizens review board.

324.81129 Operation of ORV or ATV by child; requirements; ORV information and safety advice; training program and performance testing; course instruction; ORV safety certificates; rules; exceptions; additional requirements.

Sec. 81129. (1) Subject to subsection (17), a parent or legal guardian of a child less than 16 years of age shall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession.

(2) Subject to subsection (17), a parent or legal guardian of a child less than 12 years of age shall not permit the child to operate an ATV with 4 or more wheels unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(3) A parent or legal guardian of a child less than 16 years of age shall not permit the child to operate a 3-wheeled ATV.

(4) Subject to subsection (17), the owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by a child less than 16 years of age unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession.

(5) Subject to subsection (17), the owner or person in charge of an ATV with 4 or more wheels shall not knowingly permit the vehicle to be operated by a child less than 12 years of age unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV used in agricultural operations.

(6) The owner or person in charge of a 3-wheeled ATV shall not knowingly permit the vehicle to be operated by a child less than 16 years of age.

(7) The owner or person in charge of an ORV shall not knowingly permit the vehicle to be operated by an individual who is incompetent to operate the vehicle because of mental or physical disability.

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(8) The department shall implement a comprehensive program for the training of ORV operators and the preparation and dissemination of ORV information and safety advice to the public. The program shall provide for the training of youthful operators and for the issuance of ORV safety certificates to those who successfully complete the training and may include separate instruction for each type of ORV.

(9) In implementing a program under subsection (8), the department shall cooperate with private organizations and associations, private and public corporations, the department of education, the department of state, and local governmental units. The department shall consult with ORV and environmental organizations and associations in regard to the subject matter of a training program and performance testing that leads to certification of ORV operators.

(10) The department may designate a qualified individual to provide course instruction and to award ORV safety certificates.

(11) The department may promulgate rules to implement subsections (8) to (10) and (17).

(12) Subject to subsection (17), a child who is less than 16 years of age shall not operate an ORV unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession.

(13) Subject to subsection (17), a child who is less than 12 years of age shall not operate an ATV with 4 or more wheels unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV in agricultural operations.

(14) A child who is less than 16 years of age shall not operate a 3-wheeled ATV.

(15) Subject to subsection (17), when operating an ORV, a child who is less than 16 years of age shall present the ORV safety certificate to a peace officer upon demand.

(16) Notwithstanding any other provision of this section, an operator who is less than 12 years of age shall not cross a street, county road, or highway. An operator who is not less than 12 years of age but less than 16 years of age may cross a street, county road, or highway or operate an ORV pursuant to section 81131(9) if the operator has an ORV safety certificate in his or her immediate possession and meets any other requirements under this section for operation of the vehicle.

(17) The requirement that a child possess an ORV safety certificate to operate an ORV, and the requirement that a child who is less than 12 years of age not operate an ATV with 4 or more wheels unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child, do not apply if all of the following requirements are met:

(a) The child is participating in an organized ORV riding or racing event held on land not owned by this state.

(b) The child's parent or legal guardian has provided the event organizer with written permission for the child to participate in the event.

(c) The event organizer has not less than $500,000.00 liability insurance coverage for the event.

(d) A physician or physician's assistant licensed or otherwise authorized under part 170 or 175 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, or a paramedic or emergency medical technician licensed under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979, is present at the site of the event or available on call.

(e) The event is at all times under the direct visual supervision of adult staff of the event organizer and a staff member serves as a flagger to warn participants if another participant is injured or an ORV is inoperable in the ORV operating area.

(f) Fencing or another means of crowd control is used to keep spectators out of the ORV operating area.

(g) If the event is on a closed course, dust is controlled in the ORV operating area and the riding surface in the ORV operating area is otherwise properly prepared.

(h) Three-wheeled ATVs are not used by participants.

(i) Any ATVs used by participants are equipped with a side step bar or comparable safety equipment and with a tether kill switch, and the tether is used by all participants.

(j) Each participant in the event wears a crash helmet approved by the United States department of transportation, a protective long-sleeved shirt or jacket, long pants, boots, and protective gloves.

(k) Any other applicable requirements of this part or rules promulgated under this part are met.

(18) If a child less than 16 years of age participates and is injured in an organized ORV riding or racing event, the organizer of the event shall, within 30 days after the event, submit to the department a report on a form developed by the department. The report shall include all of the following information, as applicable:

(a) Whether any participant less than 16 years of age was killed or suffered an injury resulting in transportation to a hospital as a result of an ORV accident at the event.

(b) The age of the child.

(c) Whether the child had been issued an ORV safety certificate.

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(d) The type of ORV operated.

(e) A description of the accident and injury.

(19) The requirements of this section are in addition to any applicable requirements of section 81131(13).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 111, Eff. Oct. 1, 2003;—Am. 2008, Act 164, Imd. Eff. June 19, 2008;—Am. 2008, Act 240, Imd. Eff. July 17, 2008;—Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013;—Am. 2013, Act 249, Imd. Eff. Dec. 26, 2013;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81130 ORV safety education course.

Sec. 81130. (1) A person who is under 16 years of age, before operating an ATV or ORV, shall complete an ORV safety education course approved by the department. This course may include a written examination and a driving test designed to test the competency of the applicant. Upon successful completion of this safety education course, a person shall receive an ORV safety certificate.

(2) A safety education course conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, or another governmental agency located in this state or by a department approved nonprofit service organization shall be conducted in compliance with this section. An agency or a school conducting a course under this subsection may apply to the department for a grant from the off-road vehicle account for costs associated with conducting a course.

(3) Except for a course conducted by a private business enterprise as provided by subsection (4), an applicant for a safety education course under this section shall pay not more than a $25.00 course fee or in the case of a university or community college a fee not more than the cost of 1 credit hour of instruction. The course fees shall only be used for funding the administration and implementation of the course.

(4) An ATV or ORV, or both, safety education course required by this section and approved by the department may be conducted by a private business enterprise. A private business enterprise may charge a course fee not to exceed the cost of conducting the course.

(5) The director shall designate a person to be the state coordinator of the ATV and ORV safety education program. A person designated under this subsection shall have successfully completed ATV and ORV safety courses.

(6) The director shall designate a person who has successfully completed ATV and ORV safety courses to perform annual inspections of course sites.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 111, Eff. Oct. 1, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81131 Ordinance allowing disabled person to operate ORV; notice of public hearing; closure of county road to operation of ORVs; operation of ORVs on highway; operation of ORV with flow of traffic; maintaining county road or street or highway not required; immunity from tort liability; "gross negligence" defined; operator of ORV as prima facie negligent; violation as municipal civil infraction; deposit of fines; violation as state civil infraction.

Sec. 81131. (1) A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(2) Subject to subsection (4), a county board of commissioners may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to the county road commission, to the legislative body of each township and municipality located within the county, to the state transportation department if the road intersects a highway, and, if state forestland is located within the county, to the department. If the county is a southern county, before adopting an ordinance under this

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subsection, the county board of commissioners shall consult with the board of county road commissioners.

(3) Subject to subsection (4), the legislative body of a township or municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. Not less than 28 days before a public hearing on the ordinance, the clerk of the township or municipality shall send notice of the public hearing, by certified mail, to the county road commission, to the county board of commissioners, to the legislative body of every other township and municipality located within the county, to the state transportation department if the road intersects a highway, and, if state forestland is located within the township or municipality, to the department. If the township or municipality is located in a southern county, before adopting an ordinance under this subsection, the legislative body of the township or municipality shall consult with the board of county road commissioners. This subsection does not apply to a township or municipality until 1 year after the effective date of the amendatory act that first authorized the county in which that township or municipality is located to adopt an ordinance under subsection (2).

(4) The board of county road commissioners may close a county road to the operation of ORVs otherwise authorized pursuant to subsection (2) or (3). A county road commission shall not under this subsection close more than 30% of the linear miles of county roads located within the county to the operation of ORVs otherwise authorized pursuant to subsection (2) or (3). The legislative body of a township or municipality may adopt an ordinance to close a county road located in the township or municipality to the operation of ORVs otherwise authorized pursuant to subsection (2). The legislative body of a village may adopt an ordinance to close a county road located in the village to the operation of ORVs otherwise authorized by the township pursuant to subsection (3). A county road may be closed to the operation of ORVs under this subsection only to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety.

(5) The legislative body of a municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality.

(6) The legislative body of a local unit of government may request the state transportation department to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government. The request shall describe how the authorization would meet the requirements of subsection (7). The state transportation department shall solicit comment on the request from the department, ORV clubs, and local units of government where the highway is located. The state transportation department shall consider comments received on the request before making a decision on the request. The state transportation department shall grant the request in whole or in part or deny the request not more than 60 days after the request is received. If the state transportation department grants a request in whole or in part under this subsection, the local unit of government that submitted the request may adopt an ordinance authorizing the operation of ORVs on the highway that was the subject of the request. A county may submit a request for authorization under this subsection on behalf of 1 or more local units of government located within that county if requested by those local units of government. Before January 1, 2015, the state transportation department may authorize the operation of ORVs on a highway as provided in this subsection and subsection (7) on the department's initiative and without having received a request from a local unit of government.

(7) The state transportation department shall authorize operation of an ORV under subsection (6) only on a highway that is not an interstate highway and that meets 1 or more of the following requirements:

(a) Serves as a connector between ORV areas, routes, or trails designated by the department or an ORV user group.

(b) Provides access to tourist attractions, food service establishments, fuel, motels, or other services.

(c) Serves as a connector between 2 segments of the same county road that run along discontinuous town lines and on which ORV use is authorized pursuant to subsection (2) or (3).

(d) Includes a bridge or culvert that allows an ORV to cross a river, stream, wetland, or gully that is not crossed by a street or county road on which ORVs are authorized to operate under subsection (2), (3), or (5).

(8) The state transportation department may close a highway to the operation of ORVs otherwise authorized pursuant to subsection (6) after written notice to the clerk of each local unit of government where the highway is located and the senate and house committees with primary responsibility for natural resources, recreation, and transportation. The notice shall be in writing and sent by first-class United States mail or personally delivered not less than 30 days before the adoption of the rule or order closing the highway. The notice shall set forth specific reasons for the closure.

(9) Subject to subsection (4), if a local unit of government adopts an ordinance pursuant to subsection (2), (3), or (5), a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance. If the operation of ORVs on a highway is authorized

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pursuant to subsection (6), a person may operate an ORV with the flow of traffic as follows:

(a) On the right shoulder of the highway.

(b) If there is not a right shoulder or the right shoulder is not of adequate width, on the right unmaintained portion of the highway.

(c) On the far right of the right traffic lane of the highway, if necessary to cross a bridge or culvert and if the operator brings the ORV to a complete stop before entering and yields the right-of-way to an approaching vehicle on that traffic lane.

(10) A person shall not operate an ORV as authorized pursuant to subsection (2), (3), (5), or (6) at a speed greater than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the street, county road, or highway.

(11) Unless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV as authorized pursuant to subsection (2), (3), (5), or (6) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 65 inches wide or has 3 wheels. ORVs operated as authorized pursuant to subsection (2), (3), (5), or (6) shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

(12) A person shall not operate an ORV as authorized pursuant to this section without displaying a lighted headlight and lighted taillight.

(13) A person under 18 years of age shall not operate an ORV as authorized pursuant to this section unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV as authorized pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129.

(14) A township that has authorized the operation of ORVs on a county road under subsection (3) does not have a duty to maintain the maintained portion or unmaintained portion of the county road in a condition reasonably safe and convenient for the operation of ORVs. This state does not have a duty to maintain a highway in reasonable repair so that it is reasonably safe and convenient for the operation of ORVs except ORVs registered and operated as motor vehicles as provided in the code. A board of county road commissioners, a county board of commissioners, or a municipality does not have a duty to maintain the maintained portion or unmaintained portion of a county road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except the following ORVs:

(a) ORVs registered and operated as motor vehicles as provided in the code.

(b) ORVs operated as authorized pursuant to subsection (1).

(15) Subject to section 5 of 1964 PA 170, MCL 691.1405, this state, a board of county road commissioners, a county board of commissioners, and a local unit of government are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use, on the maintained portion or unmaintained portion of a highway, road, or street, of an ORV that is not registered under the code or that is registered under the code but is operated as authorized pursuant to subsection (2), (3), (5), or (6). The immunity provided by this subsection does not apply to actions of an employee of this state, an employee of a board of county road commissioners, an employee of a county board of commissioners, or an employee of a local unit of government that constitute gross negligence. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(16) In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road, street, or highway pursuant to the code was in a collision on a roadway with an ORV that is not registered under the code, the operator of the ORV shall be considered prima facie negligent.

(17) A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a fine of not more than $500.00 for a violation of the ordinance. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a street, county road, or highway, or public property as a result of the violation.

(18) The treasurer of the local unit of government shall deposit fines collected by that local unit of government under section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, and subsection (17) and damages collected under subsection (17) into a fund to be designated as the "ORV fund". The legislative body of the local unit of government shall appropriate revenue in the ORV fund as follows:

(a) Fifty percent to the county sheriff or police department responsible for law enforcement in the local unit of government for ORV enforcement and training.

(b) Fifty percent to the board of county road commissioners or, in the case of a city or village, to the

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department responsible for street maintenance in the city or village. However, if a fine was collected for a violation of an ordinance adopted under subsection (6), 50% of the fine revenue shall be appropriated to the state transportation department. Revenue appropriated under this subdivision shall be used for repairing damage to streets, county roads, or highways and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether streets, county roads, or highways are open or closed to the operation of ORVs under this section.

(19) A person who violates a rule promulgated or order issued under subsection (6) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a highway, or public property as a result of the violation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2008, Act 240, Imd. Eff. July 17, 2008;—Am. 2009, Act 175, Imd. Eff. Dec. 15, 2009;—Am. 2011, Act 107, Imd. Eff. July 19, 2011;—Am. 2013, Act 117, Imd. Eff. Sept. 25, 2013;—Am. 2013, Act 118, Imd. Eff. Sept. 25, 2013.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81132 Rules; ordinance enacted under authority of rule; enforcement.

Sec. 81132. (1) The department may promulgate rules governing the operation and conduct of ORVs, vehicle speed limits, use of vehicles by day and hour, and the establishment and designation of areas within which vehicles may be used in a manner compatible with, and that will best protect, the public safety and general welfare on the frozen surface of public waters, and that will preserve the submerged marshlands adjacent to the borders of the Great Lakes, Lake St. Clair, and the navigable inland waters of the state.

(2) The department, on its own initiative or on receipt of a certified resolution of the governing body of a local unit of government may initiate investigations into the need for special rules governing the operation of vehicles on the frozen surface of public waters and the submerged marshlands adjacent to the borders of the Great Lakes, Lake St. Clair, and the navigable inland waters of the state. If controls for that activity are considered necessary, or when the amendment or rescission of an existing rule is required, a rule must be prepared. Notice of a public hearing must be made not less than 10 days prior to the hearing, in a newspaper of general circulation in the area within which the rules are to be imposed, amended, or rescinded.

(3) The proposed rule must then be submitted to the governing body of the political subdivision in which the affected frozen waters or marshes lie. Within 30 calendar days, the governing body shall inform the department that it approves or disapproves of the proposed rule. If the governing body disapproves the proposed rule, further action must not be taken. If the governing body approves the proposed rule, a local ordinance may be enacted which must be identical to the rule, and which ordinance must not be effective until the rule is in effect in accordance with law. The department shall then promulgate the rule.

(4) When an ordinance is enacted under the authority of a rule, and that rule is subsequently suspended by the legislature, or amended or rescinded by the department, the ordinance must also be suspended, amended, or repealed.

(5) A local peace officer may enforce an ordinance enacted pursuant to this section, and a state peace officer shall enforce a rule promulgated under this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2023, Act 210, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81133 Operation of ORV; prohibited acts; crash helmet and protective eyewear required; exception; assumption of risk.

Sec. 81133. (1) An individual shall not operate an ORV:

(a) At a rate of speed greater than is reasonable and proper, or in a careless manner, having due regard for conditions then existing.

(b) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight. The requirements of this subdivision are in addition to any applicable requirements of section 81131(12).

(c) Unless the vehicle is equipped with a braking system that may be operated by hand or foot, capable of

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producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.

(d) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose, notwithstanding section 72118; on other state-owned lands under the control of the department where the operation would be in violation of rules promulgated by the department; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the department; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the department may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property.

(e) On the frozen surface of public waters within 100 feet of an individual not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events.

(f) Unless the vehicle is equipped with a spark arrester type United States Forest Service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter that meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States Environmental Protection Agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States Environmental Protection Agency under the noise control act of 1972, 42 USC 4901 to 4918.

(g) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except under any of the following circumstances:

(*i*) On property owned by or under the operator's control or on which the operator is an invited guest.

(*ii*) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the department.

(*iii*) On a street, county road, or highway on which ORV use is authorized under section 81131(2), (3), (5), or (6).

(h) In or upon the lands of another without the written consent of the owner, the owner's agent, or a lessee, when required by part 731. The operator of the vehicle is liable for damage to private property caused by operation of the vehicle, including, but not limited to, damage to trees, shrubs, or growing crops, injury to other living creatures, or erosive or other ecological damage. The owner of the private property may recover from the individual responsible nominal damages of not less than the amount of damage or injury. Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass does not imply consent to ORV use.

(i) In an area on which public hunting is permitted during the regular November firearm deer season, from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except as follows:

(*i*) During an emergency.

(*ii*) For law enforcement purposes.

(*iii*) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(*iv*) To remove legally harvested deer, bear, or elk from public land. An individual shall operate an ORV under this subparagraph at a speed not exceeding 5 miles per hour, using the most direct route that complies with subdivision (n).

(*v*) To conduct necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

(*vi*) On property owned or under control of the operator or on which the operator is an invited guest.

(*vii*) While operating a vehicle registered under the code on a private road capable of sustaining automobile traffic or a street, county road, or highway.

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(*viii*) If the individual holds a valid permit to hunt from a standing vehicle issued under part 401 or is a person with a disability using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road. An individual holding a valid permit to hunt from a standing vehicle issued under part 401, or a person with a disability using an ORV to access public lands for purposes of hunting or fishing, may display a flag, the color of which the department shall determine, to identify himself or herself as a person with a disability or an individual holding a permit to hunt from a standing vehicle under part 401.

(j) Except as otherwise provided in section 40111, while transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.

(k) On or across a cemetery or burial ground, or land used as an airport.

(*l*) Within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area or is being operated pursuant to section 81131(2), (3), (5), or (6).

(m) On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as provided for in section 81127.

(n) In or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.

(o) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill an animal, whether wild or domesticated.

(p) In a manner so as to leave behind litter or other debris.

(q) On public land, in a manner contrary to operating regulations.

(r) While transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

(*i*) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

(*ii*) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed.

(s) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.

(t) On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except under any of the following circumstances:

(*i*) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the department.

(*ii*) On a street, county road, or highway on which ORV use is authorized under section 81131(2), (3), (5), or (6).

(u) On a forest trail if the ORV is greater than 50 inches in width.

(2) An individual who is operating or is a passenger on an ORV shall wear a crash helmet and protective eyewear that are approved by the United States Department of Transportation. This subsection does not apply to any of the following:

(a) An individual who owns the property on which the ORV is operating, is a family member of the owner and resides at that property, or is an invited guest of an individual who owns the property. An exception under this subdivision does not apply to any of the following:

(*i*) An individual less than 16 years of age.

(*ii*) An individual 16 or 17 years of age, unless the individual has consent from his or her parent or guardian to ride without a crash helmet.

(*iii*) An individual participating in an organized ORV riding or racing event if an individual who owns the property receives consideration for use of the property for operating ORVs.

(b) An individual wearing a properly adjusted and fastened safety belt if the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet.

(c) An ORV operated on a state-licensed game bird hunting preserve at a speed of not greater than 10 miles per hour.

(d) An ORV operated for the purpose of towing a fishing shanty or supply shed over the frozen surface of public waters at the minimum speed required to maintain controlled forward movement of the vehicle or while traveling to and from a fishing shanty at a speed of not greater than 10 miles per hour. An owner of private property is not liable for personal injuries, including death, to an individual who operates an ORV as described in this subdivision without wearing a helmet while traveling on the owner's property.

(3) Each person who participates in the sport of ORV riding accepts the risks associated with that sport

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insofar as the dangers are inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; defects in traffic lanes; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with fill material, decks, bridges, signs, fences, trail maintenance equipment, or other ORVs. Those risks do not include injuries to persons or property that result from the use of an ORV by another person in a careless or negligent manner likely to endanger person or property. When an ORV is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of ORV riding additionally assumes risks including, but not limited to, entanglement with railroad tracks, switches, and ties and collisions with trains and train-related equipment and facilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 86, Imd. Eff. May 13, 1998;—Am. 2008, Act 240, Imd. Eff. July 17, 2008;—Am. 2008, Act 365, Imd. Eff. Dec. 23, 2008;—Am. 2012, Act 246, Imd. Eff. July 2, 2012;—Am. 2012, Act 340, Imd. Eff. Oct. 16, 2012;—Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013;—Am. 2013, Act 249, Imd. Eff. Dec. 26, 2013;—Am. 2014, Act 147, Imd. Eff. June 4, 2014;—Am. 2016, Act 288, Imd. Eff. Sept. 28, 2016;—Am. 2018, Act 206, Eff. Sept. 18, 2018.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81134 Operation of or authorizing operation of ORV while under influence of alcoholic liquor or controlled substance prohibited; visible impairment; violation; penalty; "serious impairment of a body function" defined; person less than 21 years of age; person less than 16 years of age occupying ORV; penalties; costs; screening, assessment, and rehabilitative services; duty of court before accepting guilty plea; record.

Sec. 81134. (1) A person shall not operate an ORV if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance, as defined by section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214.

(2) The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate an ORV is visibly impaired due to the consumption of an alcoholic liquor, a controlled substance, or a combination of an alcoholic liquor and a controlled substance.

(3) A person shall not operate an ORV if, due to the consumption of alcoholic liquor, a controlled substance, as defined by section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate an ORV is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty is permissible under this subsection.

(4) A person who operates an ORV in violation of subsection (1) or (3) and by the operation of that ORV causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than $2,500.00 or more than $10,000.00, or both.

(5) A person who operates an ORV within this state in violation of subsection (1) or (3) and by the operation of that ORV causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than $1,000.00 or more than $5,000.00, or both. As used in this subsection, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(6) A person who is less than 21 years of age, whether licensed or not, shall not operate an ORV if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

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(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(7) A person shall not operate an ORV in violation of subsection (1), (3), (4), (5), or (6) while another person who is less than 16 years of age is occupying the ORV.

(8) If a person is convicted of violating subsection (1)(a) or (b), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(*i*) Community service for not more than 360 hours.

(*ii*) Imprisonment for not more than 93 days.

(*iii*) A fine of not less than $100.00 or more than $500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(*i*) Imprisonment for not less than 5 days or more than 1 year.

(*ii*) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:

(*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(9) A person who is convicted of violating subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than $100.00 or more than $500.00, or both.

(10) If a person is convicted of violating subsection (3), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(*i*) Community service for not more than 45 days.

(*ii*) Imprisonment for not more than 93 days.

(*iii*) A fine of not more than $300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(*i*) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(*ii*) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs after 2 or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person shall be sentenced to a fine of not less than $200.00 or more than $1,000.00 and either of the following:

(*i*) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(*ii*) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(11) If a person is convicted of violating subsection (6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(*i*) Community service for not more than 360 hours.

(*ii*) A fine of not more than $250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

(*i*) Community service for not more than 60 days.

(*ii*) A fine of not more than $500.00.

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(*iii*) Imprisonment for not more than 93 days.

(12) A person who violates subsection (7) is guilty of a crime as follows:

(a) A person who operates an ORV in violation of subsection (1), (3), (4), or (5) while another person who is less than 16 years of age is occupying the ORV is guilty of a crime as follows:

(*i*) Except as provided in subdivision (b), a person who violates this subdivision is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this term of imprisonment shall be served consecutively. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(B) Community service for not less than 30 days or more than 90 days.

(*ii*) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:

(A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this term of imprisonment shall be served consecutively. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(b) A person who operates an ORV in violation of subsection (6) while another person who is less than 16 years of age is occupying the ORV is guilty of a misdemeanor punishable as follows:

(*i*) Except as provided in subparagraph (*ii*), a person who violates this subdivision may be sentenced to 1 or more of the following:

(A) Community service for not more than 60 days.

(B) A fine of not more than $500.00.

(C) Imprisonment for not more than 93 days.

(*ii*) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(B) Community service for not less than 30 days or more than 90 days.

(13) For a conviction under subsection (4) or (5), the court shall order, without an expiration date, that the person not operate an ORV.

(14) As part of the sentence for a violation of subsection (1) or a local ordinance substantially corresponding to subsection (1), the court shall do the following:

(a) If the court finds that the person has no prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 6 months or more than 2 years.

(b) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years.

(c) If the court finds that the person has 2 or more prior convictions within a period of 10 years, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years.

(15) As part of the sentence for a violation of subsection (3) or a local ordinance substantially corresponding to subsection (3), the court shall do the following:

(a) If the court finds that the person has no prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 90 days or more than 1 year.

(b) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 6 months or more than 18 months.

(c) If the court finds that the person has 2 or more prior convictions within a period of 10 years, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years.

(16) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1 to 769.36.

(17) A person sentenced to perform community service under this section shall not receive compensation

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and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(18) Before imposing sentence for a violation of subsection (1), (3), (6), or (7) or a local ordinance substantially corresponding to subsection (1), (3), or (6), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(19) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of this section.

(20) Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with a violation of this section. The municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the court of record for each case charging a violation of this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996;—Am. 1998, Act 355, Eff. Oct. 1, 1999;—Am. 1999, Act 22, Eff. Oct. 1, 2000;—Am. 2001, Act 12, Eff. July 1, 2001;—Am. 2014, Act 405, Eff. Mar. 31, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81135 Repealed. 2014, Act 405, Eff. Mar. 31, 2015.

Compiler's note: The repealed section pertained to operation of ORV by visibly impaired person.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81136 Chemical analysis of operator's blood, urine, or breath; admissibility; request for results of test; taking sample of urine or breath; withdrawing blood; liability; administration of tests by person of arrested person's own choosing; refusal to take test; other evidence; jury instruction; admissibility of blood withdrawn after accident; sample of decedent's blood.

Sec. 81136. (1) In a criminal prosecution for violating section 81134 or a local ordinance substantially corresponding to section 81134(1), (3), or (6) or in a criminal prosecution for negligent homicide, manslaughter, or murder resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or to have had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or to have had in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214, the amount of alcohol or controlled substance in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath is admissible into evidence.

(2) If a chemical test of an operator's blood, urine, or breath is given, the results of the test shall be made available to the person charged with an offense enumerated in subsection (1) or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

(3) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the alcoholic content of the blood under this part. Liability for a crime or

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civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or assists in the withdrawal in accordance with this part unless the withdrawal is performed in a negligent manner.

(4) A person arrested for a crime enumerated in subsection (1) who takes a chemical test administered at the request of a peace officer as provided in this part shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the defendant's innocence or guilt of a crime enumerated in subsection (1). If the person arrested is administered a chemical test by a person of his or her own choosing, the person arrested shall be responsible for obtaining a chemical analysis of the test sample. The person shall be informed that he or she has the right to demand that a person of his or her choosing administer 1 of the chemical tests described in this section, that the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant, and that the person arrested shall be responsible for obtaining a chemical analysis of the test sample.

(5) A person arrested shall be advised that if the person refuses the request of a peace officer to take a test described in this section, a test shall not be given without a court order. The person arrested shall also be advised that the person's refusal of the request of a peace officer to take a test described in this section shall result in the suspension of the person's right to operate an ORV.

(6) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or had in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214.

(7) If a jury instruction regarding a defendant's refusal to submit to a chemical test under this section is requested by the prosecution or the defendant, the jury instruction shall be given as follows:

"Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of the defendant's guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant.".

(8) If after an accident the operator of an ORV involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime described in subsection (1) to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(9) If after an accident the operator of an ORV involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining blood alcohol content or presence of a controlled substance, or both. The medical examiner shall give the results of the chemical analysis to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996;—Am. 2014, Act 405, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81137 Implied consent to chemical tests of blood, breath, or urine; exception.

Sec. 81137. (1) Except as provided in subsection (2), a person who operates an ORV is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood, and may be requested by a peace

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officer to submit to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood if:

(a) The person is arrested for a violation of section 81134(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 81134(1), (3), or (6).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of an ORV, and the peace officer has reasonable grounds to believe that the person was operating the ORV in violation of section 81134.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 405, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81138 Chemical tests; advising of right to refuse; court order; report.

Sec. 81138. (1) A person who is requested pursuant to section 81137(1) to take a chemical test shall be advised of the right to refuse to submit to chemical tests; and if the person refuses the request of a peace officer to submit to chemical tests, a test shall not be given without a court order.

(2) If a person refuses the request of a peace officer under section 81137(1) to submit to a chemical test, a written report shall be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person committed a violation described in section 81137(1) and that the person refused to submit to a chemical test upon the request of the peace officer and was advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81139 Administrative hearing; notice.

Sec. 81139. (1) Upon receipt of a report made pursuant to section 81138, the secretary of state shall immediately notify the person in a writing, mailed to the person's last known address, that the report has been received and that within 14 days after the date of the notice the person may request an administrative hearing as provided in section 81140.

(2) The notice shall specifically state that failure to request a hearing within 14 days shall result in the suspension of the person's right to operate an ORV and that the person is not required to retain counsel for the hearing, although counsel will be permitted to represent the person at the hearing.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81140 Suspension of right to operate ORV; appointment of hearing officer; notice; powers of hearing officer; scope and conduct of hearing; final decision or order; petition; review; order; record of proceedings.

Sec. 81140. (1) If a person who refuses to submit to a chemical test under section 81138 does not request an administrative hearing within 14 days after the date of notice under section 81139, the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years.

(2) If an administrative hearing is requested, the secretary of state shall appoint a hearing officer to conduct the hearing. Not less than 10 days' notice of the hearing shall be provided by mail to the person submitting the request, to the peace officer who filed the report under section 81138, and, if a prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer

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may administer oaths and issue subpoenas for the attendance of necessary witnesses, and may grant a reasonable request for an adjournment. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person committed a crime described in section 81137(1).

(b) Whether the person was placed under arrest for a crime described in section 81137(1).

(c) Whether the person reasonably refused to submit to a chemical test upon request of the officer.

(d) Whether the person was advised of his or her rights under section 81136.

(3) An administrative hearing conducted under this section is not a contested case for the purposes of chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The hearing shall be conducted in an impartial manner. A final decision or order of a hearing officer shall be made in writing or stated in the record, and shall include findings of fact based exclusively on the evidence presented and matters officially noticed, and shall specify any sanction to be imposed against the person involved. A copy of the final decision or order shall be delivered or mailed immediately to the person and the peace officer.

(4) After the administrative hearing, if the person is found to have unreasonably refused to submit to a chemical test, the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years. Within 60 days after the final decision or order is issued by the hearing officer, the person may file a petition in the circuit court of the county in which the arrest was made to review the suspension. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 81138 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 81140b. The scope of the court's review shall be limited to the issues provided in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306.

(5) The circuit court shall enter an order setting the cause for hearing for a date certain that is not more than 60 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, birth date, and driver's license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 50 days before the date set for the hearing. The department shall cause a record to be made of the proceedings held under subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification of the filing of a petition for judicial review, the department shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 405, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81140a Suspension or revocation of operator's or chauffeur's license; operation of ORV prohibited; violation as misdemeanor; penalty.

Sec. 81140a. (1) If the operator's or chauffeur's license of a person who is a resident of this state is suspended or revoked by the secretary of state under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or if the driver license of a person who is a nonresident is suspended or revoked under the law of the state in which he or she resides, that person shall not operate an ORV under this part for the same period.

(2) A person who violates this section is guilty of a misdemeanor punishable as follows:

(a) For a first conviction, imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(b) For a second or subsequent conviction, imprisonment for not more than 180 days or a fine of not more than $1,000.00, or both.

History: Add. 1999, Act 43, Eff. Oct. 1, 2000.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81140b Final determination of secretary of state; petition for review in circuit court;

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filing; order setting cause for hearing; service on secretary of state; review of the record.

Sec. 81140b. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 81140, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 81140 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) Except as otherwise provided in this section, the circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition that includes the person's full name, current address, birth date, and driver license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared under section 81140, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) The court may take testimony and examine all the facts and circumstances incident to the order that the person not operate an ORV in this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) Except as otherwise provided in this section, in reviewing a determination under section 81140, the court shall confine its consideration to a review of the record prepared under section 81140 to determine whether the hearing officer properly determined the issues enumerated in section 81140.

(5) In reviewing a determination resulting in issuance of an order under section 81134, the court shall confine its consideration to a review of the record prepared under section 81140. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

(a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.

(b) In excess of the secretary of state's statutory authority or jurisdiction.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

History: Add. 2014, Act 405, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81141 Preliminary chemical breath analysis; arrest; admissibility of results; requirements; civil infraction; fine.

Sec. 81141. (1) A peace officer who has reasonable cause to believe that a person was operating an ORV and that the person by the consumption of alcoholic liquor may have affected his or her ability to operate the ORV, may require the person to submit to a preliminary chemical breath analysis.

(2) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(3) The results of a preliminary chemical breath analysis shall be admissible in a criminal prosecution for a crime enumerated in section 81136(1) or in an administrative hearing held under section 81140, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(4) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 81136, 81137, 81138, 81139, and 81140 for the purposes of chemical tests described in those sections.

(5) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996;—Am. 2014, Act 405, Eff. Mar.

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Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81142 Operation of ORV after right suspended as misdemeanor; penalty.

Sec. 81142. A person whose right to operate an ORV has been suspended pursuant to this part and who operates an ORV is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81143 Accident resulting in injury, death, or property damage; notice; report; report by medical facility; collection and evaluation of information; duties of operator.

Sec. 81143. (1) The operator of a vehicle involved in an accident resulting in injuries to, or the death of, a person, or resulting in property damage in an estimated amount of $100.00 or more, shall immediately, by the quickest available means of communication, notify a state police officer, or the sheriff's office of the county in which the accident occurred. The police agency receiving the notice shall complete a report of the accident on forms prescribed by the director of the department of state police and forward the report to the department of state police and the department.

(2) A medical facility to which a person injured in an accident involving an ORV is transported shall report the accident to the department of state police.

(3) The department of state police, in cooperation with the department, shall collect and evaluate information concerning accidents involving ORVs.

(4) The operator of a vehicle involved in an accident upon public or private property resulting in injury to or the death of a person shall immediately stop at the scene of an accident and shall render to any person injured in the accident reasonable assistance in securing medical aid or transportation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

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324.81144 Arrest without warrant of alleged operator of ORV.

Sec. 81144. If a peace officer has reasonable cause to believe that a person was, at the time of an accident, the operator of an ORV involved in the accident and was operating the ORV while under the influence of an alcoholic liquor, a controlled substance as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of alcoholic liquor and a controlled substance, or was operating the ORV while his or her ability to operate an ORV was impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the peace officer may arrest the alleged operator of the ORV without a warrant.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 405, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81145 Violations; appearance tickets; prima facie evidence of operation by owner.

Sec. 81145. (1) A peace officer may issue an appearance ticket for a violation of this part under sections 9a to 9g of the code of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

(2) In a proceeding for a violation of this part involving prohibited operation or conduct, the registration number or numbered decal or vehicle identification number displayed on an ORV constitutes prima facie evidence that the owner of the vehicle was the person operating the vehicle at the time of the offense; unless

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the owner identifies the operator of the vehicle to a peace officer, the vehicle was reported as stolen at the time of the violation, or that the vehicle was stolen or not in use at the time of the violation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2023, Act 210, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81146 Failure or refusal to obey signal or request to stop; misdemeanor.

Sec. 81146. (1) An operator of an ORV, who is given by hand, voice, emergency light, or siren a visual or audible signal by a peace officer acting in the lawful performance of the peace officer's duty, directing the operator to bring the vehicle to a stop, and who willfully fails to obey the signal by increasing speed, extinguishing lights, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor. The peace officer giving the signal must be in uniform, and the peace officer's vehicle must be easily identifiable as an official law enforcement vehicle.

(2) The operator of a vehicle on the private premises of another, when visibly hailed by the owner or the owner's authorized agent, shall bring the vehicle to an immediate stop and provide personal identification. Refusal to obey such a request to stop or subsequent escape or attempt to escape is a misdemeanor.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2023, Act 210, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81147 Violation of part as misdemeanor or civil violation; penalties; restoration; impoundment; disposition of seized ORV or personal property.

Sec. 81147. (1) Except as otherwise provided in this part, a person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $50.00 or more than $1,000.00, or both, for each violation.

(2) A person who violates section 81133(1)(d) by operating an ORV in such a manner as to create an erosive condition or who violates section 81133(1)(h) or (n) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $250.00 or more than $1,000.00, or both, for each violation.

(3) A person who violates section 81105, 81107, 81115, 81116, 81121, 81130, 81133(1)(b), (c), (e), (f), (g), (i), (k), or (*l*), or 81133(2) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(4) A person shall not remove, deface, or destroy a sign or marker placed by the department indicating the boundaries of an ORV trail or area or that marks a route.

(5) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.

(6) The department or any other peace officer may impound the ORV of a person who commits a violation of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.

(7) Upon conviction of a person for violation described in subsection (6), a court of competent jurisdiction may order the ORV and any personal property on the ORV seized as a result of the violation returned to the owner or, upon recommendation of the local prosecuting attorney, turned over to the department. An ORV or any other property turned over to the department under this subsection shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the department under this subsection shall first be used to restore areas damaged by ORV use, and any balance shall be deposited in the off-road vehicle account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2008, Act 240, Imd. Eff. July 17, 2008;—Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013;—Am. 2014, Act 147, Imd. Eff. June 4, 2014.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part

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of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81148 Condemnation of ORV unauthorized where trespass is result of emergency.

Sec. 81148. A person shall not have an ORV condemned pursuant to section 81147 if the trespass is the result of an emergency situation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81149 Repealed. 2018, Act 237, Eff. Sept. 25, 2018.

Compiler's note: The repealed section pertained to a report on the unrefunded gasoline sales tax money relating to nonhighway use of ORVs.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

324.81150 Uniform interpretation.

Sec. 81150. The department shall disseminate information to its field officers and to state and local law enforcement agencies on a uniform interpretation of this part and each peace officer's duties and responsibilities in enforcing this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2023, Act 210, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

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324.81151 Abandonment of ORV prohibited; presumption; violation; civil infraction.

Sec. 81151. (1) A person shall not abandon an ORV in this state.

(2) The last titled owner of the ORV is presumed to be responsible for abandoning the ORV unless the person provides a record of the transfer of the ORV to another person. The record of transfer must be either a photocopy of the reassigned title or a form or document that includes the transferee's name, address, driver license number, and signature, the date of transfer of the ORV, and, if applicable, the sale price.

(3) Sections 80130f(2) to 80130p apply to an ORV in the same manner as those provisions apply to a vessel.

(4) A person who violates subsection (1) and who fails to redeem the ORV before disposition of the ORV under section 80130k is responsible for a state civil infraction as provided in section 8905a.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Off-Road Vehicle Act

Popular name: ORV

SNOWMOBILES

PART 821
SNOWMOBILES

324.82101 Definitions.

Sec. 82101. As used in this part:

(a) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

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(b) "Auction" means the sale or offer for sale by bidding of real or personal property at a public or private location.

(c) "Auctioneer" means a person that is engaged in the business of conducting auctions or that offers to conduct an auction for compensation.

(d) "Conviction" means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt or probate court disposition on a violation of this part, regardless of whether the penalty is rebated or suspended.

(e) "Dealer" means any person engaged in the sale, lease, or rental of snowmobiles as a regular business, other than an auctioneer.

(f) "Former section 15a" means section 15a of former 1968 PA 74, as constituted before May 1, 1994.

(g) "Highly restricted personal information" means an individual's photograph or image, Social Security number, digitized signature, and medical and disability information.

(h) "Highway or street" means the entire width between the boundary lines of every way publicly maintained if any part of it is open to public use for vehicular travel.

(i) "Historic snowmobile" means a snowmobile that is over 25 years old and that is owned solely as a collector's item and for occasional use and for participation in club activities, exhibitions, tours, parades, and similar uses, including mechanical testing.

(j) "In-kind contributions" means services and goods as approved by the department that are provided by a grant recipient toward completion of a department-approved local snowmobile program under section 82107.

(k) "Law of another state" means a law or ordinance enacted by any of the following:

(*i*) Another state.

(*ii*) A local unit of government in another state.

(*iii*) Canada or a province or territory of Canada.

(*iv*) A local unit of government in a province or territory of Canada.

(*l*) "Operate" means to ride in or on and be in actual physical control of the operation of a snowmobile.

(m) "Operator" means any individual who operates a snowmobile.

(n) "Owner" means any of the following:

(*i*) A person that holds the legal title to a snowmobile.

(*ii*) A vendee or lessee of a snowmobile that is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee.

(*iii*) A person renting a snowmobile or having the exclusive use of a snowmobile for more than 30 days.

(o) "Peace officer" means any of the following:

(*i*) A sheriff.

(*ii*) A sheriff's deputy.

(*iii*) A deputy who is authorized by a sheriff to enforce this part and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(*iv*) A village or township marshal.

(*v*) An officer of the police department of any municipality.

(*vi*) An officer of the Michigan state police.

(*vii*) The director and conservation officers employed by the department.

(*viii*) A law enforcement officer who is licensed or certified under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, and is policing within his or her jurisdiction.

(p) "Personal information" means information that identifies an individual, including an individual's driver identification number, name, address not including zip code, and telephone number, but does not include information on snowmobile operation or equipment-related violations or civil infractions, operator or snowmobile registration status, accidents, or other behaviorally-related information.

(q) "Prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(*i*) A violation or an attempted violation of section 82127(1), (3), (4), (5), (6), or (7), except that only 1 violation or attempted violation of section 82127(6), a local ordinance substantially corresponding to section 82127(6), or a law of another state substantially corresponding to section 82127(6), or a law of the United States substantially corresponding to section 82127(6) may be used as a prior conviction other than for enhancement purposes as provided in section 82129a(1)(b).

(*ii*) Negligent homicide, manslaughter, or murder resulting from the operation of a snowmobile or an attempt to commit any of those crimes.

(*iii*) Former section 15a(1), (3), (4), or (5) of 1968 PA 74.

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(*iv*) Former section 15a.

(r) "Probate court or family division disposition" means the entry of a probate court order of disposition or family division order of disposition for a child found to be within the provisions of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(s) "Prosecuting attorney", unless the context requires otherwise, means the attorney general, the prosecuting attorney of a county, or the attorney representing a local unit of government.

(t) "Recreational snowmobile trail improvement subaccount" means the recreational snowmobile trail improvement subaccount of the snowmobile account created in section 82110.

(u) "Right-of-way" means that portion of a highway or street not including the roadway and any shoulder.

(v) "Roadway" means that portion of a highway or street improved, designated, or ordinarily used for vehicular travel. If a highway or street includes 2 or more separate roadways, the term roadway refers to any roadway separately, but not to all of the roadways collectively.

(w) "Shoulder" means that portion of a highway or street on either side of the roadway that is normally snowplowed for the safety and convenience of vehicular traffic.

(x) "Snowmobile" means any motor-driven vehicle that is designed for travel primarily on snow or ice and that utilizes sled-type runners or skis, an endless belt tread, or any combination of these or other similar means of contact with the surface upon which it is operated, but is not a vehicle that must be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(y) "Snowmobile account" means the snowmobile account of the Michigan conservation and recreation legacy fund provided for in section 2025.

(z) "Snowmobile registration fee subaccount" means the snowmobile registration fee subaccount of the snowmobile account created in section 82111.

(aa) "Specialty court program" means a program under any of the following:

(*i*) A drug treatment court, as defined in section 1060 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060, in which the participant is an adult.

(*ii*) A DWI/sobriety court, as defined in section 1084 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1084.

(*iii*) A hybrid of the programs under subparagraphs (*i*) and (*ii*).

(*iv*) A mental health court as defined in section 1090 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1090.

(*v*) A veterans treatment court, as defined in section 1200 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1200.

(bb) "Zone 1" means all of the Upper Peninsula.

(cc) "Zone 2" means all of that part of the Lower Peninsula north of a line beginning at and drawn from a point on the Michigan-Wisconsin boundary line due west of the westerly terminus of River Road in Muskegon County; thence due east to the westerly terminus of River Road; thence north and east along the center line of the River Road to its intersection with highway M-120; thence northeasterly and easterly along the center line of highway M-120 to the junction of highway M-20; thence easterly along the center line of M-20 to its junction with US-10 at the Midland-Bay County line; thence easterly along the center line of the "business route" of highway US-10 to the intersection of Garfield Road in Bay County; thence north along the center line of Garfield Road to the intersection of the Pinconning Road; thence east along the center line of Pinconning Road to the intersection of the Seven Mile Road; thence north along the center of the Seven Mile Road to the Bay-Arenac County line; thence north along the center line of the Lincoln School Road (county road 25) in Arenac County to the intersection of highway M-61; thence east along the center line of highway M-61 to the junction of highway US-23; thence northerly and easterly along the center line of highway US-23 to the center line of the Au Gres River; thence southerly along the center line of the river to its junction with Saginaw Bay of Lake Huron; thence north 78° east to the international boundary line between the United States and the Dominion of Canada.

(dd) "Zone 3" means all of that part of the Lower Peninsula south of the line described in subdivision (bb).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2003, Act 43, Imd. Eff. July 14, 2003;—Am. 2003, Act 230, Imd. Eff. Dec. 18, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2005, Act 175, Imd. Eff. Oct. 12, 2005;—Am. 2008, Act 145, Eff. July 1, 2009;—Am. 2010, Act 371, Imd. Eff. Dec. 22, 2010;—Am. 2014, Act 195, Imd. Eff. June 24, 2014;—Am. 2014, Act 404, Eff. Mar. 31, 2015;—Am. 2016, Act 294, Eff. Jan. 2, 2017;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

In subdivision (dd) of this section, the reference to "subdivision (bb)" evidently should read "subdivision (cc)".

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Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82102 Snowmobiles; exemption from taxes and fees.

Sec. 82102. Snowmobiles are exempt from all taxes and fees imposed on vehicles under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, and the motor vehicle accident claims act, Act No. 198 of the Public Acts of 1965, being sections 257.1101 to 257.1133 of the Michigan Compiled Laws.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82102a Michigan snowmobile advisory committee.

Sec. 82102a. (1) The Michigan snowmobile advisory committee is created in the department. The committee shall consist of 7 individuals appointed by the director for 2-year terms. The members of the former snowmobile advisory board serving on April 29, 1994 shall serve on the committee until the expiration of their terms on the snowmobile advisory board. The director shall appoint 1 member of the committee as chairperson and that member shall serve as chairperson at the pleasure of the director. The membership of the committee shall consist of the following:

(a) Three persons representing the Michigan snowmobile association, 1 from each of the department's 3 regions. One of the 3 shall also have experience as an instructor in a snowmobile safety program.

(b) One person representing trail sponsors.

(c) One person representing the business community.

(d) Two persons representing at-large trail users.

(2) The committee shall meet twice each year and at the call of the committee chairperson as needed.

(3) The Michigan snowmobile advisory committee shall advise the department regarding all of the following:

(a) The development of criteria for safety education and training programs.

(b) The allocation of funds from the recreational snowmobile trail improvement subaccount.

(c) The promulgation of rules affecting snowmobile use in this state.

(d) The development of annual updates to the comprehensive plan for implementing a statewide recreational and snowmobile trails system.

(e) Implementation of the recommendations made by snowmobile users regarding trails that should be designated for snowmobile use.

(f) The development of a comprehensive plan for the use of snowmobiles in this state.

(4) As used in this section, "committee" means the Michigan snowmobile advisory committee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

For transfer of powers and duties of Michigan snowmobile advisory committee to the Michigan trails advisory council, and abolishment of the advisory committee, see E.R.O. No. 2009-31, compiled at MCL 324.99919.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82103 Certificate of registration and registration decal required; exceptions; violation; penalty.

Sec. 82103. (1) Except as otherwise provided in this part, a snowmobile must not be operated unless the owner first obtains a certificate of registration and a registration decal. The certificate of registration must be secured at the time of purchase or transfer of ownership. A certificate of registration or a registration decal is not required for a snowmobile operated exclusively on lands owned or under the control of the snowmobile owner or for a snowmobile used entirely in a safety education and training program conducted by a certified snowmobile safety instructor and authorized under section 82108.

(2) A person who is convicted of a violation of this section shall be fined not more than $50.00.

(3) Notwithstanding any provision of this part to the contrary, before the start of each snowmobile season,

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the department shall designate 1 weekend in that snowmobile season during which registration under this part is not required to operate a snowmobile on snowmobile trails.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2022, Act 55, Imd. Eff. Apr. 7, 2022.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82104 Special event; certificate of registration or registration decal not required.

Sec. 82104. A certificate of registration or a registration decal is not required for a snowmobile that is exclusively operated in a special event of limited duration conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82105 Application for registration; forms; signature; fee; recording application; issuance of certificate of registration and decal; contents, legibility, and inspection of certificate; surety bond; issuance, duration, and renewal of certificate and registration decal; display of decal; destroying record of certificate.

Sec. 82105. (1) Before operating a snowmobile requiring registration in this state, the owner shall apply for registration with the department of state on forms provided by the department of state. If the snowmobile was purchased from a retail dealer in this state, application for initial registration shall be made with the dealer at the point of sale. The dealer shall issue a temporary registration permit in a form received from and approved by the department of state that is valid for 15 days after the date of sale. Each retail dealer shall submit applications for registrations and fees to the department of state not less than once each week. The application shall include a certification. The new owner shall sign the application or, if the application is filed electronically, provide information requested by the department of state to verify the new owner's identity. The application shall also include the new owner's name and bona fide residence address and the names and addresses of holders of any security interest in the snowmobile and its accessories in the order of priority. The application shall be accompanied by a fee of $30.00. Upon receipt of the application in approved form, the department of state shall enter the application upon its records and issue to the applicant a certificate of registration and decal. The certificate of registration shall contain the number awarded to the snowmobile, the name and address of the owner, other information the department of state considers necessary, and, beginning July 1, 2009, the name and address of the holders of secured interests. A person shall not operate a snowmobile that is required to be registered in this state unless the person possesses the certificate of registration in legible form. The person shall make the certificate of registration available for inspection upon demand by a peace officer.

(2) If the secretary of state is not satisfied as to the ownership of a snowmobile that is worth more than $2,500.00, before registering the snowmobile and issuing a certificate of registration, the secretary of state may require the applicant to file a properly executed surety bond in a form prescribed by the secretary of state and executed by the applicant and a company authorized to conduct a surety business in this state. The bond shall be in an amount equal to twice the value of the snowmobile as determined by the secretary of state and shall be conditioned to indemnify or reimburse the secretary of state, any prior owner, and any subsequent purchaser of the snowmobile and their successors in interest against any expense, loss, or damage, including reasonable attorney fees, incurred as a result of the issuance of a certificate of registration for the snowmobile or any defect in the right, title, or interest of the applicant in the snowmobile. An interested person has a right of action to recover on the bond for a breach of the conditions of the bond, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of 3 years, or before 3 years if the snowmobile is no longer registered in this state and the current valid certificate of registration is surrendered to the secretary of state, unless the secretary of state has received notification of the pendency of an action to recover on the bond. If the secretary of state is not satisfied as to the ownership of a snowmobile that is worth $2,500.00 or less, the secretary of state shall require the applicant to certify that the applicant is the owner of the snowmobile and entitled to register the snowmobile.

(3) The certificate of registration and registration decal authorizes the operation of the snowmobile for a 3-year period that begins on October 1 and expires on September 30 of the third year. The certificate of registration and registration decal may be renewed beginning July 1 of the expiration year by payment of a fee

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of $30.00. The registration decal shall be displayed as prescribed by rule promulgated by the department of state.

(4) The department of state may destroy a record of a certificate of registration 7 years after expiration of the certificate.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 297, Eff. Mar. 23, 1999;—Am. 2005, Act 271, Imd. Eff. Dec. 19, 2005;—Am. 2008, Act 145, Eff. July 1, 2009;—Am. 2008, Act 399, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82105a Fees; delinquency; penalty; deposit and use of collected penalties.

Sec. 82105a. (1) If a check, draft, or electronic payment of a required fee is not paid on its first presentation, the fee is delinquent as of the date the check, draft, or electronic payment was tendered. The person tendering the check, draft, or electronic payment remains liable for the payment of each fee and any penalty.

(2) The department of state may suspend the operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, of the person tendering the check, draft, or electronic payment for a snowmobile registration if the department of state determines a fee prescribed in this section has not been paid and remains unpaid after reasonable notice or demand.

(3) If a fee is delinquent 15 days after the department of state has given notice to a person who tendered the check, draft, or electronic payment, a $25.00 penalty shall be assessed and collected in addition to the fee.

(4) Except as otherwise provided in this part, the penalties collected under this section shall be deposited in the general fund and used first to defray the administrative costs of the department of state required by the registration provisions of this part. Any money not required for administration of the registration provisions of this part shall be credited each year to the recreational snowmobile trail improvement fund.

History: Add. 2008, Act 145, Eff. July 1, 2009.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82105b Cancellation, suspension, revocation, or refusal to issue snowmobile registration; conditions.

Sec. 82105b. The department of state may cancel, suspend, revoke, or refuse to issue a snowmobile registration if any of the following occur:

(a) The applicant has failed to furnish all required information or reasonable additional information requested by the department of state.

(b) The required fees have not been paid.

(c) The applicant is not entitled to a snowmobile registration under this part.

(d) The department of state issued the registration in error.

(e) The application contains a false or fraudulent statement.

(f) The department of state has reasonable grounds to believe that the snowmobile was stolen or embezzled.

History: Add. 2008, Act 145, Eff. July 1, 2009.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82105c Historic snowmobile registration decal; issuance; placement; fee; validity; revocation; exemption from registration; rules.

Sec. 82105c. (1) The secretary of state may issue to the owner of a historic snowmobile a historic snowmobile registration decal which shall bear the inscription "historic snowmobile - Michigan" and the registration number. The registration decal shall be affixed above or below the headlight or, if the historic snowmobile was not originally equipped with a headlight, on the forward half of the cowl above the footwell of the historic snowmobile.

(2) The owner of a historic snowmobile applying for a historic snowmobile registration decal under this section shall pay a fee of $50.00 and shall certify that the snowmobile for which the registration is requested

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is owned and operated solely as a historic snowmobile.

(3) A registration issued under this section is valid for the period the historic snowmobile is owned by the owner and is nontransferable.

(4) The secretary of state may revoke a registration decal issued under this section, for cause shown and after a hearing, for failure of the applicant to comply with this section or for use of the snowmobile for which the registration was issued for purposes other than those enumerated in section 82101(f).

(5) A historic snowmobile registered under this section is exempt from registration under section 82105.

(6) The secretary of state may promulgate rules to implement this section.

History: Add. 2010, Act 371, Imd. Eff. Dec. 22, 2010.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82106 Disposition of revenue; designation of state recreational trail coordinator; plan for statewide recreational and snowmobile trails system; expenditures; construction of recreational trail facilities or major improvements on private land; interconnecting network of statewide snowmobile trails and use areas; alternative nonconflicting off-season recreational trail uses.

Sec. 82106. (1) Except as otherwise provided in this part, revenue received from the registration fees under this part shall be deposited as follows:

(a) Twenty-two dollars of each registration fee for a snowmobile and $8.00 of each registration fee for a historic snowmobile shall be deposited into the snowmobile registration fee subaccount. However, if the balance of the snowmobile registration fee subaccount exceeds $1,600,000.00 at any time, the state treasurer shall transfer all amounts in excess of $1,600,000.00 to the recreational snowmobile trail improvement subaccount. From the revenue deposited in the snowmobile registration fee subaccount under this part, the legislature shall make an annual appropriation as follows:

(*i*) Not more than $3.00 of each registration fee for a snowmobile and not more than $3.00 for each registration fee for a historic snowmobile collected during each fiscal year shall be appropriated to the department of state for administration of the registration provisions of this part. At the close of each state fiscal year, any money appropriated under this subparagraph but not expended shall be credited to the recreational snowmobile trail improvement subaccount. Additionally, if less than $3.00 of each registration fee is appropriated to the department of state, the state treasurer shall transfer the difference between $3.00 and the amount appropriated from each registration fee to the recreational snowmobile trail improvement subaccount.

(*ii*) Fourteen dollars of each fee for a registration for a snowmobile paid before July 1, 2009, or $19.00 of each fee for a registration for a snowmobile paid on or after July 1, 2009, and $5.00 of each fee for a registration for a historic snowmobile shall be appropriated to the department for purposes set forth in section 82107, including financial assistance to county sheriff departments and local law enforcement agencies for local snowmobile programs. Any money appropriated but not expended under this subparagraph shall be credited each year to the snowmobile registration fee subaccount.

(b) Five dollars of each fee for a registration for a snowmobile paid before July 1, 2009, and $42.00 of each fee for registration of a historic snowmobile shall be deposited in the recreational snowmobile trail improvement subaccount and shall be administered by the department for the purposes of planning, construction, maintenance, and acquisition of trails and areas for the use of snowmobiles, or access to those trails and areas, and basic snowmobile facilities.

(c) From each fee for a registration for a snowmobile other than a historic snowmobile paid on or after July 1, 2009, $8.00 shall be deposited into the permanent snowmobile trail easement subaccount under section 82110a. This money is intended to supplement other money expended for snowmobile-related activities of the department and not as a replacement for those expenditures.

(2) The department shall designate a state recreational trail coordinator and shall maintain a comprehensive plan for implementing a statewide recreational and snowmobile trails system. The comprehensive plan shall be reviewed and updated each year by the department.

(3) The money appropriated under this section to the department for snowmobile trails and areas, for access to those trails or areas, and for basic snowmobile facilities may be expended for the acquisition, development, and maintenance on any land in the state. This money may be used to purchase lands or secure easements, leases, permits, or other appropriate agreements permitting use of private property for snowmobile trails, basic facilities, and areas which may be used by bicyclists, hikers, equestrians, and other nonconflicting

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off-season recreational trail users, if the easements, leases, permits, or other agreements provide public access to the trail, use areas, and support facilities.

(4) Recreational trail facilities or major improvements shall not be constructed on private land unless a written agreement in the form of an easement, lease, or permit for a public trail right-of-way having a term of not less than 5 years is made between the owner of the land and the department.

(5) The money appropriated under this section shall be expended in a manner and as part of the overall plan of the department for an interconnecting network of statewide snowmobile trails and use areas giving consideration to expected snowfall and availability for use with adequate snow cover. Consideration shall be given in the plan for alternative nonconflicting off-season recreational uses of snowmobile trails.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1998, Act 297, Eff. Mar. 23, 1999;—Am. 2003, Act 230, Imd. Eff. Dec. 18, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2008, Act 399, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 371, Imd. Eff. Dec. 22, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82107 Annual budget request to include amounts for department enforcement of part and local snowmobile programs; financial assistance to counties; cooperation in conduct of program; records; reports; rules.

Sec. 82107. (1) The annual budget request of the department shall include an amount for department enforcement of this part, for department administration of the programs provided for in this part, and for local snowmobile programs provided for under this section. In preparing its annual budget for snowmobile registration fee funds, the department shall do both of the following:

(a) Seek input from the snowmobile advisory committee created under section 82102a.

(b) To the degree feasible, give priority to use of the funds for enforcement efforts under local snowmobile programs.

(2) The department shall provide for an annual program of financial assistance to county sheriff departments and local law enforcement agencies for local snowmobile programs that shall include enforcement of this part and may also include, at the discretion of the department, a snowmobile safety education and training program based on the criteria set forth in section 82108. A county sheriff department or local law enforcement agency desiring to conduct a local snowmobile program shall submit to the department by November 1 of each year an estimate of authorized expenditures for the following calendar year, in a form and containing the information which the department requires. The department shall review the entire request and may approve a request for financial assistance in part or in whole.

(3) The amount of financial assistance to be allocated to a county sheriff department or local law enforcement agency pursuant to this section shall be determined by the department. In determining the amount of financial assistance provided to each county sheriff or local law enforcement agency, the department shall give priority to law enforcement activities and may give priority to locations where, in the determination of the department, a greater need for a local snowmobile program exists.

(4) Upon approval by the department, a county sheriff department or local law enforcement agency may use in-kind contributions in calculating its authorized expenditures not to exceed 15% of the total authorized expenditures.

(5) The department shall not provide financial assistance to a county sheriff department or local law enforcement agency in excess of 85% of the authorized expenditure documented by the county or local agency and approved by the department.

(6) Financial assistance allocated to a county sheriff department or local law enforcement agency under this section shall be used exclusively for the conduct of a local snowmobile program as provided by this part and the rules promulgated under this part.

(7) County sheriff departments and local law enforcement agencies that receive financial assistance under this section shall maintain records of activities, expenditures, and in-kind contributions and shall submit documentation and reports to the department by deadlines, in form, and containing information as the department requires.

(8) The department shall cooperate with county sheriff departments and local law enforcement departments that are operating local snowmobile programs that are funded under this section.

(9) The department may promulgate rules to implement this section.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 230, Imd. Eff. Dec. 18, 2003.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82108 Snowmobile safety education and training program.

Sec. 82108. (1) The department shall design by May 1, 1995 the minimum content of a comprehensive snowmobile safety education and training program, which shall include the preparation and dissemination of snowmobile information and safety advice to the public and training of operators. The content of the program shall include provision for the training of youthful operators at least 12 but less than 17 years of age and for the issuance of snowmobile safety certificates to those who successfully complete the training provided under the program. A person less than 17 years of age who successfully completes a training program shall carry the safety certificate on his or her person whenever operating a snowmobile in this state. The department and the counties shall encourage persons 17 years of age or over to take the program.

(2) The minimum content of a snowmobile safety education and training program shall include the following:

(a) Description of the snowmobile and its main parts.

(b) Description of machine controls, safety and operating procedures, and loading and towing procedures.

(c) General content of snowmobile and highway laws and rules.

(d) Safety hazards of operation, including possible hearing damage, and environmental consequences of snowmobile use.

(e) Performance and written tests.

(f) Familiarization with the snowmobile trail system in this state.

(3) The fee charged by a county for a training program shall be not more than $5.00.

(4) In implementing a program that is established pursuant to this section, the department shall cooperate with private organizations and associations, private and public corporations, schools, and local governmental units. The department shall consult with the department of state police and county sheriffs in regard to subject matter of a training program and performance testing that leads to certification of snowmobile operators. However, a county may expand the course content beyond the minimum requirements established by subsection (2).

(5) The department may designate any person it considers qualified to provide course instruction and to award snowmobile safety certificates.

(6) A person less than 17 years of age who fails to have a safety certificate on his or her person is subject to a fine of not more than $25.00.

(7) A person who has a valid safety certificate from another state or province shall not be required to complete the safety education and training program in this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82109 Appropriation; uses; allocation; grants; contract payments; financial assistance; conditions; application; grant agreement or contract; payment; term; request for information; report.

Sec. 82109. (1) Money appropriated to the department from the recreational snowmobile trail improvement subaccount shall be used for 1 or more of the following:

(a) Planning, constructing, maintaining, and acquiring trails and areas for the use of snowmobiles, or access to those trails and areas, and basic snowmobile facilities.

(b) Financial assistance to local units of government and nonprofit incorporated snowmobile clubs or organizations considered eligible by the department.

(c) The department's administration of subdivisions (a) and (b).

(2) In preparing its annual budget for recreational snowmobile trail improvement funds and determining the allocation of funds as provided for in subsection (1), the department shall do both of the following:

(a) Seek input from the snowmobile advisory committee created under section 82102a.

(b) To the degree feasible, give priority to use of the funds for financial assistance to local units of government and nonprofit incorporated snowmobile clubs or organizations.

(3) A portion of the funds appropriated to the department each year shall be used to provide financial

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assistance to local units of government and nonprofit incorporated snowmobile clubs or organizations in the form of grants or contract payments for annual snowmobile trail maintenance costs, including signage and liability insurance. The department may also issue grants or enter into contracts for 1 or more of the following additional activities:

(a) Maintenance equipment.

(b) Repair or new development of snowmobile trails or related facilities, including the costs of designing and engineering for grant-funded improvements.

(c) Acquisition of land or rights in lands for snowmobile trails or related facilities, costs of leases, permits, easements, or other agreements that allow for use of private lands for public access to snowmobile trails and related facilities, or development of new snowmobile trails and related facilities.

(4) Financial assistance shall not be made under this section unless the costs are for a trail that is available for public snowmobile use and is approved by the department.

(5) Financial assistance shall be allocated as follows:

(a) Assistance for snowmobile trail maintenance costs, excluding signage and liability insurance, shall be according to a formula promulgated by the state recreational trail coordinator, which shall provide an amount up to 100% of the actual, eligible expense of maintaining the trail per year incurred and documented by the grant recipient or contractor and approved by the department.

(b) Assistance for the cost of land acquisition, leasing, permits, or other agreements may equal 100% of the actual, eligible expenses incurred and documented by the grant recipient or contractor and approved by the department.

(c) Assistance for signage may equal 100% of the actual, eligible costs incurred and documented by the grant recipient or contractor and approved by the department. In lieu of financial assistance for signage, the department may choose to use recreational snowmobile trail improvement funds to purchase signs and provide them to grant recipients or contractors. Financial assistance for signs shall not be provided under this section unless the snowmobile trails meet minimum state snowmobile trail construction standards and are funded for snowmobile season maintenance.

(d) Assistance for trail insurance may equal 100% of the actual, eligible costs incurred and documented by the grant recipient or contractor and approved by the department.

(e) Assistance for repair or the development of new trails or trail facilities shall equal 100% of the actual, eligible costs incurred and documented by the grant recipient or contractor and approved by the department.

(f) The department may also assist in a portion of the costs of acquiring grooming equipment. The department shall determine the available grant or contract percentage for eligible grooming equipment costs on an annual basis and publish the percentage prior to the application deadline. Assistance for acquiring grooming equipment shall be based on actual, eligible costs incurred and documented by the grant recipient or contractor and approved by the department.

(6) To be considered for financial assistance, a local unit of government or nonprofit incorporated snowmobile club or organization must submit an application on a form provided by the department and by a deadline established by the department. An application shall include a proposed budget and the amount of financial assistance requested for each of the activities for which assistance is requested.

(7) To receive financial assistance under this section, a local unit of government or nonprofit incorporated snowmobile club or organization must enter into a grant agreement or contract with the department that specifies the obligations of the grant recipient or contractor. The grant agreement or contract shall include provisions as determined by the department, including, but not limited to, requirements that the grant recipient or contractor maintain records and submit documentation and reports to the department to verify expenditure of money received. The grant agreement or contract shall also require a grant recipient or contractor to adhere to trail specifications prescribed by the department.

(8) Upon execution of a grant agreement or contract, the department may, at its discretion, provide an advanced payment for a portion of the projected cost for 1 or more of the approved activities. The department shall make final payment upon completion of the project as determined by the department and department approval of cost documentation submitted by the grant recipient or contractor.

(9) A grant agreement or contract shall include a specified term for which the grant agreement or contract is valid. Grant or contract funds shall be encumbered upon execution of the grant agreement or contract and remain available for the specified term. Grant or contract funds not expended by a grant recipient or contractor within the specified term may, at the department's discretion, be reallocated to the grant recipient or contractor as part of a new grant agreement or contract.

(10) The department of state and the department shall include in their annual budget requests information detailing their snowmobile programs.

(11) Beginning March 31, 2004, the department shall provide a biannual report to the commission of its

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expenditures under this section for the prior 2 fiscal years.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2003, Act 230, Imd. Eff. Dec. 18, 2003;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82110 Recreational snowmobile trail improvement subaccount; use; deposits; rules; projects open to public.

Sec. 82110. (1) The recreational snowmobile trail improvement subaccount is created as a subaccount of the snowmobile account. Money in the subaccount shall be used upon appropriation solely for the improvement of snowmobile trails and other nonconflicting recreational purposes.

(2) Five dollars of each fee collected under section 82105, a portion of each trail permit fee collected as provided under section 82118, and not less than 80% of the revenue from the fees collected under sections 82114 and 82115 shall be deposited in the recreational snowmobile trail improvement subaccount.

(3) The department shall promulgate rules for the administration of the recreational snowmobile trail improvement subaccount.

(4) All funds allocated under this part shall be for projects that are open to the public.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 16, Imd. Eff. June 12, 2001;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:
"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82110a Permanent snowmobile trail easement subaccount.

Sec. 82110a. (1) The permanent snowmobile trail easement subaccount is created as a subaccount of the snowmobile account.

(2) The state treasurer may receive money or other assets from any source for deposit into the permanent snowmobile trail easement subaccount. The state treasurer shall direct the investment of the subaccount. The state treasurer shall credit to the subaccount interest and earnings from subaccount investments. Money in the subaccount at the close of the fiscal year shall remain in the subaccount and shall not lapse to the snowmobile account or the general fund. The department shall be the administrator of the subaccount for auditing purposes.

(3) The department shall expend money from the permanent snowmobile trail easement subaccount, upon appropriation, only to purchase lands, or secure easements or other appropriate agreements allowing use of private property, for permanent snowmobile trails that are open to the public in this state or to make grants for those purposes. To be eligible for a grant, an entity shall be a local unit of government or be organized for educational and charitable purposes within the meaning of 26 USC 501(c)(3) that includes promoting and facilitating the expansion and improvement of the existing snowmobile trail system in this state with permanent snowmobile trails.

(4) If a recipient of a grant under subsection (3) ceases to exist, any interest allowing the use of private property to establish permanent snowmobile trails that was obtained by that grant recipient with grant money under subsection (3) shall vest in this state, subject to the terms of the instrument creating the interest, including, but not limited to, terms concerning the scope of the easement.

(5) The department of attorney general shall review grants and other instruments proposed to be utilized for the purposes of subsections (3) and (4).

(6) The department in consultation with the snowmobile advisory committee shall promulgate rules for the administration of the permanent snowmobile trail easement subaccount.

(7) Any proceeds from the sale of lands purchased under subsection (3) or the termination of easements or other agreements secured under subsection (3) shall be deposited into the permanent snowmobile trail easement subaccount.

(8) If, at any time after July 1, 2010, the Michigan snowmobile advisory committee, by the affirmative

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vote of at least 5 members, determines that the public snowmobile trail system in this state is fully developed and not capable of expansion by adding further permanent snowmobile trail easements, the advisory committee shall report its determination to the department. The department shall, within 60 days, submit to the senate and house appropriations committees and standing committees with primary responsibility for outdoor recreation issues a report setting forth the department's recommendations concerning dissolution of the permanent snowmobile trail easement subaccount, the disposition of revenue in that subaccount, and other relevant issues under this part.

History: Add. 2008, Act 400, Imd. Eff. Jan. 6, 2009.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82111 Snowmobile registration fee subaccount; creation.

Sec. 82111. The snowmobile registration fee subaccount is created as a subaccount of the snowmobile account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82112 Operation of snowmobile program; review of effectiveness; report.

Sec. 82112. (1) The department, in consultation with the snowmobile advisory board, shall conduct a review of the effectiveness of operation of the snowmobile program by the forestry division of the department and submit a written report to the house and senate committees that consider natural resources and conservation legislation by July 1, 1996.

(2) The review shall include, but not be limited to, consideration of the following:

(a) The manner in which trail improvement funds and snowmobile registration fee funds are spent and whether the spending is in accordance with this part.

(b) The manner in which the grant process has been implemented and to whom grants have been awarded during the time of the review.

(c) Establishment and maintenance of the snowmobile trails system.

(d) Long-term planning pertaining to the trails system.

(e) Contract grooming of snowmobile trails versus grooming of trails by employees of the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82113 Registration decal; display; issuance; expiration of certificate of registration; awarding certificate of number.

Sec. 82113. (1) The owner of a snowmobile having been issued a certificate of registration for the snowmobile shall affix to each side of the forward half of the cowl above the footwell of the snowmobile the registration decal assigned to that snowmobile. The registration decal shall be as prescribed by the department. Beginning July 1, 1999, the registration decal shall include the registration expiration date and the registration number and shall contain 2 letters and 4 numbers. The numbers shall contrast so as to be distinctly visible and legible. A number other than the number awarded to the snowmobile on the registration certificate, or granted reciprocity under this part, shall not be attached or otherwise displayed on the snowmobile.

(2) Not earlier than 90 days before the expiration date of a certificate, a registration decal or other device may be issued indicating that the certificate of registration is in full force and effect.

(3) A certificate of registration shall expire pursuant to section 82105.

(4) The department of state may award a certificate of number directly or may authorize a person to act as its agent for the awarding of a certificate of number.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 92, Imd. Eff. Aug. 1, 1997;—Am. 1997, Act 102, Imd. Eff.

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Aug. 7, 1997;—Am. 1998, Act 297, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82114 Destruction, abandonment, sale, or transfer of snowmobile; change of address; notice; surrender of certificate; cancellation of certificate; destruction of record; recording new address; return of certificate to owner; application by transferee for new certificate; fee; operation without certificate prohibited; duplicate certificate; replacement registration decal.

Sec. 82114. (1) The owner of a snowmobile shall notify the department of state within 15 days if the snowmobile is destroyed or abandoned, or is sold, or an interest in the snowmobile is transferred either wholly or in part to another person, or if the owner's address no longer conforms to the address appearing on the certificate of registration. The notice shall consist of a surrender of the certificate of registration on which the proper information shall be noted on a place to be provided. If the certificate of registration is surrendered because the snowmobile was destroyed or abandoned, the department of state shall cancel the certificate of registration and enter that fact in the records of the department of state, and the number may be then reassigned. The department of state may destroy the record of a surrendered certificate of registration 10 years after its surrender.

(2) If the certificate of registration is surrendered because of the owner's change of address, the new address shall be recorded by the department of state and a certificate of registration bearing that information shall be returned to the owner.

(3) The transferee of a snowmobile registered under this part, within 15 days after acquiring the snowmobile, shall apply to the department of state for issuance of a new certificate of registration for the snowmobile, giving the previous registration number of the snowmobile and proof of payment or satisfaction of any security interest shown on the previous owner's certificate of registration or department of state's records. The application shall include a certification. The new owner shall sign the application or, if the application is filed electronically, provide information requested by the department of state to verify the owner's identity. The application shall also include the new owner's name and bona fide residence address and the names and addresses of the holders of security interests in the snowmobile and its accessories in the order of their priority. The application shall be accompanied by the fee prescribed in section 82105. Upon receipt of the application and fee, the department of state shall issue a new certificate of registration for the snowmobile to the new owner. Unless the application is made and the fee paid within 15 days of transfer of ownership, the snowmobile is without certificate of registration, and a person shall not operate the snowmobile until a valid certificate of registration is issued.

(4) If a certificate of registration is lost, mutilated, or illegible, the owner of the snowmobile shall obtain a duplicate of the certificate of registration upon application and payment of a fee of $5.00.

(5) If a valid registration decal is lost, mutilated, or illegible, the owner of the snowmobile may obtain a replacement registration decal upon submission of proof of registration and payment of a fee of $5.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2008, Act 145, Eff. July 1, 2009;—Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82115 Certificates of registration for dealers and manufacturers; use; fee; placement of registration decal.

Sec. 82115. A dealer or manufacturer, upon application to the department of state upon forms provided by it, may obtain certificates of registration for use in the testing or demonstrating of snowmobiles upon payment of $10.00 for each of the first 2 registration certificates. Additional certificates as the dealer may require may be issued at a cost of $5.00 each and used by the applicant only in the testing or demonstrating of snowmobiles by temporary placement of the registration decal on the snowmobile being tested or demonstrated. Any 1 certificate issued pursuant to this section may be used on only 1 snowmobile at any given time. The temporary placement of registration decals shall be as prescribed by this part or rules promulgated under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

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Popular name: Snowmobiles

Popular name: NREPA

324.82116 Snowmobile numbers; stamping on frame or plate; location of number; possession of snowmobile with altered, defaced, or obliterated number.

Sec. 82116. (1) A snowmobile that is manufactured after December 1, 1972 for sale in this state shall have an identifying number that is stamped into the frame of the snowmobile or into a plate affixed to the frame and is unique from an identifying number on any other snowmobile. The number shall be stamped in a place where it is easily visible with a minimum of physical effort and it shall be termed the vehicle number. A manufacturer shall furnish to a requesting police agency, to the department of state, and to the department information as to the location of vehicle numbers on snowmobiles it produces. The vehicle number shall be printed on the certificate of registration issued by the department of state to the owner.

(2) Possession of a snowmobile with an altered, defaced, or obliterated vehicle number is a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than $1,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82116a Alteration, removal, or defacement of vehicle number; application for special identifying number; missing vehicle number; replacement; fee.

Sec. 82116a. (1) The owner of a snowmobile whose vehicle number has been altered, removed, or defaced, including the owner of a snowmobile who intends to register the snowmobile as an assembled snowmobile, shall apply, in a form prescribed by the department of state, to the department of state for a special identifying number accompanied by an application for a certificate of registration and the required fees. The owner shall furnish information satisfying the department of state that he or she is the owner, upon receipt of which the department of state shall assign a special identifying number for the snowmobile, preceded by a symbol indicating this state. The department of state shall maintain a record of assigned special identifying numbers. The special identifying number shall be applied to the snowmobile as directed by the department of state. The special number shall be regarded as the identifying number of the snowmobile.

(2) The owner of a snowmobile whose vehicle number is missing shall apply, in a form prescribed by the department of state, to the department of state for a replacement vehicle number accompanied by a $10.00 fee. The owner shall furnish information satisfying the department of state that he or she is the owner of the snowmobile upon receipt of which the department of state shall assign a replacement vehicle number that shall be applied to the snowmobile as directed by the department of state. The department of state shall note on the registration record for that snowmobile that a replacement vehicle number was issued for that snowmobile.

History: Add. 2008, Act 145, Eff. July 1, 2009.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82117 Dealers; duties; liability insurance.

Sec. 82117. (1) A dealer shall maintain in safe operating condition all snowmobiles rented, leased, or furnished by him or her. The dealer or the dealer's agents or employees shall explain the operation of the snowmobile being rented, leased, or furnished and, if the dealer or the dealer's agent or employee believes the person to whom the snowmobile is to be rented, leased, or furnished is not competent to operate the snowmobile with competency to himself or herself and to the safety of others, the dealer shall refuse to rent, lease, or furnish the snowmobile. By October 15, 1994, the department shall furnish each dealer with a safety education checklist of not more than 1 page in length that the dealer shall distribute to each person who purchases, rents, or leases a snowmobile from that dealer.

(2) Any dealer renting, leasing, or furnishing any snowmobile shall carry a policy of liability insurance subject to limits exclusive of interests and costs, with respect to such snowmobile, as follows: $20,000.00 because of bodily injury to or death of 1 person in any 1 accident and subject to that limit for 1 person, $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident, and $10,000.00 because of injury to or destruction of property of others in any 1 accident; or, in the alternative, any dealer renting, leasing, or furnishing any snowmobile shall demand and be shown proof that the person renting, leasing, or being furnished a snowmobile carries liability policy of at least the type and coverage as specified

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in this subsection.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82118 Michigan snowmobile trail permit; exceptions.

Sec. 82118. (1) In addition to registration of a snowmobile under section 82105 or registration in another state or province, except as otherwise provided in this section, a person who desires to operate a snowmobile in this state shall purchase a Michigan snowmobile trail permit sticker. The Michigan snowmobile trail permit issued under this section is valid for a period of 1 year that begins on October 1 and ends on the following September 30. The fee for the permit is as follows:

(a) For permits valid for the 1-year period beginning October 1, 2009 or October 1, 2010, $35.00.

(b) For permits valid for the 1-year period beginning October 1, 2011, 2012, 2013, 2014, or 2015, $45.00.

(c) For permits valid for the 1-year period beginning October 1, 2016 and every fifth year thereafter, the state treasurer shall adjust the current permit fee by an amount determined by the state treasurer to reflect the cumulative percentage change in the Consumer Price Index during the most recent 5-year period for which Consumer Price Index statistics are available, rounded to the nearest dollar. A fee adjusted by the state treasurer under this subdivision remains in effect for 5 years. As used in this subdivision, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

(2) Revenue from the trail permit fee shall be allocated as follows:

(a) 50 cents shall be retained by the department for administrative costs.

(b) $1.00 shall be retained by the agent selling the permit.

(c) The balance shall be deposited in the recreational snowmobile trail improvement subaccount.

(3) The department shall make the sale of trail permits available on its website. For each trail permit sold through the website, the amount otherwise credited to an agent under subsection (2) shall instead be credited to the recreational snowmobile trail improvement subaccount.

(4) The trail permit sticker shall be permanently affixed to the snowmobile directly above or below the headlight of the snowmobile.

(5) The department may contract with a person to act as an agent for the purpose of issuing Michigan snowmobile trail permits. The department shall sell the permits to agents in bulk. An agent may obtain a refund from the department for any permits that are not sold.

(6) An agent who uses or allows the use of a permit by anyone except the snowmobile user to whom the permit is sold is guilty of a misdemeanor, punishable by a fine of $50.00 for each instance of use or allowed use.

(7) The department of state may suspend a certificate of registration if the department of state determines that the required fee has not been paid and remains unpaid after reasonable notice or demand. In addition to the required fee, a $10.00 penalty shall be assessed and collected against any person who tenders an insufficient check or draft in payment of the fee.

(8) A snowmobile used solely for transportation on the frozen surface of public waters for the purpose of ice fishing is exempt from the requirement of purchasing and displaying a snowmobile trail permit sticker under this section.

(9) A person shall not charge a fee for a snowmobile trail permit in an amount that is greater than the fee printed on the face of the permit.

(10) To obtain a snowmobile trail permit, an applicant must provide all information required on the permit application.

(11) A person who fails to secure a permit under this section or who violates subsection (4) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

(12) The department shall, by June 1 of each year, report to the members of the appropriate standing committees and appropriations subcommittees of the house and senate, a detailed expenditure plan pertaining to the funds generated by this section. The plan shall include information as to how funds were expended in the prior year.

(13) This section does not apply to a historic snowmobile registered under section 82105c.

(14) Before the start of each snowmobile season, the department shall designate 1 weekend in that snowmobile season during which a trail permit under this section is not required.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 114, Eff. Mar. 21, 1996;—Am. 1996, Act 139, Imd. Eff. Mar.

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21, 1996;—Am. 1996, Act 183, Imd. Eff. May 3, 1996;—Am. 2001, Act 15, Imd. Eff. June 12, 2001;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2008, Act 400, Imd. Eff. Jan. 6, 2009;—Am. 2010, Act 371, Imd. Eff. Dec. 22, 2010;—Am. 2022, Act 56, Imd. Eff. Apr. 7, 2022.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82119 Operation of snowmobiles prohibited; exceptions; permanent prohibition; requirements; rules.

Sec. 82119. (1) A person shall not operate a snowmobile upon a public highway, land used as an airport or street, or on a public or private parking lot not specifically designated for the use of snowmobiles except under the following conditions and circumstances:

(a) Subject to subsection (2), a snowmobile may be operated on the right-of-way of a public highway, except a limited access highway, if it is operated at the extreme right of the open portion of the right-of-way and with the flow of traffic on the highway. However, a snowmobile may be operated on the right-of-way of a public highway against the flow of traffic if the right-of-way is a snowmobile trail that is designated by the department in the plan developed pursuant to section 82106(2) and that is approved by the state transportation department. Snowmobiles operated on the right-of-way of a public highway, as provided in this subdivision, shall travel single file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall not exceed the speed limit posted on the public highway.

(b) Subject to subsection (2), a snowmobile may be operated on the right-of-way of a limited access public highway if it is operated on a snowmobile trail that is designated by the department in the plan developed pursuant to section 82106(2) and that is approved by the state transportation department. A snowmobile shall only be operated on that right-of-way in the manner provided in that plan. In addition, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall travel single file and shall not be operated abreast except when overtaking and passing another snowmobile. In the absence of a posted snowmobile speed limit, a snowmobile operated on the right-of-way of a public highway, as provided in this subdivision, shall not exceed the speed limit posted on the public highway.

(c) A snowmobile may be operated on the roadway or shoulder when necessary to cross a bridge or culvert if the snowmobile is brought to a complete stop before entering onto the roadway or shoulder and the driver yields the right-of-way to an approaching vehicle on the highway.

(d) In a court action in this state where competent evidence demonstrates that a vehicle that is permitted to be operated on a highway pursuant to the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, collided with a snowmobile on a roadway, the driver of the snowmobile involved in the collision shall be considered prima facie negligent.

(e) A snowmobile may be operated across a public highway other than a limited access highway, at right angles to the highway, for the purpose of getting from 1 area to another when the operation can be done in safety and another vehicle is not crossing the highway at the same time in the same general area. An operator shall bring his or her snowmobile to a complete stop before proceeding across the public highway and shall yield the right-of-way to all oncoming traffic.

(f) Snowmobiles may be operated on a highway in a county road system that is not normally snowplowed for vehicular traffic and on the plowed right-of-way or shoulder when no right-of-way exists on a snowplowed highway in the county road system, outside the corporate limits of a city or village, that is designated and marked for snowmobile use by the county road commission having jurisdiction. Upon the request of a county road commission that has designated all county roads outside the corporate limits of a city or village for snowmobile use, the state transportation department shall erect at county road commission expense and shall maintain, in accordance with the Michigan manual of uniform traffic control devices standards, the basic snowmobile sign unit together with a supplemental panel stating "permitted on right-of-way or shoulder of all ..... (county name) roads — MCL 324.82119" at the county line on all state trunk line highways and county roads. A sign erected before the effective date of the 2005 amendatory act that amended this section may cite 1968 PA 74 instead of citing this section.

(g) A law enforcement officer of a local unit of government or the state may authorize use of a snowmobile on a public highway or street within his or her jurisdiction when an emergency occurs and conventional motor

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vehicles cannot be used for transportation due to snow or other extreme highway conditions.

(h) A snowmobile may be operated on a highway or street for a special event of limited duration conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. The event may be conducted on the frozen surface of public waters only under permit from the department.

(i) A city or village by ordinance may designate 1 or more specific public highways or streets within its jurisdiction as egress and ingress routes for the use of snowmobiles. A city or village acting under the authority of this subdivision shall erect and maintain, in accordance with the Michigan manual of uniform traffic control devices standards, a sign unit giving proper notice of the designation.

(2) The state transportation department and the department of natural resources may permanently prohibit snowmobile use as described in subsection (1)(a) or (b) in a highway right-of-way if, within 10 years after the effective date of the amendatory act that added this subsection, all of the following requirements are met:

(a) The right-of-way is designated in a closure plan developed by the state transportation department and the department of natural resources and approved by the state transportation commission and the commission of natural resources.

(b) The state transportation department and the department of natural resources have held a public hearing on the proposed prohibition in the county where the prohibition is to apply. The state transportation department and the department of natural resources shall give notice of the hearing by publication in a newspaper of general circulation in the county not more than 21 or less than 7 days before the hearing.

(c) The state transportation department and the department have consulted on the proposed prohibition with the snowmobile advisory committee created under section 82102a.

(d) Snowmobile use in that right-of-way poses a particular and demonstrable threat to public safety.

(e) The department has designated and, if required under subsection (1)(a) or (b), the state transportation department has approved an alternative snowmobile trail that meets all of the following requirements:

(*i*) Is open for use and functional during snowmobile season.

(*ii*) Bypasses the highway right-of-way on which snowmobile use is to be prohibited.

(*iii*) Provides access to any qualified business that, when the alternative snowmobile trail is designated, is located along the highway right-of-way on which snowmobile use is to be prohibited. As used in this subparagraph, "qualified business" means a gas station, restaurant, hotel, motel, convenience store, or grocery store or any other business that relies on snowmobile-based commerce.

(3) The state transportation department and the department of natural resources may promulgate rules to implement subsections (1)(b) and (2).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 307, Imd. Eff. Dec. 27, 2005.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

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324.82120 Supervision of child less than 12 years of age; exception; conditions for operation of snowmobile by person 12 but less than 17 years of age; snowmobile safety certificate; crossing highway or street; duty of snowmobile owner; report of violation; suspension of certificate.

Sec. 82120. (1) A parent or legal guardian shall not permit his or her child who is less than 12 years of age to operate a snowmobile without the direct supervision of an adult except on land owned or under the control of the parent or legal guardian.

(2) A person who is at least 12 but less than 17 years of age may operate a snowmobile if 1 of the following conditions exist:

(a) The person is under the direct supervision of a person who is 21 years of age or older.

(b) The person has in his or her immediate possession a snowmobile safety certificate issued pursuant to a program conducted under section 82107.

(c) The person is on land owned or under the control of his or her parent or legal guardian.

(d) The person possesses a snowmobile safety certificate issued to the person under the authority of a law of another state or province of Canada.

(3) A person who is operating a snowmobile pursuant to subsection (2)(b) shall present the snowmobile safety certificate to any peace officer upon demand.

(4) Notwithstanding section 82119, an operator who is less than 12 years of age shall not cross a highway or street. An operator who is at least 12 years of age but less than 17 years of age may cross a highway or street only if he or she has a valid snowmobile safety certificate in his or her immediate possession.

(5) The owner of a snowmobile shall not permit the snowmobile to be operated contrary to this section.

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(6) When the judge of a juvenile court determines that a person who is less than 17 years of age has violated this part, the judge shall immediately report the determination to the department. The department upon receiving a notice of a determination pursuant to this subsection may suspend the snowmobile safety certificate without a hearing.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82121 Use of snowmobile to hunt wild bird or animal.

Sec. 82121. A snowmobile shall not be used to hunt, pursue, worry, or kill a wild bird or animal.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82122 Lights and brakes; minimum safety standards; certification as proof of compliance.

Sec. 82122. (1) A snowmobile shall not be operated unless it has at least 1 headlight, 1 taillight, and adequate brakes capable, while the snowmobile travels on packed snow and carries an operator who weighs 175 pounds or more, of stopping the snowmobile in not more than 40 feet from an initial steady speed of 20 miles per hour or of locking the snowmobile's traction belt or belts.

(2) A person shall not sell or offer to sell in this state a snowmobile manufactured after July 1, 1978, unless it meets the minimum safety standards for snowmobile product certification of the snowmobile safety and certification committee's November 23, 1976, volume 3, safety standards for snowmobiles for product certification, including detailed standard supplement and test specifications and procedures, covering machine sound levels, seats, controls, brake systems, fuel systems, shields and guards, electrical systems and lighting, reflectors, handgrips, and general hazard requirements. Proof of compliance with this section shall be in the form of certification by a qualified independent testing company that is not affiliated with the manufacturer and is approved by the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82123 Crash helmet required.

Sec. 82123. A person operating or riding on a snowmobile shall wear a crash helmet on his or her head. Crash helmets shall be approved by the United States department of transportation. This section does not apply to a person riding on or operating a snowmobile on his or her own private property.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82124 Ordinances; duty to maintain highway; immunity from liability; "gross negligence" defined.

Sec. 82124. (1) Any municipality may pass an ordinance regulating the operation of snowmobiles if the ordinance meets substantially the minimum requirements of this part. A local unit of government may not adopt an ordinance that:

(a) Imposes a fee for a license.

(b) Specifies accessory equipment to be carried on the snowmobile.

(c) Requires a snowmobile operator to possess a motor vehicle driver license.

(d) Restricts operation of a snowmobile on the frozen surface of public waters or on lands owned by or under the control of the state except pursuant to section 82125.

(2) A board of county road commissioners, a county board of commissioners, and a county have no duty to maintain any highway under their jurisdiction in a condition reasonably safe and convenient for the operation of snowmobiles.

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(3) Beginning on October 19, 1993, a board of county road commissioners, a county board of commissioners, and a county are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of a snowmobile on maintained or unmaintained highways, shoulders, and rights-of-way over which the board of county road commissioners, the county board of commissioners, or the county has jurisdiction. The immunity provided by this subsection does not apply to actions which constitute gross negligence. Gross negligence is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82125 Rules governing operation and conduct of snowmobiles; special rules; hearing; notice; corresponding ordinances; suspension, amendment, or repeal; enforcement.

Sec. 82125. (1) The department may promulgate rules to govern the operation and conduct of snowmobiles, speed limits, and the times when a snowmobile may be used and to establish and designate areas where snowmobiles may be used in a manner that will ensure compatible use and best protection of the safety and general welfare of the public on the frozen surface of public waters.

(2) The department, on its own initiative or upon receipt of a certified resolution of the governing body of a political subdivision, may initiate investigations into the need for special rules to govern the operation of snowmobiles on the frozen surface of public waters. If controls for an activity are considered necessary, or amendment or repeal of an existing rule is required, the department shall prepare a rule for consideration at a public hearing. Notice of the public hearing shall be published in a newspaper of general circulation in the area where the rules are to be imposed, amended, or repealed, at least 10 days before the hearing.

(3) After a hearing is held pursuant to subsection (2), the proposed rule shall be submitted to the governing body of the political subdivision in which the affected frozen waters lie. The governing body shall inform the department that it approves or disapproves of the proposed rule within 30 days after receiving the rule from the department. If the governing body disapproves the proposed rule, further action shall not be taken. If the governing body approves the proposed rule, it may enact an ordinance that is identical to the proposed rule and the department shall promulgate the rule. An ordinance enacted pursuant to this subsection is not effective until the proposed rule is promulgated and effective.

(4) An ordinance that is the same as a rule that is suspended by the legislature or amended or repealed by the department shall likewise be suspended, amended, or repealed. The governing body, by majority vote, may repeal the ordinance at any time.

(5) Local law enforcement officers may enforce ordinances enacted pursuant to this section, and state and county enforcement officers shall enforce rules that are promulgated pursuant to this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82126 Operation of snowmobile; prohibitions; exemption; construction, operation, and maintenance of snowmobile trail; conditions; demarcation of trail by signing; "operate" defined; prohibited conduct; assumption of risk; violation of subsection (2) as civil infraction; fine.

Sec. 82126. (1) A person shall not operate a snowmobile under any of the following circumstances:

(a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing.

(b) In a forest nursery, planting area, or on public lands posted or reasonably identifiable as an area of forest reproduction when growing stock may be damaged or posted or reasonably identifiable as a natural dedicated area that is in zone 2 or zone 3.

(c) On the frozen surface of public waters as follows:

(*i*) Within 100 feet of a person, including a skater, who is not in or upon a snowmobile.

(*ii*) Within 100 feet of a fishing shanty or shelter except at the minimum speed required to maintain forward movement of the snowmobile.

(*iii*) On an area that has been cleared of snow for skating purposes unless the area is necessary for access to the public water.

(d) Within 100 feet of a dwelling between 12 midnight and 6 a.m., at a speed greater than the minimum

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required to maintain forward movement of the snowmobile.

(e) In an area on which public hunting is permitted during the regular November firearm deer season from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except under 1 or more of the following circumstances:

(*i*) During an emergency.

(*ii*) For law enforcement purposes.

(*iii*) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(*iv*) For the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

(*v*) On the person's own property or property under the person's control or as an invited guest.

(f) While transporting on the snowmobile a bow, unless unstrung or encased, or a firearm, unless unloaded in both barrel and magazine and securely encased.

(g) On or across a cemetery or burial ground.

(h) Within 100 feet of a slide, ski, or skating area except when traveling on a county road right-of-way pursuant to section 82119 or a snowmobile trail that is designated and funded by the department. A snowmobile may enter such an area for the purpose of servicing the area or for medical emergencies.

(i) On a railroad or railroad right-of-way. This prohibition does not apply to railroad personnel, public utility personnel, law enforcement personnel while in the performance of their duties, or persons using a snowmobile trail located on or along a railroad right-of-way, or an at-grade snowmobile trail crossing of a railroad right-of-way, that has been expressly approved in writing by the owner of the right-of-way and each railroad company using the tracks and that meets the conditions imposed in subsections (4) and (5). A snowmobile trail or an at-grade snowmobile trail crossing shall not be constructed on a right-of-way designated by the federal government as a high-speed rail corridor.

(2) Except as provided under subsection (3), a person shall not operate a snowmobile unless the snowmobile is equipped with a muffler in good working order and in constant operation from which noise emission does not exceed either of the following:

(a) For a snowmobile manufactured after July 1, 1977 and sold or offered for sale in this state, 78 decibels at 50 feet, as measured using the 2003 society of automotive engineers standard J192.

(b) For a stationary snowmobile manufactured after July 1, 1980 and sold or offered for sale in this state, 88 decibels, as measured using the 2004 society of automotive engineers standard J2567.

(3) A person is exempt from the requirement of subsection (2) under either of the following circumstances:

(a) While operating a snowmobile during an organized race on a course that is used solely for racing.

(b) While operating a snowmobile on private property, with the permission of the private property owner, in preparation for an organized race, if the operation of the snowmobile is in compliance with applicable local noise ordinances.

(4) A snowmobile trail located on or along a railroad right-of-way shall be constructed, operated, and maintained by a person other than the person owning the railroad right-of-way and the person operating the railroad, except that an at-grade snowmobile trail crossing of a railroad right-of-way shall be constructed and maintained by the person operating the railroad at the sole cost and expense of the person operating the trail connected by the crossing, pursuant to terms of a lease agreement under which the person operating the trail agrees to do all of the following:

(a) Indemnify the person owning the railroad right-of-way and the person operating the railroad against any claims associated with, arising from, or incidental to the construction, maintenance, operation, and use of the trail or at-grade snowmobile trail crossing.

(b) Provide liability insurance in the amount of $2,000,000.00 naming the person owning the railroad right-of-way and the person operating the railroad as named insureds.

(c) Meet any other obligations or provisions considered appropriate by the person owning the railroad right-of-way or the person operating the railroad including, but not limited to, the payment of rent that the person owning the railroad right-of-way or the person operating the railroad is authorized to charge under this part and the meeting of all construction, operating, and maintenance conditions imposed by the person owning the railroad right-of-way and the person operating the railroad regarding the snowmobile trail.

(5) A snowmobile trail shall be clearly demarcated by signing constructed and maintained at the sole cost and expense of the grant program sponsor. The signing shall be placed at the outer edge of the railroad right-of-way, as far from the edge of the railroad tracks as possible, and not closer than 20 feet from the edge of the railroad tracks unless topography or other natural or manmade features require the trail to lie within 20 feet of the edge of the railroad tracks. The at-grade snowmobile trail crossing of a railroad right-of-way shall be aligned at 90 degrees or as close to 90 degrees as possible to the railroad track being crossed, and shall be located where approach grades to the crossing are minimal and where the vision of a person operating a

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snowmobile will be unobstructed as he or she approaches the railroad tracks. The design of the snowmobile trail, including the location of signing, shall be included upon plan sheets by the person constructing, operating, and maintaining the trail, and shall be approved in writing by the person owning the right-of-way and the person operating the railroad. Signing shall conform to specifications issued by the department to its snowmobile trail grant program sponsors.

(6) Notwithstanding section 82101, as used in this section, "operate" means to cause to function, run, or manage.

(7) A person shall not alter, deface, damage, or remove a snowmobile trail sign or control device.

(8) Each person who participates in the sport of snowmobiling accepts the risks associated with that sport insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with signs, fences, or other snowmobiles or snow-grooming equipment. Those risks do not include injuries to persons or property that can result from the use of a snowmobile by another person in a careless or negligent manner likely to endanger person or property. When a snowmobile is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of snowmobiling additionally assumes risks including, but not limited to, entanglement with tracks, switches, and ties and collisions with trains and other equipment and facilities.

(9) A person who violates subsection (2) is responsible for a state civil infraction and shall be ordered to pay a civil fine of not less than $100.00 or more than $250.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1995, Act 201, Imd. Eff. Nov. 29, 1995;—Am. 1996, Act 500, Imd. Eff. Jan. 9, 1997;—Am. 1998, Act 30, Imd. Eff. Mar. 18, 1998;—Am. 2003, Act 2, Imd. Eff. Apr. 22, 2003;—Am. 2008, Act 27, Imd. Eff. Mar. 13, 2008;—Am. 2008, Act 399, Imd. Eff. Jan. 6, 2009.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82126a Operation of snowmobile; prohibited conduct; violation as civil infraction.

Sec. 82126a. (1) A person shall not operate a snowmobile upon a highway, public trail, frozen surface of a public lake, stream, river, pond, or another public place, including but not limited to an area designated for the parking of snowmobiles or other motor vehicles, in a careless or negligent manner likely to endanger any person or property.

(2) A person who violates subsection (1) is responsible for a state civil infraction.

History: Add. 1998, Act 461, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82126b Operation of snowmobile; prohibited conduct; violation as misdemeanor; penalty.

Sec. 82126b. (1) A person shall not operate a snowmobile upon a highway, public trail, frozen surface of a public lake, stream, river, pond, or another public place, including, but not limited to, an area designated for the parking of snowmobiles or other motor vehicles, in willful or wanton disregard for the safety of persons or property.

(2) A person who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than $250.00.

History: Add. 1998, Act 461, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82126c Operation of snowmobile; conduct causing death or serious impairment of bodily function; violation as misdemeanor or felony; penalty; definition; order prohibiting operation of snowmobile.

Sec. 82126c. (1) A person who operates a snowmobile in a careless or negligent manner causing the death or serious impairment of bodily function of another is guilty of a misdemeanor and shall be imprisoned for not more than 2 years or fined not more than $2,000.00, or both.

(2) A person who, by the operation of a snowmobile in a careless and heedless manner in willful and

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wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, causes the serious impairment of bodily function, but does not cause the death of another, is guilty of the offense of felonious operation, and shall be imprisoned for not more than 2 years or fined not more than $2,000.00, or both.

(3) As used in this section, "serious impairment of bodily function" includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(4) Upon a person's conviction of a violation under this section, the court may issue an order prohibiting the person from operating a snowmobile in this state for a period of 2 or more years in the discretion of the court. An order issued under this section is in addition to any other penalty authorized under this part.

History: Add. 1998, Act 461, Eff. Mar. 23, 1999.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82127 Operation of or authorizing operation of snowmobile while under influence of alcoholic liquor or controlled substance prohibited; visible impairment; violation; penalty; “serious impairment of a body function” defined; operation by person less than 21 years of age; "any bodily alcoholic content" defined; person less than 16 years of age occupying snowmobile.

Sec. 82127. (1) A person shall not operate a snowmobile in this state if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance, or both.

(b) The person has a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214.

(2) The owner of a snowmobile or a person in charge or in control of a snowmobile shall not authorize or knowingly permit the snowmobile to be driven or operated by a person if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance, or both.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate a snowmobile is visibly impaired due to the consumption of an alcoholic liquor, a controlled substance, or a combination of an alcoholic liquor and a controlled substance.

(3) A person shall not operate a snowmobile when, due to the consumption of an alcoholic liquor or a controlled substance, or both, the person's ability to operate the snowmobile is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person who operates a snowmobile in violation of subsection (1) or (3) and by the operation of that snowmobile causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than $2,500.00 or more than $10,000.00, or both.

(5) A person who operates a snowmobile in violation of subsection (1) or (3) and by the operation of that snowmobile causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than $1,000.00 or more than $5,000.00, or both. As used in this subsection, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(6) A person who is less than 21 years of age, whether licensed or not, shall not operate a snowmobile if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

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(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(7) A person is subject to the following requirements:

(a) He or she shall not operate a snowmobile in violation of subsection (1), (3), (4), or (5) while another person who is less than 16 years of age is occupying the snowmobile.

(b) He or she shall not operate a snowmobile in violation of subsection (6) while another person who is less than 16 years of age is occupying the snowmobile.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 183, Imd. Eff. May 3, 1996;—Am. 2001, Act 12, Eff. July 1, 2001;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82128 Violations; sanctions.

Sec. 82128. (1) If a person is convicted of violating section 82127(1), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor and may be punished by 1 or more of the following:

(*i*) Community service for not more than 45 days.

(*ii*) Imprisonment for not more than 93 days.

(*iii*) A fine of not less than $100.00 or more than $500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to a fine of not less than $200.00 or more than $1,000.00 and either of the following:

(*i*) Community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year.

(*ii*) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs after 2 or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years or a fine of not less than $500.00 or more than $5,000.00, or both.

(2) A term of imprisonment imposed under subsection (1)(b)(*ii*) or (1)(c) shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(3) A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service if ordered by the court.

(4) In addition to the sanctions prescribed under subsection (1) and section 82127(4) and (5), the court may, under chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1 to 769.36, order the person to pay the costs of the prosecution. The court shall also impose sanctions under section 82142.

(5) A person who is convicted of violating section 82127(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days or a fine of not less than $100.00 or more than $500.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1999, Act 22, Eff. Oct. 1, 2000;—Am. 2014, Act 404, Eff. Mar. 31, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82129 Violations; sanctions.

Sec. 82129. (1) If a person is convicted of violating section 82127(3), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(*i*) Community service for not more than 45 days.

(*ii*) Imprisonment for not more than 93 days.

(*iii*) A fine of not more than $300.00.

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(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(*i*) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(*ii*) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs after 2 or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(*i*) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(*ii*) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(2) In addition to the sanctions prescribed in subsection (1), the court may, under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, order the person to pay the costs of the prosecution. The court shall also impose sanctions under section 82142.

(3) A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service as ordered by the court.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1999, Act 22, Eff. Oct. 1, 2000;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82129a Violation of MCL 324.82127(6); sanctions; community service.

Sec. 82129a. (1) If a person is convicted of violating section 82127(6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(*i*) Community service for not more than 360 hours.

(*ii*) A fine of not more than $250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, including a prior conviction for section 82127(6), the person may be sentenced to 1 or more of the following:

(*i*) Community service for not more than 60 days.

(*ii*) A fine of not more than $500.00.

(*iii*) Imprisonment for not more than 93 days.

(2) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(3) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82129b Violation of MCL 324.82127(7)(a) or (b); sanctions; community service.

Sec. 82129b. (1) A person who violates section 82127(7)(a) is guilty of a crime punishable as follows:

(a) Except as provided in subdivision (b), a person who violates section 82127(7)(a) is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(*i*) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this term of imprisonment shall be served consecutively. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(*ii*) Community service for not less than 30 days or more than 90 days.

(b) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates section

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82127(7)(a) is guilty of a felony and shall be sentenced to pay a fine of not less than $500.00 or more than $5,000.00 and to either of the following:

(*i*) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(*ii*) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this term of imprisonment shall be served consecutively. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(2) A person who violates section 82127(7)(b) is guilty of a misdemeanor punishable as follows:

(a) Except as provided in subdivision (b), a person who violates section 82127(7)(b) may be sentenced to 1 or more of the following:

(*i*) Community service for not more than 60 days.

(*ii*) A fine of not more than $500.00.

(*iii*) Imprisonment for not more than 93 days.

(b) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates section 82127(7)(b) shall be sentenced to pay a fine of not less than $200.00 or more than $1,000.00 and to 1 or more of the following:

(*i*) Imprisonment for not less than 5 days or more than 1 year. This term of imprisonment shall not be suspended unless the defendant agrees to participate in a specialty court program and successfully completes the program.

(*ii*) Community service for not less than 30 days or more than 90 days.

(3) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1 to 769.36.

(4) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

History: Add. 2014, Act 404, Eff. Mar. 31, 2015;—Am. 2020, Act 385, Eff. Mar. 24, 2021.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82130 Enhanced sentence; listing of prior convictions; attempted violation.

Sec. 82130. (1) If the prosecuting attorney intends to seek an enhanced sentence under section 82128, 82129, 82129a, or 82129b based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information filed in district court, circuit court, recorder's court, municipal court, or probate court a statement listing the defendant's prior convictions.

(2) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) An admission by the defendant.

(3) A person who is convicted of an attempted violation of section 82127(1) or (3) or a local ordinance substantially corresponding to section 82127(1) or (3) shall be punished as if the offense had been completed.

(4) When issuing an order under this part, the secretary of state and the court shall treat a conviction of an attempted violation of section 82127(1) or (3), former section 15a(1) or (3) of 1968 PA 74, a local ordinance substantially corresponding to section 82127(1) or (3), a law of another state substantially corresponding to section 82127(1) or (3), or a law of the United States substantially corresponding to section 82127(1) or (3) the same as if the offense had been completed.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82131 Display of lighted headlight and taillight required; applicability of section to snowmobile 25 years or older.

Sec. 82131. (1) A person shall not operate a snowmobile without displaying a lighted headlight and a lighted taillight. However, the headlight shall not be covered with a lens cap of any color.

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(2) This section does not apply to a snowmobile of a model year 25 years old or older.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2004, Act 29, Imd. Eff. Mar. 22, 2004.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82132 Accidents; notice; reports.

Sec. 82132. The operator of a snowmobile involved in an accident resulting in injuries to or the death of any person or property damage in an estimated amount of $100.00 or more shall immediately by the quickest means of communication notify a state police officer or officers, the sheriff's office of the county in which the accident occurred, or the office of the police department of the local unit of government in which the accident occurred. The police agency receiving the notice shall complete a report of the accident on forms prescribed by the director of the department of state police and forward the report to the department of state police within 14 days after the date of the accident. The department of state police shall forward a copy of all snowmobile accident reports to the department within 14 days after receipt of the accident report.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82133 Violation of part as misdemeanor; violation of 82113 and 82114(1) as civil infraction.

Sec. 82133. (1) Except as otherwise provided in this part, a person who violates this part is guilty of a misdemeanor.

(2) An individual who violates section 82113 for a first time is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00.

(3) An individual who violates section 82114(1) for a first time is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $150.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2022, Act 23, Eff. June 8, 2022.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82134 Violations; appearance tickets; presumption.

Sec. 82134. (1) A peace or police officer may issue appearance tickets for violations of this part pursuant to sections 9a to 9e of chapter 4 of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9e of the Michigan Compiled Laws.

(2) In a proceeding for a violation of this part involving prohibited operation or conduct, the registration number displayed on a snowmobile constitutes prima facie evidence that the owner of the snowmobile was the person operating the snowmobile at the time of the offense.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82135 Failure to stop on signal of uniformed officer; penalty; identification of official vehicle.

Sec. 82135. An operator of a snowmobile who is given by hand, voice, emergency light, or siren a visual or audible signal by a peace, police, or conservation officer acting in the lawful performance of his or her duty, directing the operator to bring his or her snowmobile to a stop, and who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor. The officer giving the signal shall be in uniform. A vehicle or snowmobile which is used by an officer at night for purposes of enforcing this part shall be identified as an official law enforcement vehicle or snowmobile.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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Popular name: Snowmobiles

324.82136 Arrest without warrant; preliminary chemical breath analysis.

Sec. 82136. (1) A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a snowmobile involved in the accident in this state while in violation of section 82127(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 82127(1), (3), or (6).

(2) A peace officer who has reasonable cause to believe that a person was operating a snowmobile and that, by the consumption of alcoholic liquor, the person may have affected his or her ability to operate a snowmobile may require the person to submit to a preliminary chemical breath analysis. The following apply with respect to a preliminary chemical breath analysis:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 82143(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(c) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 82143 to 82146 for the purposes of chemical tests described in those sections.

(d) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82137 Chemical tests and analysis of person's blood, urine, or breath; provisions.

Sec. 82137. (1) The following apply with respect to a chemical test and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 82143(1) shall be advised of all of the following:

(*i*) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this part and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.

(*ii*) That if the person refuses the request of a peace officer to take a test described in subparagraph (*i*), the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(*iii*) That the person's refusal of the request of a peace officer to take a test described in subparagraph (*i*) will result in issuance of an order that the person not operate a snowmobile.

(2) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in this subsection. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with this part is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner.

(3) A rule relating to a chemical test for alcohol or a controlled substance promulgated under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, applies to a chemical test administered under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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Popular name: Snowmobiles

324.82138 Chemical test and analysis of person's blood, urine, or breath; additional provisions.

Sec. 82138. (1) A chemical test described in section 82137 shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 82143(1). A person who takes a chemical test administered at the request of a peace officer, as provided in section 82137, shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in section 82137 within a reasonable time after the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

(2) If, after an accident, the operator of a snowmobile involved in an accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(3) If, after an accident, the operator of a snowmobile involved in an accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82139 Introduction of other evidence not limited by MCL 324.82137 and 324.82138; availability of chemical test results.

Sec. 82139. (1) The provisions of sections 82137 and 82138 relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether a person was impaired by, or under the influence of, alcoholic liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or had in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214.

(2) If a chemical test described in sections 82137 and 82138 is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 183, Imd. Eff. May 3, 1996;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82140 Refusal to submit to chemical test; admissibility.

Sec. 82140.

A person's refusal to submit to a chemical test as provided in sections 82137 and 82138 is admissible in a criminal prosecution for a crime described in section 82143(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 183, Imd. Eff. May 3, 1996;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82141 Acceptance of guilty plea or nolo contendere; advisement by court of maximum imprisonment and fine; screening, assessment, and rehabilitative services; record.

Sec. 82141. (1) Before accepting a plea of guilty or nolo contendere under section 82127 or a local ordinance substantially corresponding to section 82127(1), (2), or (3), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation.

(2) Before imposing sentence, other than court-ordered operating sanctions, for a violation of section 82127(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 82127(1) or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(3) Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with a violation of section 82127(1) or (3). The municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the court of record for each case charging a violation of section 82127(1) or (3).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1999, Act 22, Eff. Oct. 1, 2000.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82142 Consideration of prior convictions; sanctions.

Sec. 82142. Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 82127(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 82127(1), (3), or (6) whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions established under section 82130, except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

(a) For a conviction under section 82127(4) or (5), the court shall order, without an expiration date, that the person not operate a snowmobile.

(b) For a conviction under section 82127(1) or a local ordinance substantially corresponding to section 82127(1):

(*i*) If the court finds that the person has no prior convictions within 7 years, the court shall order that the person not operate a snowmobile for not less than 6 months or more than 2 years and shall require that the person take and successfully complete the snowmobile safety education and training program before operating a snowmobile.

(*ii*) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate a snowmobile for a period of not less than 1 year or more than 2 years and shall require the person to take and successfully complete the snowmobile safety education and training program before operating a snowmobile.

(*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order, without an expiration date, that the person not operate a snowmobile.

(c) For a conviction under section 82127(3) or a local ordinance substantially corresponding to section 82127(3):

(*i*) If the court finds that the convicted person has no prior conviction within 7 years, the court shall order that the person not operate a snowmobile for not less than 90 days or more than 1 year.

(*ii*) If the court finds that the person has 1 prior conviction within 7 years, the court shall order that the person not operate a snowmobile for not less than 6 months or more than 2 years.

(*iii*) If the court finds that the person has 2 or more prior convictions within 10 years, the court shall order, without an expiration date, the person not to operate a snowmobile.

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History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82143 Implied consent to chemical tests; circumstances; exception; administration of chemical test.

Sec. 82143. (1) A person who operates a snowmobile is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

(a) The person is arrested for a violation of section 82127(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 82127(1), (3), or (6).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a snowmobile, and the peace officer had reasonable grounds to believe that the person was operating the snowmobile in violation of section 82127.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) A chemical test described in subsection (1) shall be administered as provided in sections 82137 and 82138.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 183, Imd. Eff. May 3, 1996;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82144 Refusal to submit to chemical test; court order; report to secretary of state.

Sec. 82144. (1) If a person refuses the request of a peace officer to submit to a chemical test offered under section 82137 or 82138, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) If a person refuses a chemical test offered under section 82137 or 82138, or submits to the chemical test and the test reveals a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 82143(1), and either that the person has refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal or that the test revealed a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. The form of the report shall be prescribed and furnished by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1996, Act 183, Imd. Eff. May 3, 1996;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82145 Refusal to submit to chemical test; notice of right to hearing.

Sec. 82145. (1) If a person refuses to submit to a chemical test pursuant to section 82144, the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in section 82146. The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a snowmobile. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel is permitted to represent the person at the hearing.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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Popular name: Snowmobiles

324.82146 Refusal to submit to chemical test; failure to request hearing; order; hearing procedures.

Sec. 82146. (1) If a person who refuses to submit to a chemical test under section 82144 does not request a hearing within 14 days of the date of notice under section 82145, the secretary of state shall issue an order that the person not operate a snowmobile for 1 year or, for a second or subsequent refusal within 7 years, for 2 years.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, 1949 PA 300, MCL 257.322. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 82144, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and, except for delay attributable to the unavailability of the defendant, a witness, or material evidence or to an interlocutory appeal or exceptional circumstances, but not for delay attributable to docket congestion, shall be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 82143(1).

(b) Whether the person was placed under arrest for a crime described in section 82143(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of his or her rights under section 82137.

(3) The hearing officer shall make a record of proceedings held under subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification of the filing of a petition for judicial review under section 82150 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a snowmobile for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. The person may file a petition in the circuit court of the county in which the arrest was made to review the order as provided in section 82150. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 82144 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 82150.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82147 Issuance of order by secretary of state; operation of snowmobile prohibited; imposition of suspension for more than 1 conviction or probate court dispositions from same incident.

Sec. 82147. (1) Notwithstanding a court order issued under section 82127(1), (3), (4), or (5), section 15a(1), (3), (4), or (5) of former 1968 PA 74, sections 82141 to 82142, or a local ordinance substantially corresponding to section 82127(1) or (3), or sections 82141 to 82142, if a court has not ordered a person not to operate a snowmobile as authorized by this part, the secretary of state shall issue an order that the person not operate a snowmobile as follows:

(a) For 90 days, upon receiving a record of the conviction of the person for a violation of section 82127(3), section 15a(3) of former 1968 PA 74, a local ordinance substantially corresponding to section 82127(3), or a law of another state substantially corresponding to section 82127(3), if the person has no prior convictions

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within 7 years for a violation of section 82127(1), (3), (4), or (5), section 15a(1), (3), (4), or (5) of former 1968 PA 74, or section 15a of former 1968 PA 74, a local ordinance substantially corresponding to section 82127(1) or (3) or section 15a of former 1968 PA 74, or a law of another state substantially corresponding to section 82127(1), (3), (4), or (5) or section 15a of former 1968 PA 74.

(b) For 1 year for a violation of section 324, 413, or 414 of the Michigan penal code, 1931 PA 328, MCL 750.324, 750.413, and 750.414; or a violation of section 626(3) or (4) of the Michigan vehicle code, 1949 PA 300, MCL 257.626.

(c) For 6 months, if the person has the following convictions within a 7-year period, whether under the law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(*i*) One conviction under section 82127(1), section 15a(1) of former 1968 PA 74, or section 15a of former 1968 PA 74.

(*ii*) Two convictions under section 82127(3), section 15a(3) of former 1968 PA 74, or section 15a of former 1968 PA 74.

(*iii*) One conviction under section 82127(1) or section 15a(1) of former 1968 PA 74 and 1 conviction under section 82127(3), section 15a(3) of former 1968 PA 74, or section 15a of former 1968 PA 74.

(*iv*) One conviction under section 82127(4) or (5) or section 15a(4) or (5) of former 1968 PA 74 followed by 1 conviction under section 82127(3) or section 15a(3) of former 1968 PA 74.

(2) If the secretary of state receives records of more than 1 conviction or probate court or family division of circuit court disposition of a person resulting from the same incident, a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2001, Act 148, Eff. Feb. 1, 2002;—Am. 2008, Act 465, Imd. Eff. Jan. 9, 2009.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82147a Suspension or revocation of operator's or chauffeur's license; operation of snowmobile prohibited; violation as misdemeanor; penalty.

Sec. 82147a. (1) If the operator's or chauffeur's license of a person who is a resident of this state is suspended or revoked by the secretary of state under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or if the driver license of a person who is a nonresident is suspended or revoked under the law of the state in which he or she resides, that person shall not operate a snowmobile under this part for the same period.

(2) A person who violates this section is guilty of a misdemeanor punishable as follows:

(a) For a first conviction, imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(b) For a second or subsequent conviction, imprisonment for not more than 180 days or a fine of not more than $1,000.00, or both.

History: Add. 1999, Act 43, Eff. Oct. 1, 2000.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82148 Convictions prohibiting operation of snowmobile; order; sharing conviction records; termination of indefinite order; multiple convictions or probate court dispositions resulting from same incident; hearing; record; judicial review.

Sec. 82148. (1) Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a snowmobile to a person having any of the following convictions, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Two convictions of a felony involving the use of a snowmobile within 7 years.

(b) Any combination of 2 convictions within 7 years for a violation of section 82127(1), section 15a(1) of former 1968 PA 74, or section 15a of former 1968 PA 74, as added by 1980 PA 402.

(c) One conviction under section 82127(4) or (5) or section 15a(4) or (5) of former 1968 PA 74.

(d) Any combination of 3 convictions within 10 years for a violation of section 82127(1) or (3), section 15a(1) or (3) of former 1968 PA 74, or section 15a of former 1968 PA 74, as added by 1980 PA 402.

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(2) The department shall seek to enter agreements with the appropriate agencies of other states, Canada, and provinces and territories of Canada for the sharing of records of convictions described in subsection (1).

(3) The secretary of state shall issue an order with no expiration date that a person not operate a snowmobile notwithstanding a court order issued under section 82142, or a local ordinance substantially corresponding to section 82142. The secretary of state shall not terminate an indefinite order issued under this part until both of the following occur:

(a) The later of the following:

(*i*) The expiration of not less than 1 year after the order was issued.

(*ii*) The expiration of not less than 5 years after the date of a subsequent issuance of an indefinite order occurring within 7 years after the date of a prior order.

(b) The person meets the requirements of the department of state.

(4) Multiple convictions or probate court dispositions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under this section.

(5) A person who is aggrieved by the issuance of an order by the secretary of state under this section may request a hearing with the secretary of state. The hearing shall be requested within 14 days after issuance of an order under this section by the secretary of state. If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, 1949 PA 300, MCL 257.322.

(6) The hearing officer shall make a record of proceedings held under subsection (5). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification of the filing of a petition for judicial review under section 82150 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(7) Judicial review of an administrative sanction under this section is governed by the law in effect at the time the offense was committed or attempted.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 2005, Act 175, Imd. Eff. Oct. 12, 2005;—Am. 2014, Act 404, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82149 Operation of snowmobile prohibited; issuance of order without expiration date; notice; expiration of order; conditions.

Sec. 82149. (1) If a person is charged with, or convicted of, a violation of section 82127(1), (2), (3), (4), or (5), former section 15a(1), (2), (3), (4), or (5) of Act No. 74 of the Public Acts of 1968, or a local ordinance substantially corresponding to section 82127(1), (2), or (3), and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue an order with no expiration date that the person not operate a snowmobile. If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address.

(2) An order imposed under subsection (1) remains in effect until both of the following occur:

(a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.

(b) The person has paid to the court a $25.00 administrative order processing fee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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Popular name: Snowmobiles

324.82150 Final determination by secretary of state; petition for review in circuit court; consideration of record by court; authority of court to affirm, modify, or set aside order; applicability of section.

Sec. 82150. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 82146, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 82146 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to section 82146, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as provided in subsections (4) and (6), the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a snowmobile. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 82146, the court shall confine its consideration to a review of the record prepared pursuant to section 82146 to determine whether the hearing officer properly determined the issues enumerated in section 82146.

(5) In reviewing a determination resulting in issuance of an order under section 82148(1)(b), (c), or (d), the court shall confine its consideration to a review of the record prepared pursuant to section 82148. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

(a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.

(b) In excess of the statutory authority or jurisdiction of the secretary of state.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(6) This section does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under section 82127, sections 82141 to 82142 or a local ordinance substantially corresponding to section 82127(1), (2), or (3).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82151 Ex parte order to stay pending order.

Sec. 82151. (1) Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under this part may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a snowmobile for an order staying the order. Except as provided in subsection (2), the court may enter an ex parte order staying the order subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper.

(2) The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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Popular name: Snowmobiles

324.82152 Operation of snowmobile prohibited; knowingly permitting operation by person subject to order prohibited; violation of subsection (1) as misdemeanor; extension of length of order; cancellation of certificate of registration.

Sec. 82152. (1) A person who is ordered not to operate a snowmobile and who has been notified of the order by personal service or first-class mail shall not operate a snowmobile. A person shall not knowingly permit a snowmobile owned by the person to be operated by a person who is subject to such an order. A person who violates this subsection is guilty of a misdemeanor punishable as follows:

(a) By imprisonment for not more than 90 days or by a fine of not more than $500.00, or both.

(b) For a second or subsequent violation punishable under this subsection, by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) Upon receiving a record of the conviction or probate court disposition of a person upon a charge of unlawful operation of a snowmobile while the person is subject to an order not to operate a snowmobile, the secretary of state shall immediately extend the length of the order for an additional like period.

(3) If the secretary of state receives records of more than 1 conviction or probate court disposition resulting from the same incident, all of the convictions or probate court dispositions shall be treated as a single violation for purposes of extending the length of an order under subsection (2).

(4) If a person is convicted of violating subsection (1), the court shall order cancellation of the certificate of registration for the snowmobile, unless the snowmobile was stolen or permission to use the snowmobile was not knowingly given. The secretary of state shall not issue a certificate of registration for a snowmobile whose registration is canceled until after the expiration of 90 days after the cancellation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82153 Impoundment of snowmobile.

Sec. 82153. (1) When a person is convicted under section 82152(1), the snowmobile, if it is owned by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment.

(2) An order of impoundment issued pursuant to subsection (1) is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the snowmobile to the storage for insurance coverage purposes.

(3) The owner of a snowmobile impounded pursuant to this section is liable for expenses incurred in the removal and storage of the snowmobile whether or not the snowmobile is returned to him or her. The snowmobile shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the snowmobile is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the snowmobile, the snowmobile shall be considered abandoned.

(4) Nothing in this section affects the rights of a conditional vendor, chattel mortgagee, or lessor of a snowmobile registered in the name of another person as owner who becomes subject to this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82154 Conviction based on plea of nolo contendere.

Sec. 82154. A conviction based on a plea of nolo contendere shall be treated in the same manner as a conviction based on a plea of guilty or a finding of guilt for all purposes under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82155 Expiration of order not to operate snowmobile; administrative order processing fee.

Sec. 82155. Whether of definite or indefinite length, an order not to operate a snowmobile does not expire until the person subject to the order pays an administrative order processing fee of $125.00 to the secretary of

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state. The state treasurer shall deposit $10.00 of the fee in the drunk driving prevention equipment and training fund created under section 625h(1) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws, and $30.00 in the drunk driving caseflow assistance fund created under section 625h(5) of Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws. The state treasurer shall allocate the balance of the fee to the department of state for the administration of orders issued under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82156 Availability of records to public; commercial lookup service of snowmobile operation, title, and registration; disposition of fees; computerized central file; providing records to nongovernmental person or entity; payment; admissibility in evidence.

Sec. 82156. (1) The secretary of state shall make available to the public records maintained under this part, other than those declared to be confidential by law or that are restricted by law from disclosure to the public, under procedures prescribed in this part and the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The secretary of state may provide a commercial lookup service of snowmobile operation, title, and registration records maintained under this part. For each individual record looked up, the secretary of state shall charge a fee of $15.00 per record. The secretary of state shall process a commercial lookup request only if the request is in a form or format prescribed by the secretary of state. The secretary of state shall credit fees collected under this subsection to the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b, through October 1, 2027.

(3) To provide an individual, historical snowmobiling record, the secretary of state shall create and maintain a computerized central file that includes the information contained on application forms received under this part and the name of each individual who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part or former 1968 PA 74. The computerized central file must be interfaced with the law enforcement information network as provided in the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(4) The secretary of state shall not provide an entire computerized central or other file of records maintained under this part to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

(5) A certified copy of an order, record, or paper maintained in this record is admissible in evidence in like manner as the original and is prima facie proof of the facts stated in the original.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;—Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2005, Act 174, Imd. Eff. Oct. 12, 2005;—Am. 2009, Act 100, Imd. Eff. Sept. 30, 2009;—Am. 2011, Act 90, Imd. Eff. July 15, 2011;—Am. 2015, Act 77, Eff. Oct. 1, 2015;—Am. 2019, Act 81, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82156a Disclosure of personal information; uses.

Sec. 82156a. (1) Except as provided in this section and in section 82156c, personal information in a record maintained under this part shall not be disclosed, unless the person requesting the information furnishes proof of identity deemed satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose identified in this section or in section 82156c. Notwithstanding this section, highly restricted personal information shall be used and disclosed only as expressly permitted by law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, Public Law 85-506, 15 U.S.C. 1231 to 1232 and 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, 106 Stat. 3384, the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and all federal regulations promulgated to implement these federal laws.

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(3) Personal information in a record maintained under this part may be disclosed as follows:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions.

(b) For use in connection with matters of snowmobile and operator safety or ORV theft; snowmobile emissions; snowmobile product alterations, recalls, or advisories; performance monitoring of snowmobiles; snowmobiles research activities, including survey research; and the removal of nonowner records from the original records of snowmobile manufacturers.

(c) For use in the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded snowmobile.

(h) For use by any licensed private security guard agency or alarm system contractor licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, or a private detective or private investigator licensed under the private detective license act of 1965, 1965 PA 285, MCL 338.821 to 338.851, for any purpose permitted under this section.

(i) For use by an ORV rental business or its employees, agents, contractors, or service firms for the purpose of making rental decisions.

(j) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. "News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(k) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82156b Resale or redisclosure of information; maintenance of records; duration; availability for inspection.

Sec. 82156b. (1) An authorized recipient of personal information disclosed under section 82156a may resell or redisclose the information for any use permitted under section 82156a.

(2) Any authorized recipient, except a recipient of an individual record or records under subsection (4)(b), who resells or rediscloses personal information shall be required by the secretary of state to maintain for a period of not less than 5 years records as to the information obtained and the permitted use for which it was obtained, and to make such records available for inspection by the secretary of state, upon request.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82156c Furnishing list of information to federal, state, or local governmental agency; contract for sale of lists of records; surveys, marketing, and solicitations; insertion of safeguards in agreement or contract; duties of recipient of personal information;

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disclosure of list based on snowmobile operation or sanctions.

Sec. 82156c. (1) Upon request, the secretary of state may furnish a list of information from the records of the department maintained under this part to a federal, state, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Unless otherwise prohibited by law, the secretary of state may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this subsection if the cost of preparation exceeds $25.00, and use the revenues received from the service to defray necessary expenses. If the secretary of state sells a list of information under this subsection to a member of the state legislature, the secretary of state shall charge the same fee as the fee for the sale of information under subsection (2) unless the list of information is requested by the member of the legislature to carry out a legislative function. The secretary of state may require the requesting agency to furnish 1 or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this subsection.

(2) The secretary of state may contract for the sale of lists of records maintained under this part in bulk, in addition to those lists distributed at cost or at no cost under this section, for purposes defined in section 82156a(3). The secretary of state shall require each purchaser of information in bulk to execute a written purchase contract. The secretary of state shall fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale shall be used by the secretary of state to defray the costs of list preparation and for other necessary or related expenses.

(3) The secretary of state or any other state agency shall not sell or furnish any list of information under subsection (2) for the purpose of surveys, marketing, and solicitations. The secretary of state shall ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under this part.

(4) The secretary of state may insert any safeguard the secretary considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under this section, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals and of the secretary of state are protected.

(5) An authorized recipient of personal information disclosed under this section who resells or rediscloses the information for any of the permissible purposes described in section 82156a(3) shall do both of the following:

(a) Make and keep for a period of not less than 5 years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(b) Allow a representative of the secretary of state, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(6) The secretary of state shall not disclose a list based on snowmobile operation or sanctions to a nongovernmental agency, including an individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997;—Am. 2000, Act 194, Eff. Jan. 1, 2001.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82157 Abstract or record to be kept by court clerk of record.

Sec. 82157. (1) Each district judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of this part or former Act No. 74 of the Public Acts of 1968 or of a local ordinance corresponding to this part or former Act No. 74 of the Public Acts of 1968 regulating the operation of snowmobiles.

(2) Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating this part or a local ordinance corresponding to this part regulating the operation of snowmobiles, except as provided in subsection (11), the district judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to this part, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.

(3) The abstract or report required under this section shall be made upon a form furnished by the secretary

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of state and shall include all of the following:

(a) The name, address, and date of birth of the person charged or cited.

(b) The date and nature of the violation.

(c) The type of snowmobile operated at the time of the violation.

(d) The date of the conviction, finding, forfeiture, judgment, or determination.

(e) Whether bail was forfeited.

(f) Any order issued by the court pursuant to this part.

(g) Other information considered necessary to the secretary of state.

(4) As used in subsections (5) to (7), "felony in which a snowmobile was used" means a felony during the commission of which the person operated a snowmobile and while operating the snowmobile presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

(a) The snowmobile was used as an instrument of the felony.

(b) The snowmobile was used to transport a victim of the felony.

(c) The snowmobile was used to flee the scene of the felony.

(d) The snowmobile was necessary for the commission of the felony.

(5) If a person is charged with a felony in which a snowmobile was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court: "You are charged with the commission of a felony in which a snowmobile was used. If you are convicted and the judge finds that the conviction is for a felony in which a snowmobile was used, as defined in section 82157 of the natural resources and environmental protection act, the secretary of state will order you not to operate a snowmobile in this state.".

(6) If a child is accused of an act the nature of which constitutes a felony in which a snowmobile was used, the prosecuting attorney or juvenile court shall include the following statement on the petition filed in the probate court: "You are accused of an act the nature of which constitutes a felony in which a snowmobile was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a snowmobile was used, as defined in section 82157 of the natural resources and environmental protection act, the secretary of state will order you not to operate a snowmobile in this state.".

(7) If the judge or juvenile court referee determines as part of the sentence or disposition that the felony for which the defendant was convicted or adjudicated and with respect to which notice was given pursuant to subsection (5) or (6) is a felony in which a snowmobile was used, the clerk of the court shall forward an abstract of the court record of that conviction or adjudication to the secretary of state.

(8) Every person required to forward abstracts to the secretary of state under this section shall certify for the period from January 1 through June 30 and for the period from July 1 through December 31 that all abstracts required to be forwarded during the period have been forwarded. The certification shall be filed with the secretary of state not later than 28 days after the end of the period covered by the certification. The certification shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name and title of the person required to forward abstracts.

(b) The court for which the certification is filed.

(c) The time period covered by the certification.

(d) The following statement: "I certify that all abstracts required by section 82157 of the natural resources and environmental protection act, for the period _____ through _____ have been forwarded to the secretary of state.".

(e) Other information the secretary of state considers necessary.

(f) The signature of the person required to forward abstracts.

(9) The failure, refusal, or neglect of a person to comply with this section constitutes misconduct in office and is grounds for removal from office.

(10) Except as provided in subsection (11), the secretary of state shall keep all abstracts received under this section at the secretary of state's main office, and the abstracts shall be open for public inspection during the office's usual business hours. The secretary of state shall enter each abstract upon the snowmobiling record of the person to whom it pertains and shall record the information in a manner that makes the information available to peace officers through the law enforcement information network.

(11) The court shall not submit, and the secretary of state shall discard and not enter on the snowmobiling record, an abstract for a conviction or civil infraction determination for a violation of this part that could not be the basis for the secretary of state's issuance of an order not to operate a snowmobile in this state. The secretary of state shall discard and not enter on the snowmobiling record an abstract for a bond forfeiture that occurred outside this state.

(12) The secretary of state shall inform the court of the violations of this part that are used by the secretary

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of state as the basis for issuance of an order not to operate a snowmobile in this state.

(13) If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination.

(14) The secretary of state may permit a city or village department, bureau, person, or court to modify the requirement as to the time and manner of reporting a conviction, civil infraction determination, or settlement to the secretary of state if the modification will increase the economy and efficiency of collecting and utilizing the records. If the permitted abstract of court record reporting a conviction, civil infraction determination, or settlement originates as a part of the written notice to appeal, authorized in section 82134, the form of the written notice and report shall be as prescribed by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82158 Operator of snowmobile detained by officer; conduct of operator as misdemeanor; arrest without warrant.

Sec. 82158. (1) The operator or person in charge of a snowmobile being used or operated in this state, who is by hand, voice, emergency light or siren, or a visual or audible signal directed to bring his or her snowmobile to a stop by any peace, police, or conservation officer who is in uniform and empowered to enforce this part or the provisions of a local ordinance or rules established under this part, shall immediately bring the snowmobile to a stop or maneuver it in a manner that permits the officer to come alongside. A vehicle or snowmobile that is used by an officer at night for purposes of enforcing this part shall be identified as an official law enforcement vehicle or snowmobile. The operator or person in charge of the snowmobile and any other person on board shall give his or her correct name and address, exhibit the certificate of registration awarded for the snowmobile, and submit to a reasonable inspection of the snowmobile and to a reasonable inspection and test of the equipment of the snowmobile.

(2) A person who willfully fails to obey the direction by increasing his or her speed or extinguishing his or her lights, or who otherwise attempts to flee or elude the officer, is guilty of a misdemeanor.

(3) A person who is detained for a violation of this part or of a local ordinance substantially corresponding to a provision of this part and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor.

(4) A peace officer who observes a violation by a person of this part or of a local ordinance or rule established under this part may arrest the person without a warrant.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82159 Person arrested without warrant to be taken before magistrate or judge.

Sec. 82159. If a person is arrested without a warrant for any of the following, the arrested person shall be taken, without unreasonable delay, before a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

(a) The person is arrested upon a charge of negligent homicide.

(b) The person is arrested under section 82127 or a local ordinance substantially corresponding to section 82127. If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by section 82134.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82160 Prohibited conduct; violations as felony; penalties.

Sec. 82160. (1) A person who makes a false representation or false certification to obtain personal information under this part, or who uses personal information for a purpose other than a permissible purpose identified in section 82156a or 82156c, is guilty of a felony.

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(2) A person who is convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not less than 2 years or more than 7 years, or by a fine of not less than $1,500.00 or more than $7,000.00, or both.

(3) A person who is convicted of a third or subsequent violation of this section is guilty of a felony punishable by imprisonment for not less than 5 years or more than 15 years, or by a fine of not less than $5,000.00 or more than $15,000.00, or both.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

324.82161 Abandonment of snowmobile prohibited; presumption; violation; civil infraction.

Sec. 82161. (1) A person shall not abandon a snowmobile in this state.

(2) The last registered owner of the snowmobile is presumed to be responsible for abandoning the snowmobile unless the person provides a record of the transfer of the snowmobile to another person. The record of transfer must be a form or document that includes the transferee's name, address, driver license number, and signature, date of transfer of the snowmobile, and, if applicable, the sale price.

(3) Sections 80130f(2) to 80130p apply to a snowmobile in the same manner as those provisions apply to a vessel, except that section 80130k(3)(b)(*ii*) does not apply to a snowmobile.

(4) A person who violates subsection (1) and who fails to redeem the snowmobile before disposition of the snowmobile under section 80130k is responsible for a state civil infraction as provided in section 8905a.

History: Add. 2014, Act 549, Eff. Apr. 16, 2015.

Popular name: Act 451

Popular name: NREPA

Popular name: Snowmobiles

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SUBCHAPTER 7
FOREST RECREATION

PART 831
STATE FOREST RECREATION

324.83101 Definitions.

Sec. 83101. As used in this part:

(a) "Concession" means an agreement between the department and a person under terms and conditions as specified by the department to provide services or recreational opportunities for public use.

(b) "Department" means the department of natural resources.

(c) "Director" means the director of the department.

(d) "Forest recreation account" means the forest recreation account of the Michigan conservation and recreation legacy fund provided for in section 2005.

(e) "Lease" means a conveyance by the department to a person of a portion of the state's interest in land under specific terms and for valuable consideration, thereby granting to the lessee the possession of that portion conveyed during the period stipulated.

(f) "State forest" means those lands designated as state forests by the department.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.83102 Recreation within state forest; scope.

Sec. 83102. The department shall develop, operate, maintain, and promote an integrated recreation system that provides opportunities for hunting, fishing, camping, hiking, snowmobiling, off-road vehicle trail riding, boating, trail related activities, and other forms of recreation within each state forest. In developing, operating, maintaining, and promoting this recreation system, the department shall focus on maintaining the integrity of the forest while supporting recreation activities and experiences for which a large land base, rustic nature, and the forest and forest values are critical to the activity.

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History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998.

Popular name: Act 451

Popular name: NREPA

324.83103 Implementation of MCL 324.83102; powers of department; disposition of money collected; grant and award of concessions; notice to legislature; report.

Sec. 83103. (1) In implementing section 83102, the department may do any of the following:

(a) Enter into contracts or agreements with a person as may be necessary to implement this part.

(b) Grant concessions within the boundaries of a state forest to a person. In granting a concession, the department shall provide for all of the following:

(*i*) That the concession or any related structure, facility, equipment, or service is compatible with the natural resource values of the surrounding forest area and is appropriate for the forest recreation system.

(*ii*) That each concession is awarded at least every 7 years based on extension, renegotiation, or competitive bidding. However, if the department determines that a concession requires a capital investment in which a reasonable financing or amortization necessitates a longer term, the department may grant a concession for up to a 15-year term.

(*iii*) That a concession requiring a capital expenditure of more than $100,000.00 for a building or structure be provided for in the state forest management plan for the state forest in which the concession is proposed to be located.

(*iv*) That all buildings and equipment shall be removed from the state forest property at the end of the concession term, unless the department authorizes otherwise.

(*v*) That no concession or concession operator is granted the authority to charge a fee for access to public land or a public recreation resource.

(*vi*) That all prices, rates, and charges and all services or items offered in the operation of the concession shall be approved by the department.

(c) Lease property to a person.

(d) Accept gifts, grants, or bequests from any public or private source or from the federal government or a local unit of government for furthering the purposes of this part.

(2) Unless otherwise provided by state or federal law, all money collected under this section shall be deposited into the forest recreation account.

(3) Not less than 3 months before granting a concession for more than $500,000.00 or that will require a capital expenditure of more than $500,000.00, the department shall notify each member of the house of representatives and senate with primary responsibility for natural resources issues of its intention to grant the concession and of specific details on the nature of the concession.

(4) By December 31 of each year, the department shall submit to the legislature a report that provides details on all concessions awarded during the previous year under subsection (1).

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.83104 Forest recreation account; use.

Sec. 83104. Money in the forest recreation account shall be used by the department to develop, maintain, operate, and promote forest recreation activities and to implement this part.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998;—Am. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.83105 Forest recreation activities; volunteers.

Sec. 83105. (1) The department may appoint persons to function as volunteers for the purpose of facilitating forest recreation activities. While a volunteer is serving in such a capacity, the volunteer has the same immunity from civil liability as a department employee and shall be treated in the same manner as an employee under section 8 of 1964 PA 170, MCL 691.1408.

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(2) A volunteer under subsection (1) shall not carry a firearm when functioning as a volunteer.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998.

Popular name: Act 451

Popular name: NREPA

324.83106 Camping permit; fee; permit to use lands and facilities; exception; deposit of money into account.

Sec. 83106. (1) The department may require a person to obtain a permit for camping in designated state forest campgrounds and may establish and collect a fee for the camping permit. However, at least 6 months before increasing a camping permit fee, the department shall provide written notice of its intent to do so to the standing committees of the senate and the house of representatives that have primary jurisdiction over legislation pertaining to natural resources and the environment.

(2) The department may require a person to obtain a permit, except as otherwise provided by law, for the use of lands and facilities within the state forest as designated by the department for recreation use. The department shall not require a permit or payment of a fee for use of a state forest nonmotorized trail or pathway or state forest campground facility except as provided in subsection (1) or otherwise provided in this act.

(3) Money collected under this section shall be deposited into the forest recreation account.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998;—Am. 2004, Act 587, Eff. Dec. 23, 2006;—Am. 2010, Act 34, Eff. Oct. 1, 2010.

Compiler's note: Enacting section 2 of Act 587 of 2004 provides:

"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

Popular name: Act 451

Popular name: NREPA

324.83107 Rules; enforcement by state forest officers.

Sec. 83107. To ensure compliance with this part, rules promulgated under this part and this act, including the state land use rules provided in R 299.331 to R 299.335 of the Michigan administrative code, and any orders of the director, the director may commission state forest officers to enforce upon properties administered by the department these rules and any laws of this state specified in those rules as enforceable by commissioned state forest officers. In performing those enforcement activities, commissioned state forest officers are vested with the powers, privileges, prerogatives, and immunities conferred upon peace officers under the laws of this state.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998.

Popular name: Act 451

Popular name: NREPA

324.83108 Rules.

Sec. 83108. The department may promulgate rules to implement this part.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998.

Popular name: Act 451

Popular name: NREPA

324.83109 Violation as state civil infraction; fine.

Sec. 83109. A person who violates this part or a rule promulgated under this part is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1998, Act 418, Imd. Eff. Dec. 29, 1998.

Popular name: Act 451

Popular name: NREPA

ARTICLE VII

PART 901

324.90101 Repeal of certain acts and parts of acts.

Sec. 90101. (1) The following acts and parts of acts that are codified in article I, general provisions, and article II, pollution control, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS

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17	1921	299.1 to 299.10
199	1991	123.1031 to 123.1037
127	1970	691.1201 to 691.1207
245	1929	323.1 to 323.13a
350	1865	307.22 to 307.32
226	1971	323.231 to 323.236
98	1913	325.201 to 325.214
320	1927	123.241 to 123.253
211	1956	323.151 to 323.162
159	1969	323.401 to 323.412
271	1974	323.291 to 323.293
317	1988	323.451 to 323.470
348	1965	336.11 to 336.36
12	1993	336.121 to 336.129
171	1976	286.551 to 286.581
247	1993	286.851 to 286.868
106	1963	752.901 to 752.906
167	1970	323.331 to 323.342
64	1979	299.501 to 299.551
171	1986	299.621 to 299.625
641	1978	299.401 to 299.437
181	1986	325.311 to 325.332
136	1969	323.271 to 323.280
147	1993	299.891 to 299.898
148	1993	299.871 to 299.882
60	1976	299.351 to 299.360
414	1988	299.481 to 299.484
145	1988	445.581 to 445.584
411	1988	299.461 to 299.464
411	1980	319.311 to 319.316
133	1990	299.561 to 299.572
20	1990	299.861 to 299.869
249	1986	299.371 to 299.393
307	1982	299.601 to 299.618
91	1990	30.431 to 30.432
423	1984	299.701 to 299.712
478	1988	299.831 to 299.850
518	1988	299.801 to 299.828

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(2) The following acts and parts of acts are not codified in this act but are repealed:

(a) Act No. 366 of the Public Acts of 1974, being sections 299.301 to 299.321 of the Michigan Compiled Laws.

(b) Act No. 329 of the Public Acts of 1966, being sections 323.111 to 323.128 of the Michigan Compiled Laws.

(c) Act No. 13 of the Public Acts of the Extra Session of 1956, being sections 323.201 to 323.203 of the Michigan Compiled Laws.

(d) Act No. 280 of the Public Acts of 1909, being sections 322.202 to 322.214 of the Michigan Compiled Laws.

(e) Act No. 155 of the Public Acts of 1937, being sections 211.355a to 211.364 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.90102 Repeal of certain acts and parts of acts.

Sec. 90102. The following acts and parts of acts that are codified in article I, general provisions, and article II, pollution control, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
188	1988	299.251 to 299.257

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192	1929	300.11 to 300.18
517	1988	3.871 to 3.880
101	1985	318.501 to 318.516
223	1909	211.461 to 211.462
44	1883	211.481 to 211.483
193	1911	322.481 to 322.485
137	1913	211.471 to 211.473
187	1851	322.151 to 322.157
76	1853	322.161 to 322.162
421	1982	322.611 to 322.617
10	1953	322.651
86	1989	322.461 to 322.469
197	1980	399.251 to 399.257
314	1968	425.171 to 425.173
116	1917	211.581 to 211.582
91	1925	211.491 to 211.493
298	1993	322.141 to 322.146
66	1869	322.231 to 322.233
310	1994	299.31 to 299.36
143	1959	323.251 to 323.258
222	1966	323.351 to 323.358
76	1968	323.371 to 323.382
250	1965	336.1 to 336.8
159	1973	336.91 to 336.92
234	1993	257.2051 to 257.2076
232	1993	257.2001 to 257.2042
198	1975	286.751 to 286.767
347	1972	282.101 to 282.125
297	1937	282.1 to 282.16
345	1978	123.311 to 123.319
326	1988	299.651 to 299.660
328	1988	299.671 to 299.685

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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324.90103 Repeal of certain acts.

Sec. 90103. (1) The following acts that are codified in article III, chapter 1, entitled habitat protection, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
346	1972	281.951 to 281.966
203	1979	281.701 to 281.722
231	1970	281.761 to 281.776
146	1961	281.61 to 281.86
345	1966	281.901 to 281.930
253	1964	323.301 to 323.320
20	1964	281.301 to 281.315
300	1989	281.1301 to 281.1365
89	1954	3.601 to 3.607
28	1955	3.651 to 3.656
245	1970	281.631 to 281.644
247	1955	322.701 to 322.715
130	1985	323.71 to 323.85
128	1985	323.31 to 323.41
155	1989	3.671 to 3.677
44	1952	281.601
278	1952	281.621 to 281.628
326	1913	322.401 to 322.429

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205	1967	279.201 to 279.246
241	1972	322.751 to 322.763
222	1976	281.651 to 281.694
93	1992	299.231 to 299.237
150	1970	247.381 to 247.386
116	1974	554.701 to 554.719
203	1974	299.221 to 299.230

(2) The following act is not codified in this act but is repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAW SECTIONS
133	1985	323.51 to 323.58

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.90104 Repeal of certain acts and parts of acts.

Sec. 90104. (1) The following acts that are codified in article III, chapter 2, entitled management of renewable resources, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
256	1988	300.251 to 300.270
179	1974	299.211 to 299.213
281	1939	299.201
269	1925	317.141 to 317.143
230	1925	300.1 to 300.5
66	1891	317.271 to 317.274
112	1895	317.281 to 317.283
171	1899	317.291 to 317.297
134	1957	317.301 to 317.313
159	1967	317.331 to 317.336
82	1947	317.401 to 317.405
308	1929	317.1 to 317.7
191	1929	317.71 to 317.84
103	1941	317.21 to 317.25
207	1923	317.261 to 317.263
86	1980	316.101 to 316.901
73	1986	300.211 to 300.216
285	1986	299.151 to 299.161
94	1988	316.1001 to 316.1008
244	1986	281.571 to 281.595
14	1923	307.71 to 307.72
121	1891	307.41 to 307.42
156	1933	307.101 to 307.106
261	1915	307.51 to 307.61
196	1957	308.111 to 308.119
180	1931	308.151 to 308.152
57	1931	307.161
274	1993	752.221 to 752.230
218	1955	308.201 to 308.205
194	1925	307.171 to 307.172
63	1885	300.51 to 300.56
84	1929	308.1 to 308.51
175	1956	307.251 to 307.253
111	1951	300.151
350	1865	307.22 to 307.32
123	1929	307.1 to 307.7
4	1939	307.151
165	1929	301.1 to 306.3
92	1931	308.161
158	1949	300.101 to 300.103

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298	1980	320.1101 to 320.1711
150	1984	320.501 to 320.505
280	1990	320.2001 to 320.2023
214	1982	322.11 to 322.17
94	1925	320.301 to 320.314
86	1917	320.271 to 320.282
329	1969	320.21 to 320.38
366	1976	320.61 to 320.62
35	1955	320.41 to 320.48
178	1935	320.81
217	1931	320.201 to 320.210
182	1962	320.411 to 320.420

(2) The following acts and parts of acts are not codified in this act but are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
175	1903	320.101 to 320.107
22	1913	317.131 to 317.133

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.90105 Repeal of certain acts and parts of acts.

Sec. 90105. (1) The following acts and parts of acts that are codified in article III, chapter 3, entitled management of nonrenewable resources, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
65	1869	321.1 to 321.9
373	1917	321 21 to 321.31
248	1937	321.151 to 321.154
268	1977	321.41 to 321.45
204	1979	321.201 to 321.213
61	1939	319.1 to 319.27
308	1994	319.41 to 319.49
197	1959	319.351 to 319.394
316	1980	319.121 to 319.125
138	1947	319.301 to 319.303
315	1969	319.211 to 319.236
92	1970	425.181 to 425.188
59	1945	319.151 to 319.156
303	1982	425.1101 to 425.2005
204	1984	322.801 to 322.811

(2) The following acts and parts of acts are not codified in this act but are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
7	1911	319.202 to 319.205
132	1897	319.251 to 319.253

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995.

Compiler's note: In the second line of the table in subsection (1), “321 21” evidently should read “321.21.”

Popular name: Act 451

Popular name: NREPA

324.90106 Repeal of certain acts.

Sec. 90106. (1) The following acts that are codified in article III, chapter 4, entitled recreation, are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
326	1965	299.121 to 299.127
316	1965	299.111 to 299.116
221	1987	318.531 to 318.541
327	1988	318.551 to 318.560
329	1988	318.571 to 318.586
27	1993	299.131 to 299.144

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225	1964	318.231 to 318.233
323	1976	317.171 to 317.181
201	1953	300.201
149	1960	318.301 to 318.314
48	1952	322.601 to 322.608
130	1994	318.331 to 318.337
57	1993	322.821 to 322.826
173	1929	299.51 to 299.57
355	1927	318.61 to 318.67
201	1958	318.201 to 318.208
22	1907	318.91 to 318.93
45	1943	318.101 to 318.102
20	1955	318.71 to 318.72
70	1957	318.121 to 318.122
54	1909	318.81 to 318.84
320	1947	281.501 to 281.511
125	1959	281.531 to 281.538
187	1964	281.521 to 281.523
79	1988	281.1251 to 281.1268
66	1952	281.541 to 281.543
303	1967	281.1001 to 281.1199
160	1976	281.1201 to 281.1223
319	1975	257.1601 to 257.1626
74	1968	257.1501 to 257.1543

(2) The following acts and parts of acts are not codified in this act but are repealed:

PUBLIC ACT NUMBER	YEAR OF ACT	MICHIGAN COMPILED LAWS SECTIONS
257	1968	318.351 to 318.362
108	1969	318.371 to 318.387

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

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