NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT
Act 451 of 1994 (EXCERPTS)
Part 17

ENVIRONMENTAL PROTECTION

324.1701 Actions for declaratory and equitable relief for environmental protection; parties; standards; judicial action.
Sec. 1701. (1) The attorney general or any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

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

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

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

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1705 Administrative, licensing, or other proceedings; intervenors; determinations; doctrines applicable.
Sec. 1705. (1) If administrative, licensing, or other proceedings and judicial review of such proceedings are available by law, the agency or the court may permit the attorney general or any other person to intervene as a party on the filing of a pleading asserting that the proceeding or action for judicial review involves conduct that has, or is likely to have, the effect of polluting, impairing, or destroying the air, water, or other natural resources or the public trust in these resources.

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

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

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1706 Part as supplement.
Sec. 1706. This part is supplementary to existing administrative and regulatory procedures provided by law.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 19

NATURAL RESOURCES TRUST FUND

324.1901 Definitions.
Sec. 1901. As used in this part:

(a) “Board” means the Michigan natural resources trust fund board established in section 1905.

(b) “Economic development revenue bonds (oil and gas revenues), series 1982A, dated December 1, 1982” includes bonds refunding these bonds, provided that any refunding bonds mature no later than September 1, 1994.

(c) “Local unit of government” means a county, city, township, village, school district, the Huron-Clinton metropolitan authority, or any authority composed of counties, cities, townships, villages, or school districts, or any combination thereof, which authority is legally constituted to provide public recreation.

(d) “Total expenditures” means the amounts actually expended from the trust fund as authorized by section 1903(1) and (2).

(e) “Trust fund” means the Michigan natural resources trust fund established in section 35 of article IX of the state constitution of 1963.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1902 Michigan natural resources trust fund; establishment; contents; transfer of amount to Michigan state parks endowment fund; receipts; investment; report on accounting of revenues and expenditures; "Michigan state parks endowment fund" defined.
Sec. 1902. (1) In accordance with section 35 of article IX of the state constitution of 1963, the Michigan natural resources trust fund is established in the state treasury. The trust fund shall consist of all bonuses, rentals, delayed rentals, and royalties collected or reserved by the state under provisions of leases for the extraction of nonrenewable resources from state owned lands. However, the trust fund shall not include bonuses, rentals, delayed rentals, and royalties collected or reserved by the state from the following sources:

(a) State owned lands acquired with money appropriated from the former game and fish protection fund or the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(b) State owned lands acquired with money appropriated from the subfund account created by former section 4 of former 1976 PA 204.

(c) State owned lands acquired with money appropriated from related federal funds made available to the state under 16 USC 669 to 669i, commonly known as the federal aid in wildlife restoration act, or 16 USC 777 to 777l, commonly known as the federal aid in fish restoration act.

(d) Money received by the state from net proceeds allocable to the nonconventional fuel credit contained in section 29 of the internal revenue code of 1986, 26 USC 29, as provided for in section 503.

(2) Notwithstanding subsection (1), until the trust fund reaches an accumulated principal of $500,000,000.00, $10,000,000.00 of the revenues from bonuses, rentals, delayed rentals, and royalties described in this section, but not including money received by the state from net proceeds allocable to the nonconventional fuel credit contained in section 29 of the internal revenue code of 1986, 26 USC 29, as provided for in section 503, otherwise dedicated to the trust fund that are received by the trust fund each state fiscal year shall be transferred to the state treasurer for deposit into the Michigan state parks endowment fund. However, until the trust fund reaches an accumulated principal of $500,000,000.00, in any state fiscal year, not more than 50% of the total revenues from bonuses, rentals, delayed rentals, and royalties described in this section, but not including net proceeds allocable to the nonconventional fuel credit contained in section 29 of the internal revenue code of 1986, 26 USC 29, as provided in section 503, otherwise dedicated to the trust fund that are received by the trust fund each state fiscal year shall be transferred to the Michigan state parks endowment fund. To implement this subsection, until the trust fund reaches an accumulated principal of $500,000,000.00, the department shall transfer

50% of the money received by the trust fund each month pursuant to subsection (1) to the state treasurer for deposit into the Michigan state parks endowment fund. The department shall make this transfer on the last day of each month or as soon as practicable thereafter. However, not more than a total of $10,000,000.00 shall be transferred in any state fiscal year pursuant to this subsection.

(3) In addition to the contents of the trust fund described in subsection (1), the trust fund shall consist of money transferred to the trust fund pursuant to section 1909.

(4) The trust fund may receive appropriations, money, or other things of value.

(5) The state treasurer shall direct the investment of the trust fund. The state treasurer shall have the same authority to invest the assets of the trust fund as is granted to an investment fiduciary under the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140l.

(6) The department shall annually prepare a report containing an accounting of revenues and expenditures from the trust fund. This report shall identify the interest and earnings of the trust fund from the previous year, the investment performance of the trust fund during the previous year, and the total amount of appropriations from the trust fund during the previous year. This report shall be provided to the senate and house of representatives appropriations committees and the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to natural resources and the environment.

(7) As used in this section, "Michigan state parks endowment fund" means the Michigan state parks endowment fund established in section 35a of article IX of the state constitution of 1963 and provided for in section 74119.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 134, Imd. Eff. Mar. 19, 1996 ;-- Am. 2002, Act 52, Eff. Sept. 21, 2002 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides:"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."
Popular Name: Act 451
Popular Name: NREPA

324.1903 Expenditures.

Sec. 1903. (1) Subject to the limitations of this part and of section 35 of article IX of the state constitution of 1963, the interest and earnings of the trust fund in any 1 state fiscal year may be expended in subsequent state fiscal years only for the following purposes:

(a) The acquisition of land or rights in land for recreational uses or protection of the land because of its environmental importance or its scenic beauty.

(b) The development of public recreation facilities.

(c) The administration of the fund, including payments in lieu of taxes on state owned land purchased through the trust fund.

(2) In addition to the money described in subsection (1), 33-1/3% of the money, exclusive of interest and earnings, received by the trust fund in any state fiscal year may be expended in subsequent state fiscal years for the purposes described in subsection (1). However, the authorization for the expenditure of money provided in this subsection does not apply after the state fiscal year in which the total amount of money in the trust fund, exclusive of interest and earnings and amounts authorized for expenditure under this section, exceeds $500,000,000.00.

(3) An expenditure from the trust fund may be made in the form of a grant to a local unit of government, subject to the following conditions:

(a) The grant is used for the purposes described in subsection (1) and meets the requirements of either subdivision (b) or (c).

(b) A grant for the purposes described in subsection (1)(a) is matched by the local unit of government or public authority with at least 25% of the total cost of the project.

(c) A grant for the purposes described in subsection (1)(b) is matched by the local unit of government with 25% or more of the total cost of the project.

(4) Not less than 25% of the total amounts made available for expenditure from the trust fund from any state fiscal year shall be expended for acquisition of land and rights in land, and not more than 25% of the total amounts made available for expenditure from the trust fund from any state fiscal year shall be expended for development of public recreation facilities.

(5) If property that was acquired with money from the trust fund is subsequently sold or transferred by the state to a nongovernmental entity, the state shall forward to the state treasurer for deposit into the trust fund an amount of money equal to the following:

(a) If the property was acquired solely with trust fund money, the greatest of the following:

(i) The net proceeds of the sale.

(ii) The fair market value of the property at the time of the sale or transfer.

(iii) The amount of money that was expended from the trust fund to acquire the property.

(b) If the property was acquired with a combination of trust fund money and other restricted funding sources governed by federal or state law, an amount equal to the percentage of the funds contributed by the trust fund for the acquisition of the property multiplied by the greatest of subdivision (a)(i), (ii), or (iii).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 52, Eff. Sept. 21, 2002
Popular Name: Act 451
Popular Name: NREPA

324.1904 Limitation on amount accumulated in trust fund; deposit and distribution of amount.

Sec. 1904. The amount accumulated in the trust fund shall not exceed $500,000,000.00, exclusive of interest and earnings and amounts authorized for expenditure under this part. Any amount of money that would be a part of the trust fund but for the limitation stated in this section shall be deposited in the Michigan state parks endowment fund created in section 74119, until the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00. After the Michigan state parks endowment fund reaches an accumulated principal of $800,000,000.00, any money that would be part of the Michigan state parks endowment fund but for this limitation shall be distributed as provided by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 52, Eff. Sept. 21, 2002
Popular Name: Act 451
Popular Name: NREPA

324.1905 Michigan natural resources trust fund board; establishment; powers and duties of transferred agency; cooperation, aid, offices, and equipment; appointment and terms of members; removal; vacancies; expenses; compensation.

Sec. 1905. (1) The Michigan natural resources trust fund board is established within the department. The board shall have the powers and duties of an agency transferred under a type I transfer pursuant to section 3 of the executive organization act of 1965, Act No. 380 of the Public Acts of 1965, being section 16.103 of the Michigan Compiled Laws. The board shall be administered under the supervision department and the department shall offer its cooperation and aid to the board and shall provide suitable offices and equipment for the board.

(2) The board shall consist of 5 members. The members shall include the director or a member of the commission as determined by the

commission, and 4 residents of the state to be appointed by the governor with the advice and consent of the senate.

(3) The terms of the appointive members shall be 4 years, except that of those first appointed, 1 shall be appointed for 1 year, 1 shall be appointed for 2 years, 1 shall be appointed for 3 years, and 1 shall be appointed for 4 years.

(4) The appointive members may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

(5) Vacancies on the board shall be filled for the unexpired term in the same manner as the original appointments.

(6) The board may incur expenses necessary to carry out its powers and duties under this part and shall compensate its members for actual expenses incurred in carrying out their official duties.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1906 Board; election of chairperson; administrative procedures; conducting business at public meeting; notice; meetings of board; availability of writings to public; reports.
Sec. 1906. (1) The board shall elect a chairperson and establish its administrative procedures. The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The board shall meet not less than bimonthly and shall record its proceedings. A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Before January 16 of each year, the board shall report to the governor and to the legislature detailing the operations of the board for the preceding 1-year period. The board shall also make special reports as requested by the governor or the legislature.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1907 List of lands, rights in land, and public recreation facilities to be acquired or developed; estimates of total costs; guidelines; legislative approval.

Sec. 1907. (1) The board shall determine which lands and rights in land within the state should be acquired and which public recreation facilities should be developed with money from the trust fund and shall submit to the legislature in January of each year a list of those lands and rights in land and those public recreation facilities that the board has determined should be acquired or developed with trust fund money, compiled in order of priority. In preparing the list under this subsection, the board shall give particular consideration to the acquisition of land and rights in land for recreational trails that intersect the downtown areas of cities and villages.

(2) This list shall be accompanied by estimates of total costs for the proposed acquisitions and developments.

(3) The board shall supply with each list a statement of the guidelines used in listing and assigning the priority of these proposed acquisitions and developments.

(4) The legislature shall approve by law the lands and rights in land and the public recreation facilities to be acquired or developed each year with money from the trust fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2008, Act 229, Imd. Eff. July 17, 2008
Popular Name: Act 451
Popular Name: NREPA

324.1907a Project status; report.
Sec. 1907a. If within 2 years after a parcel of property that is approved for acquisition or development by the legislature has not been acquired or developed in the manner determined by the board and is not open for public use, the board shall report to the standing committees of the senate and the house of representatives with jurisdiction over issues related to natural resources and the environment on the status of the project and the reason why the property has not been purchased or developed in the manner determined by the board.

History: Add. 2002, Act 52, Eff. Sept. 21, 2002
Popular Name: Act 451
Popular Name: NREPA

324.1908 Adopting decisions of state recreational land acquisition trust fund board of trustees; completion of projects; validity and expenditure of appropriations; deposit and appropriation of unexpended funds; appropriation of funds available under former law; deposit of interest and earnings on unexpended money.
Sec. 1908. (1) Beginning on October 1, 1985, the board shall adopt as its own any decision made by the state recreational land acquisition trust fund board of trustees under the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976, and shall administer to completion any project pending under that act.

(2) Appropriations made pursuant to former Act No. 204 of the Public Acts of 1976 shall remain valid after October 1, 1985 and may be expended until the projects approved through the appropriations are complete. Any funds appropriated pursuant to former Act No. 204 of the Public Acts of 1976 but unexpended after completion of the projects funded under that act shall be deposited in the trust fund and may be appropriated as natural resources trust funds.

(3) Funds available for appropriation under former Act No. 204 of the Public Acts of 1976 as of October 1, 1985, but not appropriated as of that date, may be appropriated by the legislature under the terms and conditions of that act. Any funds appropriated as provided in this subsection but unexpended after completion of the projects for which the

money was appropriated shall be deposited in the trust fund and may be appropriated as natural resources trust funds.

(4) The interest and earnings on money appropriated pursuant to former Act No. 204 of the Public Acts of 1976 or subsection (3) but not expended shall be deposited in the trust fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1909 Duties of state treasurer.
Sec. 1909. On October 1, 1985, the state treasurer shall do the following:

(a) Transfer to the game and fish protection fund created in part 435 any money in the subfund account created by former section 4 of the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976.

(b) Transfer to the trust fund any money remaining in the state recreational land acquisition trust fund created in the Kammer recreational land trust fund act of 1976, former Act No. 204 of the Public Acts of 1976, after the transfer required by subdivision (a) is accomplished.

(c) Transfer to the trust fund any money or other assets in the heritage trust fund created in the heritage trust fund act of 1982, former Act No. 327 of the Public Acts of 1982.

(d) Transfer from the general fund to the trust fund an amount of money equal to all the money received by the general fund between December 22, 1984, the date on which section 35 of article IX became part of the state constitution of 1963, and October 1, 1985, the effective date of former Act No. 101 of the Public Acts of 1985, from bonuses, rentals, delayed rentals, and royalties collected or reserved by the state under provisions of leases for the extraction of nonrenewable resources from state owned lands, except money from bonuses, rentals, delayed rentals, and royalties excluded from the trust fund under 1902(1).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.1910 Transfer of writings or documents by department of natural resources and department of treasury.
Sec. 1910. (1) On October 1, 1985, the department shall transfer any writing or document prepared, owned, used, in the possession of, or retained by the state recreational land acquisition trust fund board of trustees under former Act No. 204 of the Public Acts of 1976 to the board.

(2) On October 1, 1985, the department of treasury shall transfer any writing or document prepared, owned, used, in the possession of, or retained by the heritage trust fund board of trustees under former Act No. 327 of the Public Acts of 1982 to the board or the bondholder protection board, as appropriate to the function of each board.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 31

WATER RESOURCES PROTECTION

324.3101 Definitions.
Sec. 3101. As used in this part:

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

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

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

(i) Filtration.

(ii) The application of biocides or ultraviolet light.

(iii) Thermal methods.

(iv) Other treatment techniques approved by the department.

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

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

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

(g) "Great Lakes" means the Great Lakes and their connecting waters, including Lake St. Clair.

(h) "Group 1 facility" means a facility whose discharge is described by R 323.2218 of the Michigan administrative code.

(i) "Group 2 facility" means a facility whose discharge is described by R 323.2210(y), R 323.2215, or R 323.2216 of the Michigan administrative code.

(j) "Group 3 facility" means a facility whose discharge is described by R 323.2211 or R 323.2213 of the Michigan administrative code.

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

(l) "Local unit" means a county, city, village, or township or an agency or instrumentality of any of these entities.

(m) "Municipality" means this state, a county, city, village, or township, or an agency or instrumentality of any of these entities.

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

(o) "Nonoceangoing vessel" means a vessel that is not an oceangoing vessel.

(p) "Oceangoing vessel" means a vessel that operates on the Great Lakes or the St. Lawrence waterway after operating in waters outside of the Great Lakes or the St. Lawrence waterway.

(q) "Open water disposal of contaminated dredge materials" means the placement of dredge materials contaminated with toxic substances as defined in R 323.1205 of the Michigan administrative code into the open waters of the waters of the state but does not include the siting or use of a confined disposal facility designated by the United States army corps of engineers or beach nourishment activities utilizing uncontaminated materials.

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

(s) "Sediments" means any matter settled out of ballast water within a vessel.

(t) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(u) "Sewage sludge derivative" means a product for land application derived from sewage sludge that does not include solid waste or other waste regulated under this act.

(v) "Sewage sludge generator" means a person who generates sewage sludge that is applied to land.

(w) "Sewage sludge distributor" means a person who applies, markets, or distributes, except at retail, a sewage sludge derivative.

(x) "St. Lawrence waterway" means the St. Lawrence river, the St. Lawrence seaway, and the gulf of St. Lawrence.

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

(z) "Waters of the state" means groundwaters, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the jurisdiction of this state.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1997, Act 29, Imd. Eff. June 18, 1997 ;-- Am. 2001, Act 114, Imd. Eff. Aug. 6, 2001 ;-- Am. 2004, Act 90, Imd. Eff. Apr. 22, 2004 ;-- Am. 2004, Act 142, Imd. Eff. June 15, 2004 ;-- Am. 2006, Act 97, Imd. Eff. Apr. 4, 2006
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.3102 Implementation of part.
Sec. 3102. The director shall implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For creation of the office of administrative hearings within the department of natural resources and transfer of authority to make decisions regarding administrative appeals of surface water discharge permit applications from the commission of natural resources to the office of administrative hearings, see E.R.O. No. 1995-3, compiled at MCL 299.911 of the Michigan Compiled Laws.For transfer of

authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.For transfer of the Office of Administrative Hearings, including but not limited to authority, powers, duties, functions, and responsibilities, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.3103 Department of environmental quality; powers and duties generally; rules; other actions.

Sec. 3103. (1) The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. The department may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments and governmental units and agencies in making the surveys, studies, and investigations. The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature. The department, in the public interest, shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district.

(2) The department shall enforce this part and may promulgate rules as it considers necessary to carry out its duties under this part. However, notwithstanding any rule-promulgation authority that is provided in this part, except for rules authorized under section 3112(6), the department shall not promulgate any additional rules under this part after December 31, 2006.

(3) The department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act, 33 USC 1251 to 1387, and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution. This part shall not be construed as authorizing the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature.

(4) Notwithstanding the limitations on rule promulgation under subsection (2), rules promulgated under this part before January 1, 2007 shall remain in effect unless rescinded.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004 ;-- Am. 2005, Act 33, Imd. Eff. June 6, 2005
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1001 et seq. and R 323.2101 et seq. of the Michigan Administrative Code.

324.3103a Legislative findings; duties of department; vessel owner or operator ineligible for new grant, loan, or award.
Sec. 3103a. (1) The legislature finds both of the following:

(a) It is a goal of this state to prevent the introduction of and minimize the spread of aquatic nuisance species within the Great Lakes.

(b) That, to achieve the goal stated in subdivision (a), this state shall cooperate with the United States and Canadian authorities, other states and provinces, and the maritime industry.

(2) By March 1, 2002, the department shall do all of the following:

(a) Determine whether the ballast water management practices that were proposed by the shipping federation of Canada to the department on June 7, 2000 are being complied with by all oceangoing vessels operating on the Great Lakes and the St. Lawrence waterway. Upon request by the department, the owner or operator of an oceangoing vessel shall provide, on a form developed by the department and the shipping federation of Canada, confirmation of whether or not the vessel is complying with the ballast water management practices described in this subdivision.

(b) Determine whether the ballast water management practices that were proposed jointly by the lake carriers' association and the Canadian shipowners' association to the department on January 26, 2001 are being complied with by all nonoceangoing vessels operating on the Great Lakes and the St. Lawrence waterway. Upon request by the department, the owner or operator of a nonoceangoing vessel shall provide, on a form developed by the department and the lake carriers' association and the Canadian shipowners' association, confirmation of whether or not the vessel is complying with the ballast water management practices described in this subdivision. For a nonoceangoing vessel that is a ferry used to transport motor vehicles across Lake Michigan, if the configuration of the vessel would prohibit compliance with 1 or more of the ballast water management practices described in this section, the department shall establish alternative ballast water management practices for the vessel and shall determine whether those practices are being complied with.

(c) Determine whether either or both of the ballast water management practices described in subdivisions (a) and (b) have been made conditions of passage on the St. Lawrence seaway by the St. Lawrence seaway management corporation and the Saint Lawrence seaway development corporation.

(d) Determine the following:

(i) Whether 1 or more ballast water treatment methods, which protect the safety of the vessel, its crew, and its passengers, could be used by oceangoing vessels to prevent the introduction of aquatic nuisance species into the Great Lakes.

(ii) A time period after which 1 or more ballast water treatment methods identified under subparagraph (i) could be used by all oceangoing vessels operating on the Great Lakes.

(iii) If the department determines under subparagraph (i) that a ballast water treatment method is not available, the actions needed to be taken for 1 or more ballast water treatment methods that would meet the requirements of subparagraph (i) to be developed, tested, and made available to vessel owners and operators and a time period after which the ballast water treatment method or methods could be used by all oceangoing vessels operating on the Great Lakes. Subsequently, if at any time the department determines that 1 or more ballast water treatment methods that meet the requirements of subparagraph (i) could be used by oceangoing vessels operating on the Great Lakes, the department shall determine a date after which the ballast water treatment method or methods could be used by all oceangoing vessels operating on the Great Lakes.

(e) Submit to the governor and the standing committees of the legislature with jurisdiction primarily over issues pertaining to natural resources and the environment a letter of determination that outlines the determinations made by the department under this subsection.

(3) By March 1, 2003, the department shall do all of the following:

(a) Determine whether all oceangoing vessels that are operating on the Great Lakes are using a ballast water treatment method, identified by the department under subsection (2)(d)(i) or (iii), to prevent the introduction of aquatic nuisance species into the Great Lakes. Upon request by the department, the owner or operator of an oceangoing vessel shall provide, on a form developed by the department and the shipping federation of Canada, confirmation of whether or not the vessel is using a ballast water

treatment method identified by the department under subsection (2)(d)(i) or (iii). If the department determines that all oceangoing vessels that are operating on the Great Lakes are not using a ballast water treatment method by the dates identified in subsection (2)(d)(ii) or (iii), the department shall determine what the reasons are for not doing so.

(b) Determine whether the use of a ballast water treatment method has been made a condition of passage on the St. Lawrence seaway by the St. Lawrence seaway management corporation and the Saint Lawrence seaway development corporation.

(c) Submit to the governor and the standing committees of the legislature with jurisdiction primarily over issues pertaining to natural resources and the environment a letter of determination that outlines the determinations made by the department under this subsection.

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

(a) By March 1, 2002, compile and maintain a list of all oceangoing vessels and nonoceangoing vessels that it determines have complied with the ballast water management practices described in subsection (2)(a) or (b), as appropriate, during the previous 12 months. This list shall be continually updated and maintained on the department's website.

(b) By March 1, 2003, if the department has determined under subsection (2)(d)(i), or if the department subsequently determines under subsection (2)(d)(iii), that 1 or more ballast water treatment methods could be used by oceangoing vessels to prevent the introduction of aquatic nuisance species into the Great Lakes, compile and maintain a list of all oceangoing vessels that, after the date specified in subsection (2)(d)(ii) or the date identified by the department under subsection (2)(d)(iii), as appropriate, have been using 1 of these ballast water treatment methods during the previous 12 months.

(c) Continually update and post the lists provided for in subdivisions (a) and (b) on the department's website.

(d) Annually distribute a copy of the lists prepared under subdivisions (a) and (b) to persons in the state who have contracts with oceangoing or nonoceangoing vessel operators for the transportation of cargo.

(e) Provide to the governor and the standing committees of the legislature with jurisdiction primarily over issues pertaining to natural resources and the environment copies of the initial lists prepared under subdivisions (a) and (b) and the annual list distributed under subdivision (d).

(5) The owner or operator of an oceangoing vessel or a nonoceangoing vessel that is not on an applicable list prepared under subsection (4) and any persons in the state who have contracts for the transportation of cargo with an oceangoing or nonoceangoing vessel operator that is not on an applicable list prepared under subsection (4) are not eligible for a new grant, loan, or award administered by the department.

History: Add. 2001, Act 114, Imd. Eff. Aug. 6, 2001
Popular Name: Act 451
Popular Name: NREPA

324.3104 Cooperation and negotiation with other governments as to water resources; alteration of watercourses; federal assistance; formation of Great Lakes aquatic nuisance species coalition; report; requests for appropriations; recommendations; permit to alter floodplain; application; fees; disposition of fees; other acts subject to single highest permit fee.
Sec. 3104. (1) The department is designated the state agency to cooperate and negotiate with other governments, governmental units, and governmental agencies in matters concerning the water resources of the state, including, but not limited to, flood control, beach erosion control, water quality control planning, development, and management, and the control of aquatic nuisance species. The department shall have control over the alterations of natural or present watercourses of all rivers and streams in the state to assure that the channels and the portions of the floodplains that are the floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undue restriction of the capacity of the floodway. The department may take steps as may

be necessary to take advantage of any act of congress that may be of assistance in carrying out the purposes of this part, including the water resources planning act, 42 USC 1962 to 1962d-3, and the federal water pollution control act, 33 USC 1251 to 1387.

(2) To address discharges of aquatic nuisance species from oceangoing vessels that damage water quality, aquatic habitat, or fish or wildlife, the department shall facilitate the formation of a Great Lakes aquatic nuisance species coalition. The Great Lakes aquatic nuisance species coalition shall be formed through an agreement entered into with other states in the Great Lakes basin to implement on a basin-wide basis water pollution laws that prohibit the discharge of aquatic nuisance species into the Great Lakes from oceangoing vessels. The department shall seek to enter into an agreement that will become effective not later than January 1, 2007. The department shall consult with the department of natural resources prior to entering into this agreement. Upon entering into the agreement, the department shall notify the Canadian Great Lakes provinces of the terms of the agreement. The department shall seek funding from the Great Lakes protection fund authorized under part 331 to implement the Great Lakes aquatic nuisance species coalition.

(3) The department shall report to the governor and to the legislature at least annually on any plans or projects being implemented or considered for implementation. The report shall include requests for any legislation needed to implement any proposed projects or agreements made necessary as a result of a plan or project, together with any requests for appropriations. The department may make recommendations to the governor on the designation of areawide water quality planning regions and organizations relative to the governor's responsibilities under the federal water pollution control act, 33 USC 1251 to 1387.

(4) A person shall not alter a floodplain except as authorized by a floodplain permit issued by the department pursuant to part 13. An application for a permit shall include information that may be required by the department to assess the proposed alteration's impact on the floodplain. If an alteration includes activities at multiple locations in a floodplain, 1 application may be filed for combined activities.

(5) Except as provided in subsections (6), (7), and (9), until October 1, 2011, an application for a floodplain permit shall be accompanied by a fee of $500.00. Until October 1, 2011, if the department determines that engineering computations are required to assess the impact of a proposed floodplain alteration on flood stage or discharge characteristics, the department shall assess the applicant an additional $1,500.00 to cover the department's cost of review.

(6) Until October 1, 2011, an application for a floodplain permit for a minor project category shall be accompanied by a fee of $100.00. Minor project categories shall be established by rule and shall include activities and projects that are similar in nature and have minimal potential for causing harmful interference.

(7) If work has been done in violation of a permit requirement under this part and restoration is not ordered by the department, the department may accept an application for a permit for that work if the application is accompanied by a fee equal to 2 times the permit fee required under subsection (5) or (6).

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

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Part 325.

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

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 169, Imd. Eff. Oct. 9, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2005, Act 33, Imd. Eff. June 6, 2005 ;-- Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1001 et seq. of the Michigan Administrative Code.

324.3105 Entering property for inspections and investigations; assistance.

Sec. 3105. The department may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state and the obstruction of the floodways of the rivers and streams of this state. The department may call upon any officer, board, department, school, university, or other state institution and the officers or employees thereof for any assistance considered necessary to implement this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3106 Establishment of pollution standards; permits; determination of volume of water and high and low water marks; rules; orders; pollution prevention.

Sec. 3106. The department shall establish pollution standards for lakes, rivers, streams, and other waters of the state in relation to the public use to which they are or may be put, as it considers necessary. The department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state. The department may set permit restrictions that will assure compliance with applicable federal law and regulations. The department may ascertain and determine for record and in making its order what volume of water actually flows in all streams, and the high and low water marks of lakes and other waters of the state, affected by the waste disposal or pollution of any persons. The department may promulgate rules and issue orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged

into any lake, river, stream, or other waters of the state. The department shall take all appropriate steps to prevent any pollution the department considers to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream, or other waters of the state.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1001 et seq. and R 323.2101 et seq. of the Michigan Administrative Code.

324.3106a Satisfaction of remedial obligations.

Sec. 3106a. Corrective action measures conducted pursuant to part 213 satisfy remedial obligations under this part.

History: Add. 1995, Act 15, Imd. Eff. Apr. 12, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3107 Harmful interference with streams; rules; orders; determinations for record.

Sec. 3107. The department may promulgate rules and issue orders for the prevention of harmful interference with the discharge and stage characteristics of streams. The department may ascertain and determine for record and in making its order the location and extent of floodplains, stream beds, and channels and the discharge and stage characteristics of streams at various times and circumstances.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1001 et seq. of the Michigan Administrative Code.

324.3108 Unlawful occupation, filling, or grading of floodplain, stream bed, or channel of stream; exceptions; construction of building with basement.

Sec. 3108. (1) A person shall not occupy or permit the occupation of land for residential, commercial, or industrial purposes or fill or grade or permit the filling or grading for a purpose other than agricultural of land

in a floodplain, stream bed, or channel of a stream, as ascertained and determined for the record by the department, or undertake or engage in an activity on or with respect to land that is determined by the department to interfere harmfully with the discharge or stage characteristics of a stream, unless the occupation, filling, grading, or other activity is permitted under this part.

(2) A person may construct or cause the construction of a building that includes a basement in a floodplain that has been properly filled above the 100-year flood elevation under permit if 1 or more of the following apply:

(a) The lowest floor, including the basement, will be constructed above the 100-year flood elevation.

(b) A licensed professional engineer schooled in the science of soil mechanics certifies that the building site has been filled with soil of a type and in a manner that hydrostatic pressures are not exerted upon the basement walls or floor while the watercourse is at or below the 100-year flood elevation, that the placement of the fill will prevent settling of the building or buckling of floors or walls, and that the building is equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building.

(c) A licensed professional engineer or architect certifies that the basement walls and floors are designed to be watertight and to withstand hydrostatic pressure from a water level equal to the 100-year flood elevation and that the building is properly anchored or weighted to prevent flotation and is equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building.

(3) If the community within which a building described in subsection (2) is located is a participant in the national flood insurance program authorized under the national flood insurance act of 1968, title XIII of the housing and urban development act of 1968, Public Law 90-448, 82 Stat. 572, 42 U.S.C. 4001, 4011 to 4012, 4013 to 4020, 4022 to 4102, 4104 to 4104d, 4121 to 4127, and 4129, then the developer shall apply

for and obtain a letter of map revision, based on fill, from the federal emergency management agency prior to the issuance of a local building permit or the construction of the building if 1 or both of the following apply:

(a) The floodplain will be altered through the placement of fill.

(b) The watercourse is relocated or enclosed.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 162, Imd. Eff. Apr. 11, 1996
Popular Name: Act 451
Popular Name: NREPA

324.3109 Discharge into state waters; prohibitions; exception; violation; penalties; abatement.
Sec. 3109. (1) A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:

(a) To the public health, safety, or welfare.

(b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.

(c) To the value or utility of riparian lands.

(d) To livestock, wild animals, birds, fish, aquatic life, or plants or to their growth or propagation.

(e) To the value of fish and game.

(2) The discharge of any raw sewage of human origin, directly or indirectly, into any of the waters of the state shall be considered prima facie evidence of a violation of this part by the municipality in which the discharge originated unless the discharge is permitted by an order or rule of the department. If the discharge is not the subject of a valid permit issued by the department, a municipality responsible for the discharge

may be subject to the remedies provided in section 3115. If the discharge is the subject of a valid permit issued by the department pursuant to section 3112, and is in violation of that permit, a municipality responsible for the discharge is subject to the penalties prescribed in section 3115.

(3) Notwithstanding subsection (2), a municipality is not responsible or subject to the remedies provided in section 3115 for an unauthorized discharge from a sewerage system as defined in section 4101 that is permitted under this part and owned by a party other than the municipality, unless the municipality has accepted responsibility in writing for the sewerage system and, with respect to the civil fine and penalty under section 3115, the municipality has been notified in writing by the department of its responsibility for the sewerage system.

(4) Unless authorized by a permit, order, or rule of the department, the discharge into the waters of this state of any medical waste, as defined in part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831, is prima facie evidence of a violation of this part and subjects the responsible person to the penalties prescribed in section 3115.

(5) Beginning January 1, 2007, unless a discharge is authorized by a permit, order, or rule of the department, the discharge into the waters of this state from an oceangoing vessel of any ballast water is prima facie evidence of a violation of this part and subjects the responsible person to the penalties prescribed in section 3115.

(6) A violation of this section is prima facie evidence of the existence of a public nuisance and in addition to the remedies provided for in this part may be abated according to law in an action brought by the attorney general in a court of competent jurisdiction.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2005, Act 32, Eff. Jan. 1, 2007 ;-- Am. 2005, Act 241, Imd. Eff. Nov. 22, 2005
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1001 et seq. of the Michigan Administrative Code.

324.3109a Mixing zones for discharges of venting groundwater; conditions not requiring permit; definitions.

Sec. 3109a. (1) Notwithstanding any other provision of this part, or rules promulgated under this part, the department shall allow for a mixing zone for discharges of venting groundwater in the same manner as the department provides for a mixing zone for point source discharges. Mixing zones for discharges of venting groundwater shall not be less protective of public health or the environment than the level of protection provided for mixing zones from point source discharges.

(2) Notwithstanding any other provision of this part, if a discharge of venting groundwater is in compliance with the water quality standards provided for in this part and the rules promulgated under this part, a permit is not required under this part for the discharge if the discharge is provided for in either or both of the following:

(a) A remedial action plan that is approved by the department under part 201.

(b) A corrective action plan that is submitted to the department under part 213 that includes a mixing zone determination made by the department and that has been noticed in the department calendar.

(3) As used in this section:

(a) “Mixing zone” means that portion of a water body where a point source discharge or venting groundwater is mixed with receiving water.

(b) “Venting groundwater” means groundwater that is entering a surface water of the state from a facility, as defined in section 20101.

History: Add. 1995, Act 70, Imd. Eff. June 5, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999
Popular Name: Act 451
Popular Name: NREPA

324.3109b Satisfaction of remedial obligations.
Sec. 3109b. Notwithstanding any other provision of this part, remedial actions that satisfy the requirements of part 201 satisfy a person's remedial obligations under this part.

History: Add. 1995, Act 70, Imd. Eff. June 5, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3109c Prohibition.
Sec. 3109c. Notwithstanding any other provision of this part or the rules promulgated under this part, the open water disposal of contaminated dredge materials is prohibited.

History: Add. 2006, Act 97, Imd. Eff. Apr. 4, 2006
Popular Name: Act 451
Popular Name: NREPA

324.3110 Waste treatment facilities of industrial or commercial entity; examination and certification of supervisory personnel; training program; fees; reports; false statement; applicability of section.
Sec. 3110. (1) Each industrial or commercial entity that discharges liquid wastes into any surface water or groundwater or underground or on the ground other than through a public sanitary sewer shall have waste treatment or control facilities under the specific supervision and control of persons who have been certified by the department as properly qualified to operate the facilities. The department shall examine all supervisory personnel having supervision and control of the facilities and certify that the persons are properly qualified to operate or supervise the facilities.

(2) The department may conduct a program for training persons seeking to be certified as operators or supervisors under subsection (1) or seeking to be certified as operators or supervisors of municipal wastewater treatment facilities. The department may charge a fee based on the costs to the department of operating the training program. The fees shall be deposited in the state treasury, credited to a separate fund, and used to

conduct the training program. Any unexpended fees collected pursuant to this subsection, along with any excess collections from prior fiscal years, shall be carried over into subsequent fiscal years and shall be available for appropriation for the purposes of conducting the program described in this subsection.

(3) A person certified as required by subsection (1) shall file monthly, or at such longer intervals as the department may designate, on forms provided by the department, reports showing the effectiveness of the treatment or control facility operation and the quantity and quality of discharged liquid wastes. A person who knowingly makes a false statement in a report may have his or her certificate as an approved treatment facility operator revoked.

(4) This section does not apply to water, gas, or other material that is injected into a well to facilitate production of oil or gas or to water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes and is under permit by the state supervisor of wells.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3111 Discharge of wastewater; filing, contents, and use of annual report; injunction; rules.

Sec. 3111. A person doing business within this state who discharges to the waters of the state or to any sewer system wastewater that contains wastes in addition to sanitary sewage shall file an annual report on a form provided by the department. The report described in this section shall set forth the nature of the enterprise, indicating the quantities of materials used in and incidental to its manufacturing processes and including by-products and waste products that appear on a register of critical materials compiled by the department and the estimated annual total number of gallons of wastewater, including, but not limited to, process and cooling water to be discharged to the waters of the state or to any sewer system. The information shall be used by the department only for purposes of water pollution control. The department shall provide

proper and adequate facilities and procedures to safeguard the confidentiality of manufacturing proprietary processes, except that confidentiality shall not extend to waste products discharged to the waters of the state. Operations of a business or industry that violate this section may be enjoined by an action commenced by the attorney general in a court of competent jurisdiction. The department shall promulgate rules as it considers necessary to effectuate the administration of this section, including, where necessary to meet special circumstances, reporting more frequently than annually.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 299.9001 et seq. of the Michigan Administrative Code.

324.3111b Release required to be reported under R 324.2001 to R 324.2009.

Sec. 3111b. (1) If a person is required to report a release to the department under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan administrative code, the person, via a 9-1-1 call, shall at the same time report the release to the primary public safety answering point serving the jurisdiction where the release occurred.

(2) If a person described in subsection (1) is required to subsequently submit to the department a written report on the release under part 5 of the water resources protection rules, R 324.2001 to R 324.2009 of the Michigan administrative code, the person shall at the same time submit a copy of the report to the local health department serving the jurisdiction where the release occurred.

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

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

(4) The emergency management coordinator of each county shall develop and oversee the implementation of a plan to provide timely notification of a release required to be reported under subsection (1) or (3) to appropriate local, state, and federal agencies. In developing and overseeing the implementation of the plan, the emergency management coordinator shall consult with both of the following:

(a) The directors of the primary public safety answering points with jurisdiction within the county.

(b) Any emergency management coordinator appointed for a city, village, or township located in that county.

(5) If rules promulgated under this part require a person to maintain a pollution incident prevention plan, the person shall update the plan to include the requirements of subsections (1) and (2) when conducting any evaluation of the plan required by rule.

(6) If a person reports to the department a release pursuant to subsection (1), the department shall do both of the following:

(a) Notify the person of the requirements imposed under subsections (1) and (2).

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

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

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

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

(a) The requirements of subsections (1) and (2).

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

(c) The criminal and civil sanctions under section 3115 applicable to violations of subsections (1) and (2).

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

(9) The department shall biennially do both of the following:

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

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

History: Add. 2004, Act 142, Imd. Eff. June 15, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3112 Permit to discharge waste into state waters; application determined as complete; condition of validity; modification, suspension, or revocation of permit; reissuance; application for new permit; notice; order; complaint; petition; contested case hearing; rejection of petition; oceangoing vessels engaging in port operations; permit required.

Sec. 3112. (1) A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department.

(2) An application for a permit under subsection (1) shall be submitted to the department. Within 30 days after an application for a new or increased use is received, the department shall determine whether the application is administratively complete. Within 90 days after an application for reissuance of a permit is received, the department shall determine whether the application is administratively complete. If the department determines that an application is not complete, the department shall notify the applicant in writing within the applicable time period. If the department does not make a determination as to whether the application is complete within the applicable time period, the application shall be considered to be complete.

(3) The department shall condition the continued validity of a permit upon the permittee's meeting the effluent requirements that the department considers necessary to prevent unlawful pollution by the dates that the department considers to be reasonable and necessary and to assure compliance with applicable federal law and regulations. If the department finds that the terms of a permit have been, are being, or may be violated, it may modify, suspend, or revoke the permit or grant the permittee a reasonable period of time in which to comply with the permit. The department may reissue a revoked permit upon a showing satisfactory to the department that the permittee has corrected the violation. A person who has had a permit revoked may apply for a new permit.

(4) If the department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.

(5) A person who is aggrieved by an order of abatement of the department or by the reissuance, modification, suspension, or revocation

of an existing permit of the department executed pursuant to this section may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the order or permit may be rejected by the department as being untimely.

(6) Beginning January 1, 2007, all oceangoing vessels engaging in port operations in this state shall obtain a permit from the department. The department shall issue a permit for an oceangoing vessel only if the applicant can demonstrate that the oceangoing vessel will not discharge aquatic nuisance species or if the oceangoing vessel discharges ballast water or other waste or waste effluent, that the operator of the vessel will utilize environmentally sound technology and methods, as determined by the department, that can be used to prevent the discharge of aquatic nuisance species. The department shall cooperate to the fullest extent practical with other Great Lakes basin states, the Canadian Great Lakes provinces, the Great Lakes panel on aquatic nuisance species, the Great Lakes fishery commission, the international joint commission, and the Great Lakes commission to ensure development of standards for the control of aquatic nuisance species that are broadly protective of the waters of the state and other natural resources. Permit fees for permits under this subsection shall be assessed as provided in section 3120. The permit fees for an individual permit issued under this subsection shall be the fees specified in section 3120(1)(a) and (5)(a). The permit fees for a general permit issued under this subsection shall be the fees specified in section 3120(1)(c) and (5)(b)(i). Permits under this subsection shall be issued in accordance with the timelines provided in section 3120. The department may promulgate rules to implement this subsection.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004 ;-- Am. 2005, Act 33, Imd. Eff. June 6, 2005
Popular Name: Act 451
Popular Name: NREPA

324.3112a Discharge of untreated sewage from sewer system; notification; duties of municipality; legal action by state not limited; penalties and fines; definitions.

Sec. 3112a. (1) Except for sewer systems described in subsection (8), if untreated sewage or partially treated sewage is directly or indirectly discharged from a sewer system onto land or into the waters of the state, the person responsible for the sewer system shall immediately, but not more than 24 hours after the discharge begins, notify the department; local health departments as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105; a daily newspaper of general circulation in the county or counties in which a municipality notified pursuant to subsection (4) is located; and a daily newspaper of general circulation in the county in which the discharge occurred or is occurring of all of the following:

(a) Promptly after the discharge starts, by telephone or in another manner required by the department, that the discharge is occurring.

(b) At the conclusion of the discharge, in writing or in another manner required by the department, all of the following:

(i) The volume and quality of the discharge as measured pursuant to procedures and analytical methods approved by the department.

(ii) The reason for the discharge.

(iii) The waters or land area, or both, receiving the discharge.

(iv) The time the discharge began and ended as measured pursuant to procedures approved by the department.

(v) Verification of the person's compliance status with the requirements of its national pollutant discharge elimination system permit or groundwater discharge permit and applicable state and federal statutes, rules, and orders.

(2) Upon being notified of a discharge under subsection (1), the department shall promptly post the notification on its website.

(3) Each time a discharge to surface waters occurs under subsection (1), the person responsible for the sewer system shall test the affected waters for E. coli to assess the risk to the public health as a result of the discharge and shall provide the test results to the affected local county health departments and to the department. The testing shall be done at locations specified by each affected local county health department but shall not exceed 10 tests for each separate discharge event. The requirement for this testing may be waived by the affected local county health department if the affected local county health department determines that such testing is not needed to assess the risk to the public health as a result of the discharge event.

(4) A person responsible for a sewer system that may discharge untreated sewage or partially treated sewage into the waters of the state shall annually contact each municipality whose jurisdiction contains waters that may be affected by the discharge. If those contacted municipalities wish to be notified in the same manner as provided in subsection (1), the person responsible for the sewer system shall provide that notification.

(5) A person who is responsible for a discharge of untreated sewage or partially treated sewage from a sewer system into the waters of the state shall comply with the requirements of its national pollutant discharge elimination system permit or groundwater discharge permit and applicable state and federal statutes, rules, and orders.

(6) This section does not authorize the discharge of untreated sewage or partially treated sewage into the waters of the state or limit the state from bringing legal action as otherwise authorized by this part.

(7) The penalties and fines provided for in section 3115 apply to a violation of this section.

(8) For sewer systems that discharge to the groundwater via a subsurface disposal system, that do not have a groundwater discharge permit issued

by the department, and the discharge of untreated sewage or partially treated sewage is not to surface waters, the person responsible for the sewer system shall notify the local health department in accordance with subsection (1)(a) and (b), but the requirements of subsections (2), (3), (4), and (5) do not apply.

(9) As used in this section:

(a) “Partially treated sewage” means any sewage, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that meets 1 or more of the following:

(i) Is not treated to national secondary treatment standards for wastewater or that is treated to a level less than that required by the person's national pollutant discharge elimination system permit.

(ii) Is treated to a level less than that required by the person's groundwater discharge permit.

(iii) Is found on the ground surface.

(b) “Sewer system” means a public or privately owned sewer system designed and used to convey or treat sanitary sewage or sanitary sewage and storm water. Sewer system does not include an on-site wastewater treatment system serving 1 residential unit or duplex.

(c) “Surface water” means all of the following, but does not include drainage ways and ponds used solely for wastewater conveyance, treatment, or control:

(i) The Great Lakes and their connecting waters.

(ii) Inland lakes.

(iii) Rivers.

(iv) Streams.

(v) Impoundments.

(vi) Open drains.

(vii) Other surface bodies of water.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 3, Imd. Eff. Jan. 30, 1998 ;-- Am. 2000, Act 286, Imd. Eff. July 10, 2000 ;-- Am. 2004, Act 72, Imd. Eff. Apr. 20, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3112b Discharge from combined sewer system; issuance or renewal of permit; disconnection of eaves troughs and downspouts as condition; exception; "combined sewer system" defined.
Sec. 3112b. (1) When a permit for a discharge from a combined sewer system is issued or renewed under this part, the department shall require as a condition of the permit that eaves troughs and roof downspouts for the collection of storm water throughout the tributary service area are not directly connected to the sewer system. The department may allow the permittee up to 1 year to comply with this provision for residential property and up to 5 years for commercial and industrial properties.

(2) Subsection (1) does not apply if the permittee demonstrates to the satisfaction of the department that the disconnection of downspouts and eaves troughs is not a cost-effective means of reducing the frequency or duration of combined sewer overflows or of maintaining compliance with discharge requirements.

(3) As used in this section, "combined sewer system" means a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.

History: Add. 1998, Act 4, Imd. Eff. Jan. 30, 1998
Popular Name: Act 451
Popular Name: NREPA

324.3112c Discharges of untreated or partially treated sewage from sewer systems; list of occurrences; “partially treated sewage” and “sewer system” defined.
Sec. 3112c. (1) The department shall compile and maintain a list of occurrences of discharges of untreated or partially treated sewage from sewer systems onto land or into the waters of the state that have been reported to the department or are otherwise known to the department. This list shall be made available on the department's website on an ongoing basis. In addition, the department shall annually publish this list and make it available to the general public. The list shall include all of the following:

(a) The entity responsible for the discharge.

(b) The waters or land area, or both, receiving the discharge.

(c) The volume and quality of the discharge.

(d) The time the discharge began and ended.

(e) A description of the actions the department has taken to address the discharge.

(f) Whether the entity responsible for the discharge is subject to a schedule of compliance approved by the department.

(g) Any other information that the department considers relevant.

(2) As used in this section:

(a) “Partially treated sewage” means any sewage, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that is not treated to national secondary treatment standards for

wastewater or that is treated to a level less than that required by a national pollutant discharge elimination system permit.

(b) “Sewer system” means a sewer system designed and used to convey sanitary sewage or storm water, or both.

History: Add. 2000, Act 287, Imd. Eff. July 10, 2000
Popular Name: Act 451
Popular Name: NREPA

324.3113 New or increased use of waters for sewage or other waste disposal purposes; filing information; permit; conditions; complaint; petition; contested case hearing; rejection of petition.
Sec. 3113. (1) A person who seeks a new or increased use of the waters of the state for sewage or other waste disposal purposes shall file with the department an application setting forth the information required by the department, including the nature of the enterprise or development contemplated, the amount of water required to be used, its source, the proposed point of discharge of the wastes into the waters of the state, the estimated amount to be discharged, and a statement setting forth the expected bacterial, physical, chemical, and other known characteristics of the wastes.

(2) If a permit is granted, the department shall condition the permit upon such restrictions that the department considers necessary to adequately guard against unlawful uses of the waters of the state as are set forth in section 3109.

(3) If the permit or denial of a new or increased use is not acceptable to the permittee, the applicant, or any other person, the permittee, the applicant, or other person may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the permit application may be rejected by the department as being untimely.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3114 Enforcement of part; criminal complaint.

Sec. 3114. An employee of the department of natural resources or an employee of another governmental agency appointed by the department may, with the concurrence of the department, enforce this part and may make a criminal complaint against a person who violates this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3115 Violations; civil or criminal liability; venue; jurisdiction; penalties; knowledge attributable to defendant; lien; setoff.

Sec. 3115. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued or rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. If requested by the defendant within 21 days after service of process, the court shall grant a change of venue to the circuit court for the county of Ingham or for the county in which the alleged violation occurred, is occurring, or, in the event of a threat of violation, will occur. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court, except as otherwise provided in this subsection, shall impose a civil fine of not less than $2,500.00 and the court may award reasonable attorney fees and costs to the prevailing party. However, all of the following apply:

(a) The maximum fine imposed by the court shall be not more than $25,000.00 per day of violation.

(b) For a failure to report a release to the department or to the primary public safety answering point under section 3111b(1), the court shall impose a civil fine of not more than $2,500.00.

(c) For a failure to report a release to the local health department under section 3111b(2), the court shall impose a civil fine of not more than $500.00.

(2) A person who at the time of the violation knew or should have known that he or she discharged a substance contrary to this part, or contrary to a permit or order issued or rule promulgated under this part, or who intentionally makes a false statement, representation, or certification in an application for or form pertaining to a permit or in a notice or report required by the terms and conditions of an issued permit, or who intentionally renders inaccurate a monitoring device or record required to be maintained by the department, is guilty of a felony and shall be fined not less than $2,500.00 or more than $25,000.00 for each violation. The court may impose an additional fine of not more than $25,000.00 for each day during which the unlawful discharge occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than $25,000.00 per day and not more than $50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction. However, the person shall not be subject to the penalties of this subsection if the discharge of the effluent is in conformance with and obedient to a rule, order, or permit of the department. In addition to a fine, the attorney general may file a civil suit in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state and the costs of surveillance and enforcement by the state resulting from the violation.

(3) Upon a finding by the court that the actions of a civil defendant pose or posed a substantial endangerment to the public health, safety, or

welfare, the court shall impose, in addition to the sanctions set forth in subsection (1), a fine of not less than $500,000.00 and not more than $5,000,000.00.

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

(5) To find a defendant civilly or criminally liable for substantial endangerment under subsection (3) or (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following occurred:

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

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

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

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

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

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

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

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

(10) In addition to any other method of collection, any fine or other award ordered paid may be recovered by right of setoff to any debt owed to the defendant by the state of Michigan, including the right to a refund of income taxes paid.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004 ;-- Am. 2004, Act 143, Imd. Eff. June 15, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3115a Violation as misdemeanor; penalty; "minor offense" defined.

Sec. 3115a. (1) Except as provided in subsections (2) and (3), a person who alters or causes the alteration of a floodplain in violation of this part is guilty of a misdemeanor punishable by a fine of not more than $2,500.00 for each occurrence.

(2) A person who commits a minor offense is guilty of a misdemeanor punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(3) A person who willfully or recklessly violates a condition of a floodplain permit issued under this part is guilty of a misdemeanor punishable by a fine of not more than $2,500.00 per day.

(4) As used in this section, “minor offense” means either of the following violations of this part if the department determines that restoration of the affected floodplain is not required:

(a) The failure to obtain a permit under this part.

(b) A violation of a permit issued under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3116 Construction of part.
Sec. 3116. This part does not repeal any law governing the pollution of lakes and streams, but shall be held and construed as ancillary to and supplementing the other laws and in addition to the laws now in force, except as a law may be in direct conflict with this part. This part does not apply to copper or iron mining operations, whereby such operations result in the placement, removal, use, or processing of copper or iron mineral tailings or copper or iron mineral deposits from such operations being placed in inland waters on bottomlands owned by or under the control of the mining company and only water which may contain a minimal amount of residue as determined by the department resulting from such placement, removal, use, or processing being allowed or permitted to escape into public waters. This part does not apply to the discharge of water from underground iron or copper mining operations subject to a determination by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3117 Supplemental construction.
Sec. 3117. This part is supplemental to and in addition to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws. This part does not amend or repeal any law of the state relating to the public service commission, the

department, and the department of public health relating to waters and water structures, or any act or parts of acts not inconsistent with this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.3118 Storm water discharge fees.
Sec. 3118. (1) Except as otherwise provided in this section, until October 1, 2009, the department shall collect storm water discharge fees from persons who apply for or have been issued storm water discharge permits as follows:

(a) A 1-time fee of $400.00 is required for a permit related solely to a site of construction activity for each permitted site. The fee shall be submitted by the permit applicant with his or her application for an individual permit or for a certificate of coverage under a general permit. For a permit by rule, the fee shall be submitted by the construction site permittee along with his or her notice of coverage. A person needing more than 1 permit may submit a single payment for more than 1 permit and receive appropriate credit. Payment of the fee under this subdivision or verification of prepayment is a necessary part of a valid permit application or notice of coverage under a permit by rule.

(b) An annual fee of $260.00 is required for a permit related solely to a storm water discharge associated with industrial activity or from a commercial site for which the department determines a permit is needed.

(c) An annual fee of $500.00 is required for a permit for a municipal separate storm sewer system, unless the permit is issued to a city, a village, a township, or a county or is a single permit authorization for municipal separate storm sewer systems in multiple locations statewide.

(d) An annual fee for a permit for a municipal separate storm sewer system issued to a city, village, or township shall be determined by its population in an urbanized area as defined by the United States bureau of the census. The fee shall be based on the latest available decennial census as follows:

(i) For a population of 1,000 people or fewer, the annual fee is $500.00.

(ii) For a population of more than 1,000 people, but fewer than 3,001 people, the annual fee is $1,000.00.

(iii) For a population of more than 3,000 people, but fewer than 10,001 people, the annual fee is $2,000.00.

(iv) For a population of more than 10,000 people, but fewer than 30,001 people, the annual fee is $3,000.00.

(v) For a population of more than 30,000 people, but fewer than 50,001 people, the annual fee is $4,000.00.

(vi) For a population of more than 50,000 people, but fewer than 75,001 people, the annual fee is $5,000.00.

(vii) For a population of more than 75,000 people, but fewer than 100,001 people, the annual fee is $6,000.00.

(viii) For a population of more than 100,000 people, the annual fee is $7,000.00.

(e) An annual fee of $3,000.00 is required for a permit for a municipal separate storm sewer system issued to a county.

(f) An annual fee for a single municipal separate storm sewer systems permit authorizing a state or federal agency to operate municipal separate storm sewer systems in multiple locations statewide shall be determined in accordance with a memorandum of understanding between that state or federal agency and the department and shall be based on the projected needs by the department to administer the permit.

(2) A storm water discharge permit is not required for a municipality that does not own or operate a separate storm sewer system. The department shall not collect storm water discharge fees under subsection (1) from a municipality that does not own or operate a separate storm sewer system.

(3) The permit fees identified in subsection (1) are nonrefundable.

(4) A person possessing a permit not related solely to a site of construction activity as of January 1 shall be assessed a fee. The department shall notify those persons of their fee assessments by February 1. Payment shall be postmarked no later than March 15. Failure by the department to send a fee assessment notification by the deadline, or failure of a person to receive a fee assessment notification, does not relieve that person of his or her obligation to pay the fee. If the department does not meet the February deadline for sending the fee assessment, the fee assessment is due not later than 45 days after receiving a fee notification.

(5) If a storm water permit is issued for a drainage district, the drainage district is responsible for the applicable fee under this section.

(6) The department shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(7) The department shall forward all fees and interest payments collected under this section to the state treasurer for deposit into the fund.

(8) The department shall make payment of the required fee assessed under this section a condition of issuance or reissuance of a permit not related solely to a site of construction activity.

(9) In addition to any other penalty provided in this part, if a person fails to pay the fee required under this section by its due date, the person is in violation of this part and the department may undertake enforcement actions as authorized under this part.

(10) The attorney general may bring an action to collect overdue fees and interest payments imposed under this section.

(11) If the permit is for a municipal separate storm sewer system and the population served by that system is different than the latest decennial census, the permittee may appeal the annual fee determination and submit written verification of actual population served by the municipal separate storm sewer system.

(12) A person who wishes to appeal either a fee or a penalty assessed under this section is limited to an administrative appeal, in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. The appeal shall be filed within 30 days of the department's fee notification under subsection (4).

(13) As used in this section and section 3119:

(a) "Certificate of coverage" means a document issued by the department that authorizes a discharge under a general permit.

(b) "Clean water act" means the federal water pollution control act, 33 USC 1251 to 1387.

(c) "Construction activity" means a human-made earth change or disturbance in the existing cover or topography of land that is 5 acres or more in size, for which a national permit is required pursuant to 40 CFR 122.26(a), and which is described as a construction activity in 40 CFR 122.26(b)(14)(x). Construction activity includes clearing, grading, and excavating activities. Construction activity does not include the practice of clearing, plowing, tilling soil, and harvesting for the purpose of crop production.

(d) "Fee" means a storm water discharge fee authorized under this section.

(e) "Fund" means the storm water fund created in section 3119.

(f) "General permit" means a permit issued authorizing a category of similar discharges.

(g) "Individual permit" means a site-specific permit.

(h) "Municipal separate storm sewer system" means all separate storm sewers that are owned or operated by the United States or a state, city, village, township, county, district, association, or other public body created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law, such as a sewer district, flood control district, or drainage district or similar entity, or a designated or approved management agency under section 208 of the clean water act, 33 USC 1288, that discharges to waters of the state. Municipal separate storm sewer system includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. Municipal separate storm sewer system does not include separate storm sewers in very discrete areas, such as individual buildings.

(i) "Notice of coverage" means a notice that a person engaging in construction activity agrees to comply with a permit by rule for that activity.

(j) "Permit" or "storm water discharge permit" means a permit authorizing the discharge of wastewater or any other substance to surface waters of the state under the national pollutant discharge elimination system, pursuant to the clean water act or this part and the rules and regulations promulgated under that act or this part.

(k) "Public body" means the United States, the state of Michigan, a city, village, township, county, school district, public college or university, or single purpose governmental agency, or any other body which is created by federal or state statute or law.

(l) "Separate storm sewer system" means a system of drainage, including, but not limited to, roads, catch basins, curbs, gutters, parking lots, ditches, conduits, pumping devices, or man-made channels, which has the following characteristics:

(i) The system is not a combined sewer where storm water mixes with sanitary wastes.

(ii) The system is not part of a publicly owned treatment works.

(m) "Storm water" means storm water runoff, snowmelt runoff, and surface runoff and drainage.

(n) "Storm water discharge associated with industrial activity" means a point source discharge of storm water from a facility which is defined as an industrial activity under 40 CFR 122.26(b)(14)(i-ix and xi).

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 169, Imd. Eff. Oct. 9, 1995 ;-- Am. 1999, Act 35, Imd. Eff. June 3, 1999 ;-- Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004 ;-- Am. 2008, Act 2, Imd. Eff. Jan. 16, 2008
Popular Name: Act 451
Popular Name: NREPA

324.3119 Storm water fund.

Sec. 3119. (1) The storm water fund is created within the state treasury.

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

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

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

(a) Review of storm water permit applications.

(b) Storm water permit development, issuance, reissuance, modification, and termination.

(c) Surface water monitoring to support the storm water permitting process.

(d) Assessment of compliance with storm water permit conditions.

(e) Enforcement against storm water permit violations.

(f) Classification of storm water control facilities.

(g) Not more than 10% of the money in the fund for training for certification of storm water operators and educational material to assist persons regulated under this part.

(h) Regional or statewide public education to enhance the effectiveness of storm water permits.

(5) Money in the fund shall not be used to support the direct costs of litigation undertaken to enforce this part.

(6) Upon the expenditure or appropriation of money raised in section 3118 for any other purpose than those specifically listed in this section, authorization to collect fees under section 3118 shall be suspended until such time as the money expended or appropriated for purposes other than those listed in this section is returned to the fund.

(7) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's storm water program that were funded by the fund. This report shall include, at a minimum, all of the following:

(a) The number of full-time equated positions performing each of the following functions:

(i) Permit issuance and development.

(ii) Compliance.

(iii) Enforcement.

(b) The number of new permit applications received by the department in the preceding year.

(c) The number of renewal permits in the preceding year.

(d) The number of permit modifications requested in the preceding year.

(e) The number of staff hours dedicated to each of the fee categories listed in section 3118.

(f) The number of permits issued for fee categories listed in section 3118.

(g) The average number of days required for review of a permit from the date the permit application is determined to be administratively complete.

(h) The number of permit applications denied.

(i) The number of permit applications withdrawn by the applicant.

(j) The percentage and number of permit applications that were reviewed for administrative completeness within 10 days of receipt by the department.

(k) The percentage and number of permit applications submitted to the department that were administratively complete as received.

(l) The percentage and number of new permit applications for which a final action was taken by the department within 180 days.

(m) The percentage and number of permit renewals and modifications processed within the required time.

(n) The number of permits reopened by the department.

(o) The number of unfilled positions dedicated to the department's storm water program.

(p) The amount of revenue in the fund at the end of the fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2004, Act 91, Imd. Eff. Apr. 22, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3120 New or increased use permit; application and annual permit fees; definitions.
Sec. 3120. (1) Until October 1, 2009, an application for a new permit, a reissuance of a permit, or a modification of an existing permit under this part authorizing a discharge into surface water, other than a storm water discharge, shall be accompanied by an application fee as follows:

(a) For an EPA major facility permit, $750.00.

(b) For an EPA minor facility individual permit, a CSO permit, or a wastewater stabilization lagoon individual permit, $400.00.

(c) For an EPA minor facility general permit, $75.00.

(2) Within 180 days after receipt of a complete application for a new or increased use permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(3) By September 30 of the year following the submittal of a complete application for reissuance of a permit, the department shall either grant or deny the permit, unless the applicant and the department agree to extend this time period.

(4) If the department fails to make a decision on an application within the applicable time period under subsection (2) or (3), the department shall return to the applicant the application fee submitted under subsection (1) and the applicant shall not be subject to an application fee and shall receive a 15% annual discount on an annual permit fee required for a permit issued based upon that application.

(5) Until October 1, 2009, a person who receives a permit under this part authorizing a discharge into surface water, other than a stormwater discharge, is subject to an annual permit fee as follows:

(a) For an industrial or commercial facility that is an EPA major facility, $8,700.00.

(b) For an industrial or commercial facility that is an EPA minor facility, the following amounts:

(i) For a general permit for a low-flow facility, $150.00.

(ii) For a general permit for a high-flow facility, $400.00.

(iii) For an individual permit for a low-flow facility, $1,650.00.

(iv) For an individual permit for a high-flow facility, $3,650.00.

(c) For a municipal facility that is an EPA major facility, the following amounts:

(i) For an individual permit for a facility discharging 500 MGD or more, $213,000.00.

(ii) For an individual permit for a facility discharging 50 MGD or more but less than 500 MGD, $20,000.00.

(iii) For an individual permit for a facility discharging 10 MGD or more but less than 50 MGD, $13,000.00.

(iv) For an individual permit for a facility discharging less than 10 MGD, $5,500.00.

(d) For a municipal facility that is an EPA minor facility, the following amounts:

(i) For an individual permit for a facility discharging 10 MGD or more, $3,775.00.

(ii) For an individual permit for a facility discharging 1 MGD or more but less than 10 MGD, $3,000.00.

(iii) For an individual permit for a facility discharging less than 1 MGD, $1,950.00.

(iv) For a general permit for a high-flow facility, $600.00.

(v) For a general permit for a low-flow facility, $400.00.

(e) For a municipal facility that is a CSO facility, $6,000.00.

(f) For an individual permit for a wastewater stabilization lagoon, $1,525.00.

(g) For an individual or general permit for an agricultural purpose, $600.00, unless either of the following applies:

(i) The facility is an EPA minor facility and would qualify for a general permit for a low-flow facility, in which case the fee would be $150.00.

(ii) The facility is an EPA major facility that is not a farmers' cooperative corporation, in which case the fee would be $8,700.00.

(h) For a facility that holds a permit issued under this part but has no discharge and the facility is connected to and is authorized to discharge only to a municipal wastewater treatment system, an annual permit maintenance fee of $100.00. However, if a facility does have a discharge or at some point is no longer connected to a municipal wastewater treatment system, the annual permit fee shall be the appropriate fee as otherwise provided in this subsection.

(6) If the person required to pay an application fee under subsection (1) or an annual permit fee under subsection (5) is a municipality, the municipality may pass on the application fee or the annual permit fee, or both, to each user of the municipal facility.

(7) The department shall send invoices for annual permit fees under subsection (5) to all permit holders by December 1 of each year. The fee shall be based on the status of the facility as of October 1 of that year. A person subject to an annual permit fee shall pay the fee not later than January 15 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does not relieve that person of his or her obligation to pay the annual permit fee. If the department does not meet the December 1 deadline for sending invoices, the annual permit fee is due not later than 45 days after receiving an invoice. The department shall forward annual permit fees received under this section to the state treasurer for deposit into the national pollutant discharge elimination system fund created in section 3121.

(8) The department shall assess a penalty on all annual permit fee payments submitted under this section after the due date. The penalty shall be an amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due.

(9) Following payment of an annual permit fee, if a permittee wishes to challenge its annual permit fee under this section, the owner or operator shall submit the challenge in writing to the department. The department

shall not process the challenge unless it is received by the department by March 1 of the year the payment is due. A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the permittee with notification of a revised annual permit fee and a refund, if appropriate, or a statement setting forth the reason or reasons why the annual permit fee was not revised. If the owner or operator of a facility desires to further challenge its annual permit fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(10) The attorney general may bring an action for the collection of the annual permit fee imposed under this section.

(11) Within 30 days after the effective date of the amendatory act that added this section, the director of the department shall notify each person holding a permit under this part authorizing a discharge into surface water, other than a storm water permit, of the requirements of this section.

(12) As used in this section:

(a) “Agricultural purpose” means the agricultural production or processing of those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur. Agricultural purpose includes an operation or facility that produces wine.

(b) “Combined sewer overflow” means a discharge from a combined sewer system that occurs when the flow capacity of the combined sewer system is exceeded at a point prior to the headworks of a publicly owned treatment works during wet weather conditions.

(c) “Combined sewer system” means a sewer designed and used to convey both storm water runoff and sanitary sewage, and which contains lawfully installed regulators and control devices that allow for delivery of sanitary flow to treatment during dry weather periods and divert storm water and sanitary sewage to surface waters during storm flow periods.

(d) “CSO facility” means a facility whose discharge is solely a combined sewer overflow.

(e) “EPA major facility” means a facility that is designated by the United States environmental protection agency as being a major facility under 40 C.F.R. 122.2.

(f) “EPA minor facility” means a facility that is not an EPA major facility.

(g) “Farmers' cooperative corporation” means a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

(h) “General permit” means a permit suitable for use at facilities meeting eligibility criteria as specified in the permit. With a general permit, the discharge from a specific facility is acknowledged through a certificate of coverage issued to the facility.

(i) “High-flow facility” means a facility that discharges 1 MGD or more.

(j) “Individual permit” means a permit developed for a particular facility, taking into account that facility's specific characteristics.

(k) “Industrial or commercial facility” means a facility that is not a municipal facility.

(l) "Low-flow facility" means a facility that discharges less than 1 MGD.

(m) "MGD" means 1,000,000 gallons per day.

(n) "Municipal facility" means a facility that is designed to collect or treat sanitary wastewater, and is either publicly or privately owned, and serves a residential area or a group of municipalities.

(o) "Wastewater stabilization lagoon" means a type of treatment system constructed of ponds or basins designed to receive, hold, and treat sanitary wastewater for a predetermined amount of time. Wastewater is treated through a combination of physical, biological, and chemical processes.

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3121 National pollutant discharge elimination system fund.
Sec. 3121. (1) The national pollutant discharge elimination system fund is created within the state treasury.

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

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

(4) The department shall expend money from the fund, upon appropriation, only to administer the national pollutant discharge elimination system program under this part including, but not limited to, all of the following:

(a) Water quality standards development and maintenance.

(b) Permit development and issuance.

(c) Maintenance of program data.

(d) Ambient water quality monitoring conducted to determine permit conditions and evaluate the effectiveness of permit requirements.

(e) Activities conducted to determine a discharger's permit compliance status, including, but not limited to, inspections, discharge monitoring, and review of submittals.

(f) Laboratory services.

(g) Enforcement.

(h) Program administration activities.

(5) By January 1, 2006 and by January 1 of each year thereafter, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the departmental activities of the previous fiscal year in administering the department's national pollutant discharge elimination system program that were funded by the fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing each of the following functions:

(i) Permit issuance and development.

(ii) Compliance.

(iii) Enforcement.

(b) The number of permit applications received by the department in the preceding year, including applications for new and increased uses and reissuances.

(c) The number of staff hours dedicated to each of the fee categories listed in section 3120.

(d) The number of permits issued for fee categories listed in section 3120.

(e) The number of permit applications denied.

(f) The number of permit applications withdrawn by the applicant.

(g) The percentage and number of permit applications that were reviewed for administrative completeness within statutory time frames.

(h) The percentage and number of permit applications submitted to the department that were administratively complete as received.

(i) The percentage and number of permit applications for which a final action was taken by the department within statutory time frames for new and increased uses and reissuances.

(j) The number of permits reopened by the department.

(k) The number of unfilled positions dedicated to the national pollutant discharge elimination system program.

(l) The amount of revenue in the fund at the end of the fiscal year.

(6) As used in this section:

(a) “Fund” means the national pollutant discharge elimination system fund created in subsection (1).

(b) “National pollutant discharge elimination system program” means the national pollutant discharge elimination system program delegated to the department under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, and implemented under this part.

History: Add. 2004, Act 91, Imd. Eff. Apr. 22, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3122 Annual groundwater discharge permit fee; failure of department to grant or deny within certain time period; payment of fee by municipality; definitions.
Sec. 3122. (1) Until October 1, 2011, the department may levy and collect an annual groundwater discharge permit fee from facilities that discharge wastewater to the ground or groundwater of this state pursuant to section 3112. The fee shall be as follows:

(a) For a group 1 facility, $3,650.00.

(b) For a group 2 facility or a municipality of 1,000 or fewer residents, $1,500.00.

(c) For a group 3 facility, $200.00.

(2) Within 180 days after receipt of a complete application, the department shall either grant or deny a permit, unless the applicant and the department agree to extend this time period. If the department fails to make a decision on an application within the time period specified or agreed to under this subsection, the applicant shall receive a 15% annual discount on an annual groundwater discharge permit fee for a permit issued based upon that application. This subsection applies to permit applications received beginning October 1, 2005.

(3) If the person required to pay the annual groundwater discharge permit fee under subsection (1) is a municipality, the municipality may pass on the annual groundwater discharge permit fee to each user of the municipal facility.

(4) As used in this section, "group 1 facility", "group 2 facility", and "group 3 facility" do not include a municipality with a population of 1,000 or fewer residents.

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004 ;-- Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.3122a Annual groundwater discharge permit fees; credit; amount.

Sec. 3122a. In any state fiscal year, if the department collects more than $2,000,000.00 under section 3122 in annual groundwater discharge permit fees, the department shall credit in the next fiscal year each permittee who paid a groundwater discharge permit fee a proportional amount of the fees collected in excess of $2,000,000.00. However, if a permit is no longer required by the permittee in the next fiscal year, the department shall do the following:

(a) If the credited amount is $50.00 or more, the department shall provide a refund to the permittee for the credited amount.

(b) If the credited amount is less than $50.00, the department shall provide a credit to the permittee for an annual groundwater discharge permit fee that may be required in a subsequent year.

History: Add. 2004, Act 114, Imd. Eff. May 21, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3123 Groundwater discharge permit fees; invoices; late payment; action by attorney general.

Sec. 3123. (1) The department shall send invoices for the groundwater discharge permit fees under section 3122 to all permit holders by January 15 of each year. Fees will be charged for all facilities authorized as of December 15 of each calendar year. Payment shall be postmarked no later than March 1 of each year. Failure by the department to send an invoice by the deadline, or failure of a person to receive an invoice, does

not relieve that person of his or her obligation to pay the annual groundwater discharge permit fee. If the department does not meet the January 15 deadline for sending invoices, the annual groundwater discharge permit fee is due not later than 45 days after receiving an invoice. The department shall forward money collected pursuant to this section to the state treasurer for deposit into the groundwater discharge permit fund established under section 3124.

(2) The department shall assess a penalty on all fee payments submitted under this section after the due date. The penalty shall be an amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due. Failure to timely pay a fee imposed by this section is a violation of this part and is cause for revocation of a permit issued under this part and may subject the discharger to additional penalties pursuant to section 3115.

(3) The attorney general may bring an action for the collection of the groundwater discharge permit fees imposed under this section.

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3124 Groundwater discharge permit fund.
Sec. 3124. (1) The groundwater discharge permit fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the groundwater discharge permit fund. The state treasurer shall direct the investment of the groundwater discharge permit fund.

(2) Money in the groundwater discharge permit fund at the close of the fiscal year shall remain in the groundwater discharge permit fund and shall not lapse to the general fund.

(3) The state treasurer shall credit to the groundwater discharge permit fund the interest and earnings from groundwater discharge permit fund investments.

(4) The department shall expend money from the groundwater discharge permit fund, upon appropriation, only to implement the department's groundwater discharge program under this part. However, in any state fiscal year, the department shall not expend more than $2,000,000.00 of money from the fund.

(5) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chair of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities during the previous fiscal year in administering the department's groundwater discharge program that were funded by the groundwater discharge permit fund. This report shall include, at a minimum, all of the following as they relate to the department:

(a) The number of full-time equated positions performing groundwater permitting, compliance, and enforcement activities.

(b) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(c) The number of applications for groundwater permits determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(d) The percentage and number of applications determined to be administratively complete for which a final decision was made within the statutory time frame.

(e) The number of inspections conducted at groundwater facilities.

(f) The number of violation letters sent.

(g) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(h) For each enforcement action that includes a penalty, a description of what corrective actions were required by the enforcement action.

(i) The number of groundwater complaints received, investigated, resolved, and not resolved by the department.

(j) The amount of revenue in the groundwater discharge permit fund at the end of the fiscal year.

History: Add. 2004, Act 90, Imd. Eff. Apr. 22, 2004
Popular Name: Act 451
Popular Name: NREPA

324.3131 Land application of sewage sludge and derivatives; rules.
Sec. 3131. (1) By October 1, 1997, the department of environmental quality in consultation with the department of agriculture shall promulgate rules to manage the land application of sewage sludge and sewage sludge derivatives. The rules shall be consistent with the minimum requirements of 40 C.F.R. part 503 but may impose requirements in addition to or more stringent than 40 C.F.R. part 503 to protect public health or the environment from any adverse effect from a pollutant in sewage sludge or in a sewage sludge derivative. However, the rules shall require that if monitoring of sewage sludge or a sewage sludge derivative indicates a pollutant concentration in excess of that provided in table 3 of 40 C.F.R. 503.13, monitoring frequency shall be increased to not less than twice that provided in table 1 of 40 C.F.R. 503.16, until pollutant concentrations are at or below those provided in table 3 of 40 C.F.R. 503.13. The rules shall require a sewage sludge generator or sewage sludge distributor to deliver to a county, city, village, or township a copy of any record required to be created under the rules pertaining to sewage sludge or a sewage sludge derivative applied to land in that local unit. The copy shall be delivered free of charge promptly after the record is created.

(2) If the Michigan supreme court rules that sections 45 and 46 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.245 and 24.246, are unconstitutional and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the rule-making authority under this section and any rules promulgated under that rule-making authority are rescinded, and the land application of sewage sludge shall be managed by the department of environmental quality in consultation with the department of agriculture consistent with the requirements of 40 C.F.R. part 503.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997
Compiler's Notes: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).
Popular Name: Act 451
Popular Name: NREPA

324.3132 Sewage sludge generators and sewage sludge distributors; fees; report; sewage sludge land application fund; local ordinance.
Sec. 3132. (1) Beginning in state fiscal year 1998, an annual sewage sludge land application fee is imposed upon sewage sludge generators and sewage sludge distributors. The sewage sludge land application fee shall be in an amount equal to the sum of an administrative fee and a generation fee. The administrative fee shall be $400.00 and the department shall set the generation fee as provided by subsection (2). The department shall set the generation fee so that the annual cumulative total of the sewage sludge land application fee to be paid in a state fiscal year is, as nearly as possible, $650,000.00 minus the amount in the fund created under subsection (5) carried forward from the prior state fiscal year. Starting with fees to be paid in state fiscal year 1999, the $650,000.00 amount shall be annually adjusted for inflation using the Detroit consumer price index.

(2) Each sewage sludge generator and sewage sludge distributor shall annually report to the department for each state fiscal year, beginning with the 1997 state fiscal year, the number of dry tons of sewage sludge it generated or the number of dry tons of sewage sludge in sewage sludge derivatives it distributed that were applied to land in that state fiscal year. The report is due 30 days after the end of the state fiscal year. By December 15 of each state fiscal year, the department shall determine the generation fee on a per dry ton basis by dividing the cumulative generation fee by the number of dry tons of sewage sludge applied to land or in sewage sludge derivatives applied to land in the immediately preceding state fiscal year. The department shall notify each sewage sludge generator and sewage sludge distributor of the generation fee on a per dry ton basis. Notwithstanding any other provision of this section, for the 1998 state fiscal year, the generation fee shall not exceed $4.00 per dry ton.

(3) By January 31 of each state fiscal year, each sewage sludge generator or sewage sludge distributor shall pay its sewage sludge land application fee. The sewage sludge generator or sewage sludge distributor shall determine the amount of its sewage sludge land application fee by multiplying the number of dry tons of sewage sludge that it reported under subsection (2) by the generation fee and adding the administrative fee.

(4) The department of environmental quality shall assess interest on all fee payments submitted under this section after the due date. The permittee shall pay an additional amount equal to 0.75% of the payment due for each month or portion of a month the payment remains past due. The failure by a person to timely pay a fee imposed by this section is a violation of this part.

(5) The sewage sludge land application fund is created in the state treasury. The department of environmental quality shall forward all fees collected under this section to the state treasurer for deposit into the fund. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest

and earnings from fund investments. An unexpended balance within the fund at the close of the state fiscal year shall be carried forward to the following state fiscal year. The fund shall be allocated solely for the administration of this section and sections 3131 and 3133, including, but not limited to, education of the farmers, sewage sludge generators, sewage sludge distributors, and the general public about land application of sewage sludge and sewage sludge derivatives and the requirements of this section and sections 3131 and 3133. The director of the department of environmental quality may contract with a nonprofit educational organization to administer the educational components of this section. Ten percent of the fund shall be allocated to the department of agriculture to provide persons involved in or affected by land application of sewage sludge or sewage sludge derivatives with education and technical assistance relating to land application of sewage sludge or sewage sludge derivatives.

(6) A local unit may enact, maintain, and enforce an ordinance that prohibits the land application of sewage sludge or a sewage sludge derivative if monitoring indicates a pollutant concentration in excess of that provided in table 1 of 40 C.F.R. 503.13 until subsequent monitoring indicates that pollutant concentrations do not exceed those provided in table 1 of 40 C.F.R. 503.13.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997
Popular Name: Act 451
Popular Name: NREPA

324.3133 Local ordinances, regulations, or resolutions; preemption; contracts with local units; enactment and enforcement of local standards; compliance with conditions of approval; submission of resolution by local unit to department; public meeting; issuance of opinion and approval by department.

Sec. 3133. (1) Except as otherwise provided in this section, sections 3131 and 3132 preempt a local ordinance, regulation, or resolution of a local unit that would duplicate, extend, revise, or conflict with section 3131 or 3132. Except as otherwise provided for in this section, a local unit shall not enact, maintain, or enforce an ordinance, regulation, or

resolution that duplicates, extends, revises, or conflicts with section 3131 or 3132.

(2) The director of the department of environmental quality may contract with a local unit to act as its agent for the purpose of enforcing this section and sections 3131 and 3132. The department shall have sole authority to assess fees. If a local unit is under contract with the department of environmental quality to act as its agent or the local unit has received prior written authorization from the department, then the local unit may pass an ordinance that is identical to section 3132 and rules promulgated under section 3131, except as prohibited in subsection (4).

(3) A local unit may enact an ordinance prescribing standards in addition to or more stringent than those contained in section 3132 or in rules promulgated under section 3131 and which regulate a sewage sludge or sewage sludge derivative land application site under either or both of the following circumstances:

(a) The operation of a sewage sludge or sewage sludge derivative land application site within that local unit will result in unreasonable adverse effects on the environment or public health within the local unit. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within the local unit.

(b) The operation of a sewage sludge or sewage sludge derivative land application site within that local unit has resulted or will result in the local unit being in violation of other existing state laws or federal laws.

(4) An ordinance enacted pursuant to subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (3) shall not be enforced by a local unit until approved or conditionally approved by the director of the department of environmental quality under subsection (5). The local unit shall comply with any conditions of approval.

(5) If the legislative body of a local unit submits to the department of environmental quality a resolution identifying how the requirements of subsection (3)(a) or (b) are met, the department shall hold a public meeting in the local unit within 60 days after the submission of the resolution to assist the department in determining whether the requirements of subsection (3)(a) or (b) are met. Within 45 days after the public meeting, the department shall issue a detailed opinion on whether the requirements of subsection (3)(a) or (b) are met as identified by the resolution of the local unit and shall approve, conditionally approve, or disapprove the ordinance accordingly. If the department fails to satisfy the requirements of this subsection, the ordinance is considered to be approved.

History: Add. 1997, Act 29, Imd. Eff. June 18, 1997
Popular Name: Act 451
Popular Name: NREPA

Part 41

SEWERAGE SYSTEMS

324.4101 Definitions.

Sec. 4101. As used in this part:

(a) "Conventional gravity sewer extension" means the installation of a new gravity sewer and connection to an existing collection system to provide sewer service to new areas previously not served by the public sewer system.

(b) "Expedited review" means an expedited review of an application for a construction permit under section 4112.

(c) "Fund" means the infrastructure construction fund created in section 4113.

(d) "Governmental agencies" means local units of government, metropolitan districts, or other units of government or the officers of the

units of government authorized to own, construct, or operate sewerage systems to serve the public.

(e) "Licensed professional engineer" means a professional engineer licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(f) "Plans and specifications" means a true description or representation of the entire sewerage system and parts of a system as the sewerage system exists or is to be constructed, and also a full and fair statement of how the system is to be operated.

(g) "Project" means a proposal to install within 1 general area a new wastewater collection system. Systems proposed for construction on separate land parcels shall be considered separate projects.

(h) "Sewerage system" means a system of pipes and structures including pipes, channels, conduits, manholes, pumping stations, sewage or waste treatment works, diversion and regulatory devices, outfall structures, and appurtenances, collectively or severally, actually used or intended for use by the public for the purpose of collecting, conveying, transporting, treating, or otherwise handling sanitary sewage or other industrial liquid wastes that are capable of adversely affecting the public health.

(i) "Simple pumping station and force main" means the installation of a duplex pumping station and a force main with only 1 high point and of length of no more than 2,000 feet that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

(j) "Small diameter pressure sewer and grinder pumping station" means a single project that includes the installation of new pressure sewers totaling not more than 5,000 feet and not more than 25 grinder pumping stations with each grinder pumping station serving not more than 5 separate owners and that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007
Popular Name: Act 451
Popular Name: NREPA

324.4102 Department of natural resources; powers.

Sec. 4102. The department is given power and control as limited in this part over persons engaged in furnishing sewerage or sewage treatment service, or both, and over sewerage systems.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 342.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.4103 Sewerage systems; inspection by department.

Sec. 4103. The department may enter at reasonable times the sewerage systems and other property of a person for the purpose of inspecting a sewerage system and carrying out the authority vested in the department by this part.
History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4104 Sewerage systems; rules; classification of sewage treatment works; examinations; issuance and revocation of certificates; supervision by certified operator.

Sec. 4104.The department may promulgate and enforce rules as the department considers necessary governing and providing a method of conducting and operating all or a part of sewerage systems including sewage treatment works. The department shall classify sewage treatment works with regard to size, type, location, and other physical conditions affecting those works and according to the skill, knowledge, experience, and character that the person who is in charge of the active operation of

the sewage treatment works has to possess in order to successfully operate the works, to prevent the discharge of deleterious matter capable of being injurious to the health of the people, or to other public interests. The department shall examine or provide for the examination of persons as to their qualifications to operate sewage treatment works. The department shall promulgate rules regarding the classification of sewage treatment works, the examinations for certification of operators for those works, and the issuance and revocation of certificates, and shall issue and revoke certificates in accordance with those rules. Every sewage treatment works subject to this part shall be under the supervision of a properly certified operator, except that this section does not require the employment of a certified operator in a waste treatment works that receives only wastes that are not potentially prejudicial to the public health.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 299.2901 et seq. and R 299.2903 et seq. of the Michigan Administrative Code.

324.4105 Sewerage systems; plans and specifications; rules; permit for construction; minor modifications; misdemeanor.

Sec. 4105. (1) The mayor of each city, the president of each village, the township supervisor of each township, the responsible executive officer of a governmental agency, and all other persons operating sewerage systems in this state shall file with the department a true copy of the plans and specifications of the entire sewerage system owned or operated by that person, including any filtration or other purification plant or treatment works as may be operated in connection with the sewerage system, and also plans and specifications of all alterations, additions, or improvements to the systems that may be made. The plans and specifications shall, in addition to all other requirements, show all the sources through or from which water is or may be at any time pumped or otherwise permitted to enter into the sewerage system, and the drain, watercourse, river, or lake into which sewage is to be discharged. The plans and specifications shall be certified by the mayor of a city, the president of a village, a responsible member of a partnership, an

individual owner, or the proper officer of any other person that operates the sewerage system, as well as by the engineer, if any are employed by any such operator. The department may promulgate and enforce rules regarding the preparation and submission of plans and specifications and for the issuance and period of validity of construction permits for the work.

(2) A person shall not construct a sewerage system or any filtration or other purification plant or treatment works in connection with a sewerage system except as authorized by a construction permit issued by the department pursuant to part 13. An application for a permit shall be submitted by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person proposing the construction. If eligible, a person may request an expedited review of an application for a construction permit under section 4112. An application for a permit shall include plans and specifications as described in subsection (1). If considered appropriate by the department, the department may issue a permit with conditions to correct minor design problems.

(3) The department may verbally approve minor modifications of a construction permit issued by the department as a result of unforeseen site conditions that become apparent during construction. Minor modifications include, but are not limited to, a minor change of location of the sewer or location of manholes. The person making the request for a modification shall provide to the department all relevant information pursuant to R 299.2931 to R 299.2945 of the Michigan administrative code and the application form provided by the department related to the requested modification. Written approval from the department shall be obtained for all modifications except when the department provides verbal approval for a minor modification as provided for in this subsection. The person receiving a written or verbal approval from the department shall submit revised plans or specifications to the department within 10 days from the date of approval.

(4) If a person seeks confirmation of the department’s verbal approval of a minor modification under subsection (3), the person shall notify the

department electronically, at an address specified by the department, with a detailed description of the request for the modification. The department shall make reasonable efforts to respond within 2 business days, confirming whether the request has been approved or not approved. If the department has not responded within 2 business days after the department receives the detailed description, the verbal approval shall be considered confirmed.

(5) A municipal officer or an officer or agent of a person who permits or allows construction to proceed on a sewerage works without a valid permit, or in a manner not in accordance with the plans and specifications approved by the department, is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment for not more than 90 days, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 299.2901 et seq. of the Michigan Administrative Code.

324.4106 Sewage treatment works; reports; false statement; penalty.
Sec. 4106. (1) A person who operates a sewage treatment works shall file with the department reports under oath as required by the department. The reports shall be sworn to by a responsible officer or person acquainted with the facts and employed by the person required to report under this part.

(2) A person making a false statement in a report under subsection (1) is guilty of perjury and subject to the penalty for that offense.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4107 Inspection of plans and specifications; inspection of sewerage systems; recommendations or orders; compliance.

Sec. 4107. (1) The department on receipt of plans and specifications for a sewerage system shall inspect them with reference to their adequacy to protect the public health, and if the public water supply of the city or village is impure and dangerous to individuals or to the public generally, he or she shall inspect the sewerage systems or any parts of the sewerage system and the manner of its operation. If upon inspection the department finds the plans and specifications or the sewerage systems are inadequate or operated in a manner that does not adequately protect the public health, he or she may order the person owning or operating the sewerage system to make alterations in the plans and specifications or in the sewerage systems or the method of operation of the sewerage system as may be required or advisable in his or her opinion, in order that the sewage is not potentially prejudicial to the public health.

(2) The recommendations or orders of the department shall be served in writing upon the owner or operator of the sewerage system and the owner and operator shall comply with the recommendations or orders.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4108 Sewerage system; planning, construction and operation; cooperation; compliance; "private, investor-owned wastewater utility" defined.
Sec. 4108. (1) The department shall exercise due care to see that sewerage systems are properly planned, constructed, and operated to prevent unlawful pollution of the streams, lakes, and other water resources of the state. The department shall cooperate with appropriate federal or state agencies in the determination of grants of assistance for the preparation of plans or for the construction of waterworks systems, sewerage systems, or waste treatment projects, or both.

(2) The activities of a private, investor-owned wastewater utility shall comply with all applicable provisions of this act, local zoning and other ordinances, and the construction and operation requirements of the federal water pollution control act and the national environmental policy act of 1969, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(3) As used in this section, "private, investor-owned wastewater utility" means a utility that delivers wastewater treatment services through a sewerage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- 2005, Act 191, Imd. Eff. Nov. 7, 2005
Popular Name: Act 451
Popular Name: NREPA

324.4109 Engineers and other assistants; employment.

Sec. 4109. The department may employ engineers and other assistants as may be necessary to administer this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4110 Commencement of civil action by attorney general; jurisdiction; additional relief; violation as misdemeanor; penalty; appearance ticket; enforcement; "minor offense" defined.

Sec. 4110. (1) The department may request that the attorney general commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued under this part or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), a person who violates this part is subject to the following:

(a) If the person fails to obtain a permit required under this part, the court shall impose a civil fine of not less than $1,500.00 or greater than $2,500.00 for the first violation, not less than $2,500.00 or greater than $10,000.00 for the second violation, and not less than $10,000.00 or greater than $25,000.00 for each subsequent violation.

(b) If the person violates this part or a provision of a permit or order issued under this part or rule promulgated under this part other than by failure to obtain a permit, the court shall impose a civil fine of not less than $500.00 or greater than $2,500.00 for the first violation, not less than $1,000.00 or greater than $5,000.00 for the second violation, and not less than $2,500.00 or greater than $10,000.00 for each subsequent violation. For the purposes of this subdivision, all violations of a specific construction permit are treated as a single violation.

(3) Subject to section 4105(5), a person who violates this part or a written order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both, and payment of the costs of prosecution.

(4) A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g.

(5) The attorney general shall enforce this part.

(6) As used in this section, "minor offense" means a violation of a permit issued under this part that does not functionally impair the operation or capacity of a sewerage system.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007
Popular Name: Act 451
Popular Name: NREPA

324.4111 Actions brought by department.

Sec. 4111. The department may bring an appropriate action in the name of the people of this state as may be necessary to carry out this part and to enforce any and all laws, rules, and regulations relating to this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4112 Construction permit applications; expedited review process.
Sec. 4112. (1) Not later than October 1, 2007, the department shall establish an expedited review process for construction permit applications for projects described in subsection (2) that are located in a county with a population of between 750,000 and 1,000,000 and any contiguous county with a population greater than 160,000. The expedited review process shall be available through September 30, 2010. To be eligible for expedited review, an applicant shall submit all of the items under subsection (4) not later than September 30, 2010.

(2) Subject to subsection (3), the following projects are eligible for expedited review:

(a) A conventional gravity sewer extension of 10,000 feet or less of sewer line.

(b) A simple pumping station and force main.

(c) A small diameter pressure sewer and grinder pumping station.

(3) An expedited review shall not be conducted for a project that is being funded by the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(4) A person requesting an expedited review shall do all of the following:

(a) At least 10 business days prior to submitting an application under subdivision (b), notify the department electronically, in accordance with the instructions provided on the department's website, of his or her intent to request expedited review.

(b) Submit electronically a complete application for a construction permit including a request for expedited review and including, via credit card, the appropriate fee under subsection (5).

(c) Provide a written copy of the construction plans and specifications for the project that has been prepared, signed, and sealed by a licensed professional engineer to the department postmarked not later than the same date that the application is submitted electronically.

(d) For nongovernmental entities, provide certification to the department that all necessary contractual service agreements and financial plans are in place.

(5) Except as provided in subsection (7), the fee for an expedited review is as follows:

(a) For a conventional gravity sewer extension less than 2,000 feet, $1,000.00.

(b) For a conventional gravity sewer extension equal to or greater than 2,000 feet but less than 4,000 feet of sewer line, $1,500.00, and for each incremental increase of up to 2,000 feet of sewer line, an additional $500.00.

(c) For a simple pumping station and force main, $2,000.00.

(d) For a small diameter pressure sewer and grinder pumping station consisting of not more than 2,000 feet of sewer line and not more than 10 grinder pumping stations, $2,000.00.

(e) For small diameter pressure sewer and grinder pumping station projects not covered by subdivision (d) and not more than 5,000 feet of sewer line and not more than 25 grinder pumping stations, $4,000.00.

(6) Except as provided in subsection (8), if an applicant does not comply with subsection (4), the department shall not conduct an expedited review and any submitted fee shall not be refunded. Within 10 business days after receipt of the application, the department shall notify the applicant of the reasons why the department's review of the application will not be expedited. Upon receipt of this notification, a person may correct the deficiencies and resubmit an application and request for an

expedited review with the appropriate fee specified under subsection (7). The department shall not reject a resubmitted application and request for expedited review solely because of deficiencies that the department failed to fully identify in the original application.

(7) For a second submission of an application that originally failed to meet the requirements specified in subsection (6), the applicant shall instead include a fee equal to 10% of the fee specified in subsection (5). However, if the deficiency included failure to pay the appropriate fee, the second submission shall include the balance of the appropriate fee plus 10% of the appropriate fee. If the applicant makes additional changes other than those items identified by the department as being deficient, the applicant shall instead include an additional fee equal to the fee specified in subsection (5). For the third and each subsequent submittal of an application that failed to meet the requirements specified in subsection (6), the applicant shall include an additional fee equal to the fee specified in subsection (5).

(8) If an applicant fails to sign the application, submits construction plans and specifications that have not been prepared, signed, and sealed by a licensed professional engineer, or submits an insufficient fee, the department shall notify the applicant within 5 business days of the deficiency. The application shall not be processed until the deficient items are addressed. If the applicant does not provide the deficient items within 5 business days after notification by the department, the application shall be handled as provided in subsection (6).

(9) The department shall review and make a decision on complete applications submitted with a request for expedited review pursuant to the following schedule:

(a) Until September 30, 2008, a permit decision shall be made within 20 business days of receipt by the department of the complete application.

(b) From October 1, 2008 through September 30, 2009, a permit decision shall be made within 15 business days of receipt by the department of the complete application.

(c) From October 1, 2009 through September 30, 2010, a permit decision shall be made within 10 business days of receipt by the department of the complete application.

(10) If the department fails to meet the deadlines specified in subsection (9), the department shall continue to expedite the application review process for an application submitted under this section. However, the fee for an expedited review required under this section shall be refunded if the department fails to meet the deadlines established in subsection (9).

(11) The department shall transmit fees collected under this section to the state treasurer for deposit into the fund.

(12) As used in this section, "complete application" means that a department-provided application form is completed, all requested information has been provided, and the application can be processed without additional information.

History: Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007
Popular Name: Act 451
Popular Name: NREPA

324.4113 Infrastructure construction fund; administration of expedited review process; reports.
Sec. 4113. (1) The infrastructure construction fund is created within the state treasury.

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

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

(4) The department shall expend money from the fund, upon appropriation, only to administer this part and the safe drinking water

act, 1976 PA 399, MCL 325.1001 to 325.1023, including all of the following:

(a) Maintenance of program data.

(b) Development of program-related databases and software.

(c) Compliance assistance, education, and training directly related to this part and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(d) Program administration activities.

(5) By January 1, 2009 and by January 1 of each year thereafter until January 1, 2011, the department shall prepare and submit to the governor, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the department's administration of the expedited review process under section 4112 and the expedited review process under section 4a of the safe drinking water act, 1976 PA 399, MCL 325.1004a, in the previous fiscal year. This report shall include, at a minimum, all of the following as itemized for each expedited review process:

(a) The number of requests for expedited review received by the department.

(b) The percentage and number of requests for expedited review that were properly submitted.

(c) The percentage and number of requests for expedited review that were reviewed for completeness within statutory time frames.

(d) The percentage and number of requests for expedited review for which a final action was taken by the department within statutory time frames. The type of final action shall be indicated.

(e) The amount of revenue in the fund at the end of the fiscal year.

(6) For the first 3 years of the expedited review process, the department shall submit quarterly summary reports of items under subsection (5)(a) to (d) to the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department.

History: Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007
Popular Name: Act 451
Popular Name: NREPA

Part 45

BONDS FOR PREVENTION AND ABATEMENT OF WATER POLLUTION

324.4501 “Municipality” defined.

Sec. 4501. The term “municipality” or “municipalities” as used in this part means and includes a county, city, village, township, school district, metropolitan district, port district, drainage district, authority, or other governmental authority, agency, or department within or of the state with power to acquire, construct, improve, or operate facilities for the prevention or abatement of water pollution, or any combination of such governmental agencies.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4502 Legislative determinations.

Sec. 4502. The legislature hereby determines all of the following:

(a) That it is essential for the public health, safety, and welfare of the state and the residents of the state to undertake a complete program of construction of facilities to abate and prevent pollution of the water in and adjoining the state, the program to be undertaken by the state in cooperation with any municipalities and with such aid from the United States government or its agencies as is available.

(b) That abating and preventing pollution of the water in and adjoining the state is essential to the encouragement of business, industrial, agricultural, and recreational activities within the state.

(c) That the encouragement of business, industrial, agricultural, and recreational activities in the state by abating and preventing pollution of the water in and adjoining the state will benefit the economy of the state by encouraging businesses and industries to locate or expand within the state in order to provide more employment within the state.

(d) That abating and preventing pollution of the water in and adjoining the state is in furtherance of the purpose and the public policy of the state as expressed in sections 51 and 52 of article IV of the state constitution of 1963 and to carry out the remaining unfunded portions of the program for which electors of the state authorized the issuance of general obligation bonds.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4503 Bond issuance; authorization; amount; purpose.
Sec. 4503. The state shall borrow the sum of $335,000,000.00 and issue the general obligation bonds of the state, pledging the faith and credit of the state for the payment of the principal and interest on the bonds, for the purpose of providing money for the planning, acquisition, and construction of facilities for the prevention and abatement of water pollution, consisting of trunk and interceptor sewers, sewage treatment plants and facilities, improvements and additions to existing sewage treatment plants and facilities, and such other structures, devices, or facilities as will prevent or abate water pollution, and for the making of

grants, loans, and advances to municipalities, in accordance with conditions, methods, and procedures established by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4504 Bonds; issuance in series; resolution of administrative board; sale of bonds.

Sec. 4504. (1) The bonds shall be issued in 1 or more series, each series to be in the principal amount, to be dated, to have the maturities that may be either serial, term, or term and serial, to bear interest at a rate or rates not to exceed 6% per annum if issued before September 19, 1982 and not to exceed 18% per annum if issued on or after September 19, 1982, to be subject or not subject to prior redemption and, if subject to prior redemption with call premiums, to be payable at a place or places, to have or not have the provisions for registration as to principal only or as to both principal and interest, and to be in the form and to be executed in the manner as determined by resolution to be adopted by the administrative board. The administrative board may in the resolution provide for the investment and reinvestment of bond sales proceeds and any other details for the bonds and the security of the bonds considered necessary and advisable. The bonds or any series of the bonds shall be sold for not less than the par value of the bonds and may be sold, as authorized by the state administrative board, either at a public sale or at a publicly negotiated sale.

(2) Bonds issued under this part are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) The issuance of bonds under this part is subject to the agency financing reporting act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 248, Imd. Eff. Apr. 30, 2002
Popular Name: Act 451
Popular Name: NREPA

324.4505 Revenues; disposition.
Sec. 4505. The proceeds of sale of the bonds or any series of the bonds and any premium and accrued interest received on the delivery of the bonds shall be deposited in the treasury in a separate account and shall be disbursed from the separate account only for the purposes for which the bonds have been authorized and for the expense of issuing the bonds. Proceeds of sale of the bonds or any series of the bonds shall be expended for the purposes set forth in this part in the manner provided by law.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4506 Bonds; negotiability; tax exempt.
Sec. 4506. Bonds issued under this part are fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws, and the bonds and the interest on the bonds are exempt from all taxation by the state or any of its political subdivisions.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4507 Legal investments.
Sec. 4507. Bonds issued under former Act No. 76 of the Public Acts of 1968 or this part are securities in which all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest any funds, including capital, belonging to them or within their control.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4508 Bonds; question; submission to electors; ballot; form.
Sec. 4508. The question of borrowing the sum of $335,000,000.00 and issuing bonds of the state for the purpose set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963 , at the general November election to be held on November 5, 1968. The question submitted shall be substantially as follows:

“Shall the state of Michigan borrow the sum of $335,000,000.00 and issue general obligation bonds of the state therefor pledging the full faith and credit of the state for the payment of principal and interest thereon for the purpose of planning, acquiring and constructing facilities for the prevention and abatement of water pollution and for the making of grants, loans and advances to municipalities, political subdivisions and agencies of the state for such purposes, the method of repayment of said bonds to be from the general fund of the state?

Yes [ ]

No [ ]”.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4509 Submission to electors.
Sec. 4509. The secretary of state shall take such steps and perform all acts as are necessary to properly submit the question to the electors of the state qualified to vote on the question at the general November election to be held on November 5, 1968.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4510 Bonds; appropriation to make prompt payment.
Sec. 4510. After the issuance of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part, or any series of the bonds, the legislature shall each year make appropriations fully sufficient to pay promptly when due the principal of and interest on all outstanding bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part and all costs incidental to the payment of that principal and interest.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.4511 Approval of electors.
Sec. 4511. Bonds shall not be issued under this part unless the question set forth in section 4508 is approved by a majority vote of the qualified electors voting on the question at the general November election to be held on November 5, 1968.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 51

WASTEWATER DISPOSAL

324.5101 "Land disposal wastewater management program" defined.
Sec. 5101. As used in this part, "land disposal wastewater management program" means the program developed in the United States army corps of engineers southeastern Michigan survey scope wastewater management study, as authorized by section 102 of title I of the federal water pollution control act, chapter 758, 86 Stat. 817, 33 U.S.C. 1252, and the resolution of the United States house of representatives public works committee and the United States senate public works committee or any other study by the corps of engineers proposing disposal of municipal wastewater on land.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5102 Submission of views as to environmental consequences, cost effectiveness, and social acceptability of program.

Sec. 5102. Upon receipt of a proposal to implement a land disposal wastewater management program as defined in this part by a federal, state, or local unit of government, the department shall submit to the governor, the legislature, and local units of government its views as to the environmental consequences, cost effectiveness, and social acceptability of the program. The department of agriculture shall present its views to the governor, the legislature, and local units of government regarding the impact of the program on agriculture.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5103 Implementation of program; approval or disapproval.

Sec. 5103. Upon receipt of the views of the department and the department of agriculture, the local units of government shall either approve or disapprove by resolution, and the legislature shall either approve or disapprove by concurrent resolution, the implementation of the program.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 53

CLEAN WATER ASSISTANCE

324.5301 Definitions.
Sec. 5301. As used in this part:

(a) "Assistance" means 1 or more of the following activities to the extent authorized by the federal water pollution control act:

(i) Provision of loans to municipalities for construction of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects.

(ii) Project refinancing assistance.

(iii) The guarantee or purchase of insurance for local obligations, if the guarantee or purchase action would improve credit market access or reduce interest rates.

(iv) Use of the proceeds of the fund as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by this state, if the proceeds of the sale of the bonds will be deposited into the fund.

(v) Provision of loan guarantees for similar revolving funds established by municipalities.

(vi) The use of deposited funds to earn interest on fund accounts.

(vii) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act, 33 USC 1381 to 1387.

(b) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076.

(c) "Capitalization grant" means the federal grant made to this state by the United States environmental protection agency for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, 33 USC 1381 to 1387.

(d) "Construction activities" means any actions undertaken in the planning, designing, or building of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects. Construction activities include, but are not limited to, all of the following:

(i) Project planning services.

(ii) Engineering services.

(iii) Legal services.

(iv) Financial services.

(v) Design of plans and specifications.

(vi) Acquisition of land or structural components, or both.

(vii) Building, erection, alteration, remodeling, or extension of a sewage treatment works.

(viii) Building, erection, alteration, remodeling, or extension of projects designed to control nonpoint source pollution, consistent with section 319 of title III of the federal water pollution control act, 33 USC 1329.

(ix) Building, erection, alteration, or remodeling of a stormwater treatment project.

(x) Municipal supervision of the project activities described in subparagraphs (i) to (ix).

(e) "Federal water pollution control act" means 33 USC 1251 to 1387.

(f) "Fund" means the state water pollution control revolving fund established under the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076, established pursuant to title VI of the federal water pollution control act.

(g) "Fundable range" means those projects, taken in descending order on the priority lists, for which sufficient funds are estimated by the department to exist to provide assistance at the beginning of each annual funding cycle.

(h) "Municipality" means a city, village, county, township, authority, or other public body, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law; or an Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of title III of the federal water pollution control act, 33 USC 1329.

(i) "Nonpoint source project" means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan pursuant to section 319 of title III of the federal water pollution control act, 33 USC 1329.

(j) "Priority list" means the annual ranked listing of projects developed by the department in section 5303 or used by the department pursuant to section 5315.

(k) "Project" means a sewage treatment works project, a stormwater treatment project, or a nonpoint source project, or a combination of these.

(l) "Project refinancing assistance" means buying or refinancing the debt obligations of municipalities within the state if construction activities commenced after March 7, 1985 and the debt obligation was incurred after March 7, 1985.

(m) "Sewage treatment works project" means construction activities on any device or system for the treatment, storage, collection, conveyance,

recycling, or reclamation of the sewage of a municipality, including combined sewer overflow correction and major rehabilitation of sewers.

(n) "Stormwater treatment project" means construction activities of a municipality on any device or system for the treatment, storage, recycling, or reclamation of storm water that is conveyed by a storm sewer that is separate from a sanitary sewer.

(o) "Tier I project" means a project for which assistance is sought or provided from funds made directly available from the federal capitalization grant or from the Great Lakes water quality bond fund pursuant to section 19708(1)(a).

(p) "Tier II project" means a project for which assistance is sought or provided from funds other than those made directly available from the federal capitalization grant or from the Great Lakes water quality bond fund pursuant to section 19708(1)(a).

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2002, Act 397, Eff. Nov. 5, 2002 ;-- Am. 2005, Act 255, Imd. Eff. Dec. 1, 2005
Compiler's Notes: Enacting section 2 of Act 397 of 2002 provides:“Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election.”Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds “shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question.” In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.
Popular Name: Act 451
Popular Name: NREPA

324.5302 Construction of part; broad interpretation of powers; prohibited grants or loans; liability for costs; legislative intent.
Sec. 5302. (1) This part shall be construed liberally to effectuate the legislative intent. All powers granted under this part shall be broadly

interpreted to effectuate the intent and purposes of this part and shall not be interpreted as a limitation of powers.

(2) Except as may be authorized by the federal water pollution control act, the fund shall not provide grant assistance to a municipality or provide loans for the local share of projects constructed with grants provided under title II of the federal water pollution control act, chapter 758, 86 Stat. 833, 33 U.S.C. 1281, 1282 to 1293, and 1294 to 1299.

(3) This state is not liable to a municipality, or any other person performing services for the municipality, for costs incurred in developing or submitting an application for assistance under this part.

(4) It is the specific intent of the legislature to minimize paperwork for tier II projects.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5303 Cooperative regional or intermunicipal projects; project plan for tier I or tier II project; documentation; notice; public comment; development of priority list; submission of priority list to legislature; effective date of priority list; other actions not limited; "on-site septic system" defined.
Sec. 5303. (1) Municipalities shall consider and utilize, where possible, cooperative regional or intermunicipal projects in satisfying sewerage needs in the development of project plans.

(2) A municipality may submit a project plan for use by the department in developing a priority list.

(3) The project plan for a tier I project shall include documentation that demonstrates that the project is needed to assure maintenance of, or to

progress toward, compliance with the federal water pollution control act or part 31, and to meet the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341 to 4347. The documentation shall demonstrate all of the following:

(a) The need for the project.

(b) That feasible alternatives to the project were evaluated taking into consideration volume reduction opportunities and the demographic, topographic, hydrologic, and institutional characteristics of the area.

(c) That the project is cost effective and implementable from a legal, institutional, financial, and management standpoint.

(d) Other information as required by the department.

(4) The project plan for a tier II project shall include documentation that demonstrates that the project is or was needed to assure maintenance of or progress towards compliance with the federal water pollution control act or part 31, and is consistent with all applicable state environmental laws. The documentation shall include all of the following information:

(a) Information to demonstrate the need for the project.

(b) A showing that the cost of the project is or was justified, taking into account available alternatives. Those costs determined by the department to be in excess of those costs justified will not be eligible for assistance under this part.

(5) After notice and an opportunity for public comment, the department shall annually develop separate priority lists for sewage treatment works projects and stormwater treatment projects, for nonpoint source projects, and for projects funded under the strategic water quality initiatives fund created in section 5204. Projects not funded during the time that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria,

unless the municipality submits an amendment to its plan that introduces new information to be used as the basis for prioritization. These priority lists shall be based upon project plans submitted by municipalities, and the following criteria:

(a) That a project complies with all applicable standards in part 31 and the federal water pollution control act.

(b) An application for a segment of a project that received funds under the title II construction grant program or title VI state revolving loan funds of the federal water pollution control act or the strategic water quality initiatives fund created in section 5204 shall be first priority on its respective priority list for funding for a period of not more than 3 years after funds were first committed under those programs.

(c) If the project is a sewage treatment works project or a stormwater treatment project, all of the following criteria:

(i) The severity of the water pollution problem to be addressed, maximizing progress towards restoring beneficial uses and meeting water quality standards.

(ii) A determination of whether a project is or was necessary to comply with an order, permit, or other document with an enforceable schedule for addressing a municipality's sewage-related water pollution problems that was issued by the department or entered as part of an action brought by the state against the municipality or any component of the municipality. A municipality may voluntarily agree to an order, permit, or other document with an enforceable schedule as described in this subparagraph.

(iii) The population to be served by the project. However, the criterion provided in this subparagraph shall not be applied to projects funded by the strategic water quality initiatives fund created in section 5204.

(iv) The dilution ratio existing between the discharge volume and the receiving stream.

(d) If the project is a sewage treatment works project, 100 priority points shall be awarded pursuant to R 323.958 of the Michigan administrative code for each of the following that apply to the project:

(i) The project addresses on-site septic systems that are adversely affecting the water quality of a water body or represent a threat to public health, provided that soil and hydrologic conditions are not suitable for the replacement of those on-site septic systems.

(ii) The project includes the construction of facilities for the acceptance or treatment of septage collected from on-site septic systems.

(e) Rankings for nonpoint source projects shall be consistent with the state nonpoint source management plan developed pursuant to section 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329.

(f) Any other criteria established by the department by rule.

(6) The priority list shall be submitted annually to the chair of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of natural resources and the environment.

(7) For purposes of providing assistance, the priority list shall take effect on the first day of each fiscal year.

(8) This section does not limit other actions undertaken to enforce part 31, the federal water pollution control act, or any other act.

(9) As used in this section, “on-site septic system” means that term as defined in section 5201.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2001, Act 221, Imd. Eff. Jan. 2, 2002 ;-- Am. 2002, Act 398, Eff. Nov. 5, 2002
Compiler's Notes: Enacting section 2 of Act 398 of 2002 provides:“Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered

electors voting on the question at the November 2002 general election."Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.
Popular Name: Act 451
Popular Name: NREPA

324.5304 Assistance; requirements.

Sec. 5304. Subject to sections 5309 and 5310, assistance provided to municipalities to construct sewage treatment works projects, stormwater projects, and nonpoint source projects shall be in accordance with all of the following:

(a) Assistance for approved sewage treatment works projects and stormwater treatment projects shall be provided for projects in the fundable range of the priority list developed pursuant to 5303, and to other projects that may become fundable pursuant to section 5310.

(b) Assistance for approved qualified nonpoint source projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 5303. The director shall annually allocate at least 2% of the available funds to the extent needed to provide assistance to projects on the nonpoint source priority list. If these funds are not awarded, the allocation shall revert to provide assistance to projects on the sewage treatment works priority list.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2002, Act 397, Eff. Nov. 5, 2002
Compiler's Notes: Enacting section 2 of Act 397 of 2002 provides:"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors

voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed $1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.
Popular Name: Act 451
Popular Name: NREPA

324.5305 Descriptions and timetables for actions.

Sec. 5305. The department shall provide written descriptions and timetables for actions required under this part, including the intended use plan developed under section 5306, and may provide to municipalities that request assistance in writing other information that the department considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5306 Intended use plan; preparation and submission; purpose; public participation; changes in plan; contents of plan; notice of approval; notification of municipality; information to be provided; schedule.

Sec. 5306. (1) The department shall prepare and submit an intended use plan annually to identify proposed annual intended uses of the fund, and to facilitate the negotiation process that the department may conduct with the United States environmental protection agency for the capitalization grant agreement and schedule of payments to be made to this state under the federal water pollution control act.

(2) The department shall provide for a public participation process that requires not less than 1 public hearing for the intended use plan. The department may make changes in the intended use plan without holding additional hearings in response to the comments received from the United States environmental protection agency and through the public participation process.

(3) The intended use plan shall include all of the following:

(a) A copy of the state's priority lists.

(b) A description of the long- and short-term goals of the fund.

(c) The proposed fundable range and an allocation of the funds available for projects on the nonpoint source priority list and for the sewage treatment works projects and stormwater treatment projects priority list.

(d) A description of the projects that are on the priority lists, including project categories and types, applicable discharge or enforceable requirements, proposed terms of the assistance, including a schedule of estimated disbursements of funds, and the names of the municipalities proposed to receive assistance.

(e) Any necessary assurances or proposals indicating how the state intends to meet applicable federal requirements.

(f) A description of the criteria and method for distribution of the fund.

(g) A description of the public participation process followed in the development of the intended use plan and the results of that process.

(h) Any other information needed to comply with the federal water pollution control act.

(i) Any other information considered appropriate by the department.

(4) Upon notice from the United States environmental protection agency that the intended use plan is approved, the department shall notify each municipality of its inclusion on the intended use plan and shall further provide copies of the sewage treatment works projects and stormwater treatment projects priority list, the nonpoint source project priority list, and the intended use plan to all persons requesting such information. Following notification, the department shall establish, with the concurrence of the municipality, a schedule for project plan approval, submittal of a complete application for assistance, and approval of plans and specifications.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5307 Project plans; review; approval or disapproval; extension of review period; notice of deficiencies; review of subsequent submittals.
Sec. 5307. (1) The department shall review, generally in priority order, the project plans for projects in the fundable range and either approve or disapprove the plans within 120 days of notifying the municipalities of their inclusion in the intended use plan. Upon determination by the department that a project is complex and warrants additional review, the department shall notify the municipality and may extend the review period for not more than 60 days.

(2) If the project plan is disapproved, the department shall notify the municipality of any deficiencies that need to be corrected.

(3) The department shall review subsequent submittals and either approve or disapprove the amended project plan within 120 days of those submittals.

(4) If the project plan is not approved, the department shall notify the municipality of the deficiencies.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5308 Application for assistance; requirements; revenue source; acceptance; notice of additional information required; approval or disapproval of application.
Sec. 5308. (1) To apply for assistance from the fund, a municipality shall submit the following, if applicable as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with municipal

bond obligations existing at the time assistance is requested, and pledged to both of the following purposes:

(i) If assistance is in the form of a loan, the timely repayment of the loan.

(ii) Adequate revenues from a user-based source to fund the operation and maintenance of the project.

(b) A project plan approved under section 5307.

(c) A certification by an authorized representative of a municipality affirming that the municipality has the legal, managerial, institutional, and financial capability to build, operate, and maintain the project.

(d) A letter of credit, insurance, or other credit enhancement to support the credit position of the municipality, as required by the department.

(e) A set of plans and specifications suitable for bidding.

(f) A certification from an authorized representative of the municipality that the applicant has, or will have prior to the start of construction, all applicable state and federal permits required for construction of the project.

(g) A certified resolution from the municipality designating an authorized representative for the project.

(h) A certification from an authorized representative of the municipality that an undisclosed fact or event, or pending litigation, will not materially or adversely affect the project, the prospects for its completion, or the municipality's ability to make timely loan repayments, if applicable.

(i) If applicable, all executed intermunicipal service agreements.

(j) An agreement that the municipality will operate the project in compliance with applicable state and federal laws.

(k) An agreement that the municipality will not sell, lease, abandon, or otherwise dispose of the project without an effective assignment of obligations and the prior written approval of the department and the authority.

(l) An agreement that all municipal project accounts will be maintained in accordance with generally accepted government accounting standards as defined and required under the federal water pollution control act.

(m) An agreement that the municipality will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial records of the project, and that the municipality will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

(n) An agreement that all municipal contracts with contractors will provide that the contractor and any subcontractor may be subject to a financial audit and that contractors and subcontractors shall comply with generally accepted governmental accounting standards.

(o) An agreement that all pertinent records shall be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation, a claim, an appeal, or an audit is begun before the end of the 3-year period, records shall be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer. As used in this subdivision, “initiation of the operation” means the date certain set by the municipality and accepted by the department, on which use of the project begins for the purposes for which it was constructed.

(p) If the project is segmented as provided in section 5309, a schedule for completion of the project and adequate assurance that the project shall be completed with or without assistance from the fund or that the segmented project shall be operational without completion of the entire project.

(q) An agreement that the project shall proceed in a timely fashion if the application for assistance is approved.

(r) An application fee, if required by the department.

(2) The requirement of subsection (1)(a) for a dedicated source of revenue may include a revenue source pledged to repay the debt to the fund from sources including, but not limited to, 1 or more of the following:

(a) Ad valorem taxes.

(b) Special assessments.

(c) User-based revenue collections.

(d) General funds of the municipality.

(e) Benefit charges.

(f) Tap-in fees, or other 1-time assessments.

(3) The department shall accept applications for assistance from municipalities in the fundable range of the priority list that have approved project plans and shall determine whether an application for assistance is administratively complete and notify the applicant within 30 calendar days of receipt of the application specifying any additional information necessary to complete the application.

(4) The department shall approve or disapprove an application within 30 calendar days of the determination that the application is complete.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5309 Segmenting sewage treatment work project.
Sec. 5309. To ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single sewage treatment work project or stormwater project, the department may segment a sewage treatment work project if either of the following criteria is present:

(a) The cost of the proposed project is more than 30% of the amount available in the fund.

(b) Upon application of a municipality, the department has approved a municipality's application for segmenting a project.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5310 Project subject to bypass; extension of schedule; effect of bypass.
Sec. 5310. A project in the fundable range of a priority list that fails to meet the schedule established by the department under section 5306, or does not have approved plans and specifications and an approvable application 90 days prior to the last day of the fiscal year, whichever comes first, is subject to bypass. A municipality may request an extension of the schedule for cause. A project bypassed pursuant to this section shall not be considered for an order of approval until all other projects in the fundable range have either been funded or rejected. This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle. After a project within the fundable range has been bypassed, the department may award assistance to projects outside the fundable range. Assistance shall be made available to projects outside the fundable range in priority order contingent upon the municipality's satisfaction of all applicable requirements for assistance pursuant to section 5308 within the time period established by the department, but not to exceed 60 days from the date of notification of bypass.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5311 Order of approval; certification of eligibility; method of establishing interest rate.

Sec. 5311. (1) The department shall review a complete application for assistance for a project in the fundable range. If the department approves the application for assistance, the department shall issue, subject to section 5310, an order of approval to establish the specific terms of the assistance. The order of approval shall include, but not be limited to, all of the following:

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

(c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the premium charged.

(2) The order of approval shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) After issuance of the order, the department shall certify to the authority that the municipality is eligible to receive assistance.

(4) Within each annual funding cycle, the method of establishing the interest rate applicable to a loan or project refinancing assistance shall be applied equally within tier I and tier II projects to all municipalities receiving such assistance.

(5) The method of establishing interest rates may provide for a different level of subsidy for tier I projects than for tier II projects.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5312 Termination of assistance; determination; causes; notice; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5312. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(3) The department shall give written notice to the municipality by certified letter of the intent to issue an order recommending that assistance be terminated. This notification must be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of assistance under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5313 Petition; orders; repayment of outstanding loan balance; requirements under state or federal law.
Sec. 5313. (1) A municipality may petition the department to make a determination and issue an order under section 5312(1) for cause.

(2) The department may issue an order to terminate the project for cause that is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order to the authority recommending appropriate action.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

(5) Termination of the loan under this section does not relieve the municipality of any requirements that may exist under state or federal law to construct the project.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5314 Costs of administering and implementing part; payment.
Sec. 5314. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal water pollution control act.

(b) Loan fees, not to exceed the ratio that the annual appropriation for administration of this part bears to the total value of loans awarded for the fiscal year in which the appropriation was made, as estimated in the intended use plan.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5315 Duration of current priority list.
Sec. 5315. The priority list developed under Act No. 329 of the Public Acts of 1966, being sections 323.111 to 323.128 of the Michigan Compiled Laws, and rules promulgated under that act, shall remain in effect until a priority list is developed by the department pursuant to this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5316 Powers of department.
Sec. 5316. The department has the powers necessary or convenient to carry out and effectuate the purpose, objectives, and provisions of this part, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of his or her powers.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, to enter into agreements with any person or the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(d) Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(e) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(f) Review and approve all necessary documents in a municipality's application for assistance and issue an order authorizing assistance to the authority.

(g) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(h) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(i) Make application requesting a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(j) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and to select projects to be funded.

(k) Prepare and submit an annual report required by the federal water pollution control act.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 54

SAFE DRINKING WATER ASSISTANCE

324.5401 Definitions; A to C.
Sec. 5401. As used in this part:

(a) “Act 399” means the safe drinking water act, 1976 PA 399, MCL 325.101 to 325.1023.

(b) “Annual user costs” means an annual charge levied by a water supplier on users of the waterworks system to pay for each user's share of the cost for operation, maintenance, and replacement of the waterworks system. These costs may also include a charge to pay for the debt obligation.

(c) “Assistance” means 1 or more of the following activities to the extent authorized by the federal safe drinking water act:

(i) Provision of loans for the planning, design, and construction or alteration of waterworks systems.

(ii) Project refinancing assistance.

(iii) The guarantee or purchase of insurance for local obligations, if the guarantee or purchase action would improve credit market access or reduce interest rates.

(iv) Use of the proceeds of the fund as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by this state, if the proceeds of the sale of the bonds will be deposited into the fund.

(v) Provision of loan guarantees for sub-state revolving funds established by water suppliers that are municipalities.

(vi) The use of deposited funds to earn interest on fund accounts.

(vii) Provision for reasonable costs of administering and conducting activities under this part.

(viii) Provision of technical assistance under this part.

(ix) Provision of loan forgiveness for certain planning costs incurred by disadvantaged communities.

(d) “Authority” means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1077.

(e) “Capitalization grant” means the federal grant made to this state by the United States environmental protection agency, as provided in the federal safe drinking water act.

(f) “Community water supply” means a public water supply that provides year-round service to not less than 15 living units or which regularly provides year-round service to not less than 25 residents.

(g) “Construction activities” means any actions undertaken in the planning, designing, or building of a waterworks system. Construction activities include, but are not limited to, all of the following:

(i) Engineering services.

(ii) Legal services.

(iii) Financial services.

(iv) Preparation of plans and specifications.

(v) Acquisition of land or structural components, or both, if the acquisition is integral to a project authorized by this part and the purchase is from a willing seller at fair market value.

(vi) Building, erection, alteration, remodeling, or extension of waterworks systems, providing the extension is not primarily for the anticipation of future population growth.

(vii) Reasonable expenses of supervision of the project activities described in subparagraphs (i) to (vi).

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5402 Definitions; D to N.
Sec. 5402. As used in this part:

(a) "Department" means the department of environmental quality or its authorized agent or representative.

(b) "Director" means the director of the department of environmental quality or his or her designated representative.

(c) "Disadvantaged community" means a municipality in which all of the following conditions are met:

(i) Users within the area served by a proposed public water supply project are directly assessed for the costs of construction.

(ii) The area served by a proposed public water supply project does not exceed 120% of the statewide median annual household income for Michigan.

(iii) The municipality demonstrates at least 1 of the following:

(A) More than 50% of the area served by a proposed public water supply project is identified as a poverty area by the United States bureau of the census.

(B) The median annual household income of the area served by a proposed public water supply project is less than the most recently published federal poverty guidelines for a family of 4 in the 48 contiguous United States. In determining the median annual household income of the area served by the proposed public water supply project under this subparagraph, the municipality shall utilize the most recently published statistics from the United States Bureau of the Census, updated to reflect current dollars, for the community which most closely approximates the area being served. If these figures are not available for the area served by the proposed public water supply project, the municipality may have a survey conducted to document the median annual household income of the area served by the project.

(C) The median annual household income of the area served by a proposed public water supply project is less than the most recently published statewide median annual household income for Michigan, and annual user costs for water supply exceed 1.5% of the median annual household income of the area served by the proposed public water supply project.

(D) The median annual household income of the area served by a proposed public water supply project is not greater than 120% of the statewide median annual household income for Michigan, and annual user costs for water supply exceed 3% of the median annual household income of the area served by the proposed project.

(d) “Federal safe drinking water act” means title XIV of the public health service act, chapter 373, 88 Stat. 1660, and the rules promulgated under that act.

(e) “Fund” means the safe drinking water revolving fund created in section 16b of the shared credit rating act, 1985 PA 227, MCL 141.1066b.

(f) “Fundable range” means those projects, taken in descending order on the priority list, for which the department estimates sufficient funds exist to provide assistance during each annual funding cycle.

(g) “Municipality” means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law.

(h) “Noncommunity water supply” means a public water supply that is not a community water supply, but that has not less than 15 service connections or that serves not less than 25 individuals on an average daily basis for not less than 60 days per year.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5403 Definitions; P to W.
Sec. 5403. As used in this part:

(a) “Priority list” means the annual ranked listing of projects developed by the department in section 5406.

(b) “Project” means a project related to the planning, design, and construction or alteration of a waterworks system.

(c) “Project refinancing assistance” means buying or refinancing the debt obligations of water suppliers if construction activities commenced, and the debt obligation was incurred, after the effective date of this part.

(d) "Public water supply" means a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water, except for those waterworks systems that supply water to only 1 house, apartment, or other domicile occupied or intended to be occupied on a day-to-day basis by an individual, family group, or equivalent.

(e) "State drinking water standards" means rules promulgated under Act 399 that establish water quality standards necessary to protect public health or that establish treatment techniques to meet these water quality standards.

(f) "Water supplier" or "supplier" means a municipality or its designated representative accepted by the director, a legal business entity, or any other person who owns a public water supply. However, water supplier does not include a water hauler.

(g) "Waterworks system" or "system" means a system of pipes and structures through which water is obtained or distributed and includes any of the following that are actually used or intended to be used for the purpose of furnishing water for drinking or household purposes:

(i) Wells and well structures.

(ii) Intakes and cribs.

(iii) Pumping stations.

(iv) Treatment plants.

(v) Storage tanks.

(vi) Pipelines and appurtenances.

(vii) A combination of any of the items specified in this subdivision.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5404 Water suppliers; qualifications for assistance.
Sec. 5404. (1) Water suppliers owning the following types of public water supplies qualify to receive assistance under this part:

(a) A community water supply.

(b) A noncommunity water supply that operates as a nonprofit entity.

(2) Water suppliers identified in subsection (1) that serve 10,000 people or less may qualify for assistance from funds prescribed in section 1452(a)(2) of part 6 of the federal safe drinking water act, 42 U.S.C. 300j-12.

(3) Project planning costs are eligible for funding under this part and will be reimbursed by the department as follows:

(a) For a municipality serving greater than 10,000 people, incurred planning costs related to the proposed project may be reimbursed as part of the construction loan approved by the Michigan municipal bond authority. These costs shall be repaid as part of the outstanding construction loan proceeds according to a schedule established by the authority.

(b) For a municipality serving less than 10,000 people, incurred planning costs related to the proposed project will be directly reimbursed by the department upon completion and submittal of an approvable project plan by the municipality to the department. These costs shall be repaid as part of the outstanding planning loan proceeds according to a schedule established by the authority.

(c) For disadvantaged communities, incurred planning costs related to the proposed project shall be directly reimbursed to the extent funds are available by the department upon completion and submittal of an approvable project plan by the municipality to the department. Technical

assistance funds identified in section 1452(g)(2)(D) or section 1452(d)(1) of part E of the federal safe drinking water act, 42 U.S.C. 300j-12, shall be used to the extent available, to forgive repayment of the planning loan.

(4) Only water suppliers that have no outstanding prior year fees as prescribed in Act 399 may receive assistance under this part.

(5) A federal, state, or other water supplier that is not regulated by the department shall not receive assistance under this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5405 Water suppliers; application for assistance; project plan.
Sec. 5405. (1) A water supplier who is interested in applying for assistance under this part shall prepare and submit to the department a project plan as provided in this section. The department shall use project plans submitted under this section to develop a priority list for assistance as provided under this part.

(2) During the development of a project plan, a water supplier that is a municipality shall consider and utilize, where practicable, cooperative regional or intermunicipal projects, and a water supplier that is not a municipality shall consider and utilize, where practicable, connection to, or ownership by, a water supplier that is a municipality.

(3) The project plan for a project shall include documentation that demonstrates that the project is needed to assure maintenance of, or progress toward, compliance with the federal safe drinking water act. A complete project plan shall include all of the following as background:

(a) Identification of planning area boundaries and characteristics.

(b) A description of the existing waterworks systems.

(c) A description of the existing waterworks problems and needs, including the severity and extent of water supply problems or public health problems.

(d) An examination of projected needs for the next 20 years.

(e) Population projections and the source and basis for the population projections.

(4) A project plan shall include an analysis of alternatives, which shall consist of a systematic identification, screening, study, evaluation, and cost-effectiveness comparison of feasible technologies, processes, and techniques. The alternatives shall be capable of meeting the applicable state drinking water standards over the design life of the facility, while recognizing environmental and other nonmonetary considerations. The analysis shall include, but not be limited to, all of the following:

(a) A planning period for the cost-effectiveness analysis of 20 years or other such planning period as is justified by the unique characteristics of the project.

(b) Monetary costs that consider the present worth or equivalent annual value of all capital costs and operation and maintenance costs.

(c) Provisions for the ultimate disposal of residuals and sludge resulting from drinking water treatment processes.

(d) A synopsis of the environmental setting of the project and an analysis of the potential environmental and public health impacts of the various alternatives, as well as the identification of any significant environmental or public health benefits precluded by rejection of an alternative.

(e) Consideration of opportunities to make more efficient use of energy and resources.

(f) A description of the relationship between the service capacity of each waterworks systems alternative and the estimated future needs using population projections under subsection (3)(e).

(5) A project plan shall include a description of the selected alternative, including all of the following:

(a) Relevant design parameters.

(b) Estimated capital construction costs, operation and maintenance costs, and a description of the manner in which project costs will be financed.

(c) A demonstration of the water supplier's ability to repay the incurred debt, including an analysis of the impacts of the annual user costs for water supply on its users.

(d) A demonstration that the selected alternative is implementable considering the legal, institutional, technical, financial, and managerial resources of the water supplier.

(e) Assurance that there is sufficient waterworks system service capacity for the service area based on projected needs identified in subdivision (d) while avoiding the use of funds available under this part to finance the expansion of any public water system if a primary purpose of the expansion is to accommodate future development.

(f) Documentation of the project's consistency with the approved general plan prepared pursuant to section 4 of Act 399, MCL 325.1004.

(g) An analysis of the environmental and public health impacts of the selected alternative.

(h) Consideration of structural and nonstructural measures that could be taken to mitigate or eliminate adverse effects on the environment.

(6) A project plan shall describe the public participation activities conducted during planning and shall include all of the following:

(a) Significant issues raised by the public and any changes to the project that were made as a result of the public participation process.

(b) A demonstration that there were adequate opportunities for public consultation, participation, and input in the decision-making process during alternative selection.

(c) A demonstration that before the adoption of the project plan, the water supplier held a public hearing on the proposed project not less than 30 days after advertising in local media of general circulation and at a time and place conducive to maximizing public input.

(d) A demonstration that, concurrent with advertisement of the hearing, a notice of public hearing was sent to all affected local, state, and federal agencies and to any public or private parties that have expressed an interest in the proposed project.

(e) A transcript or recording of the hearing, a list of all attendees, any written testimony received, and the water supplier's responses to the issues raised.

(7) A project plan shall include either of the following, as appropriate:

(a) For a water supplier that is a municipality, a resolution adopted by the governing board of the municipality approving the project plan.

(b) For a water supplier that is not a municipality, a statement of intent to implement the project plan.

(8) A project plan shall not have as a primary purpose the construction of or expansion of a waterworks system to accommodate future development.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5406 Projects eligible for assistance; priority list; award of points; annual submission to legislative standing committees; segmenting of projects; equitable distribution of funding; priority list to be effective first day of fiscal year.
Sec. 5406. (1) The department shall annually develop a priority list of projects eligible for assistance under this part. Projects that are not funded during the year that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria, unless the water supplier submits an amendment to its project plan that introduces new information to be used as the basis for prioritization. The priority list shall be based on project plans submitted by water suppliers under section 5405 and the criteria listed in subdivisions (a) through (f). Each project shall be assigned points up to a maximum of 1,000. The point values are maximum values available for each category or subcategory listed in this section and shall only be awarded if the project substantially addresses the problem for which the point award is given. If a project is primarily designed to replace individual wells at private homes, 50% or more of the homes in the affected area shall meet equivalent water quality or infrastructure deficiency criteria listed in subdivisions (a) through (f) in order to receive the maximum available points. If less than 50% of the homes in the affected area can demonstrate deficiencies, 1/2 of the total points available shall be awarded. Points shall be awarded as follows:

(a) A maximum of 450 points may be awarded to a project that addresses drinking water quality as outlined in Act 399, if the project:

(i) Is designed to eliminate an acute violation of a drinking water standard as defined in part 4 of the administrative rules for Act 399. A violation of a surface water treatment technique, or if a waterborne disease outbreak has been documented, 250 points shall be awarded for each violation.

(ii) Is designed to eliminate a violation of a drinking water standard other than those outlined in subparagraph (i), 200 points shall be awarded for each violation.

(iii) Is designed to upgrade a facility to maintain compliance with drinking water standards or system capacity requirements, 150 points shall be awarded.

(iv) Is designed to eliminate an exceedance of a secondary maximum contaminant level for aesthetic water quality, 25 points shall be awarded.

(b) A maximum of 350 points may be awarded to a project that addresses infrastructure improvements, as follows:

(i) If source or treatment facilities are upgraded, including the watermains to connect to the distribution system, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

(C) For other source or treatment facility upgrades not included in subparagraph (i)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded.

(E) For source water protection, 50 points shall be awarded.

(ii) If transmission or distribution watermains are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where flow or residual pressure is less than acceptable, 100 points shall be awarded.

(B) For reliability, including looping or redundant feeds, 75 points shall be awarded.

(C) Other transmission or distribution system upgrades not included in subparagraph (ii)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded.

(iii) If water storage facilities or pumping stations are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where storage or pumping capacity is less than minimum requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

(C) Other storage facility or pumping station upgrades not included in subparagraph (iii)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded.

(c) A maximum of 50 points shall be awarded based on the population served by the water system according to the following table. However, a transient noncommunity water supply as defined in section 2 of Act 399 is eligible for 1/2 of the point value listed in the following table:

Population	Points
>50,000	50
10,001 – 50,000	40
3,301 – 10,000	30
501 – 3,300	20
0 – 500	10

(d) A maximum of 50 points shall be awarded to a community water supply that is a disadvantaged community.

(e) A maximum of 100 points shall be awarded for projects that include consolidation as follows:

(i) If 1 or more public water supplies are brought into compliance with state drinking water standards as a result of consolidation, 100 points shall be awarded.

(ii) If deficiencies, which are documented in writing by the department, at 1 or more public water supplies are corrected as a result of consolidation, 60 points shall be awarded.

(iii) Other consolidations, not included under subparagraph (i) or (ii), shall be awarded 40 points.

(f) For communities that have completed a wellhead protection plan or a source water protection plan, 100 points shall be awarded.

(g) After scoring, using the criteria in subdivisions (a) through (f), if 2 or more projects have the same score, the following tie-breaker shall be applied:

(i) If the system has fewer than 2 violations of the monitoring, record-keeping, and reporting requirements of Act 399 in the previous 2-year reporting period, or no violations if ownership of the system has changed in the previous 2 years, it shall rank above systems having more violations.

(ii) After applying the tie-breaker in subparagraph (i), if 2 or more projects score exactly the same, a calculation of the cost per population served by the water system shall be made. The affected projects shall be ranked with the lowest ratio of cost to population ranked higher.

(2) The priority list shall be submitted annually to the chairpersons of the senate and house of representatives standing committees that primarily

consider legislation pertaining to the protection of public health and the environment.

(3) In preparing the priority list, to ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single water supply project, the department may segment a project if either of the following criteria is present:

(a) The cost of the proposed project is more than 30% of the total amount available in the fund during the fiscal year.

(b) The department has approved a water supplier's application for segmenting a project.

(4) Segments of a project that have been segmented under subsection (3) shall be assigned priority points based on the project as identified in the project plan. After funding assistance for the first segment is accepted, the remaining segments will retain first priority for funding assistance on the next 3 fiscal year priority lists. All projects with previously funded segments will be designated with first priority. Ranking order for these projects to receive funding assistance will be subject to the relative ranking of all first segment projects.

(5) In preparing the intended use plan, the department shall make every effort to assure that funding for assistance is equitably distributed among public water supplies of varying sizes.

(6) For purposes of providing assistance, the priority list shall take effect on the first day of each fiscal year.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5407 Identification of projects in fundable range.

Sec. 5407. The department shall annually identify those projects in the fundable range of the priority list. Following the identification of projects in the fundable range, the department shall review, generally in

priority order, the project plans for these projects and, following completion of the environmental review process described in section 5408, either approve or disapprove the project plans.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5408 Project plan; environmental review; categorical exclusion; criteria; environmental assessment; finding of no significant impact; environmental impact statement; record of decision; project reevaluation for compliance with national environmental policy act requirements; action prohibited during public comment period.
Sec. 5408. (1) The department shall conduct an environmental review of the project plan of each project in the fundable range of the priority list to determine whether any significant impacts are anticipated and whether any changes can be made in the project to eliminate significant adverse impacts. As part of this review, the department may require the submittal of additional information or additional public participation and coordination to justify the environmental determination.

(2) Based on the environmental review under subsection (1), the department may issue a categorical exclusion for categories of actions that do not individually, cumulatively over time or in conjunction with other federal, state, local, or private actions have a significant adverse effect on the quality of the human environment or public health. Additional environmental information documentation, environmental assessments, and environmental impact statements will not be required for excluded actions.

(3) Following receipt of the project plan, the director shall determine if the proposed public water supply project qualifies for a categorical exclusion and document the decision.

(4) The director may revoke a categorical exclusion and require a complete environmental review if, subsequent to the determination, the director finds any of the following:

(a) The proposed public water supply project no longer qualifies for a categorical exclusion due to changes in the proposed plan.

(b) New evidence exists documenting a serious health or environmental issue.

(c) Federal, state, local, or tribal laws will be violated by the proposed public water supply project.

(5) The proposed project shall not qualify for a categorical exclusion if the director determines any of the following criteria are applicable:

(a) The proposed facilities result in an increase in residuals and sludge generated by drinking water processes, either volume or type, which would negatively impact the performance of the waterworks system or the disposal methods, or would threaten an aquifer recharge zone.

(b) The proposed facilities would provide service to a population greater than 30% of the existing population, unless population projections required in section 5405(3)(e) support projected needs.

(c) The proposed public water supply project is known, or expected, to directly or indirectly affect cultural areas, fauna or flora habitats, endangered or threatened species, or environmentally important natural resource areas.

(d) The proposed public water supply project directly or indirectly involves the extension of transmission systems to new service areas.

(e) The proposed public water supply project has been shown not to be the cost-effective alternative.

(f) The proposed public water supply project will cause significant public controversy.

(6) If, based on the environmental review under subsection (1), the department determines that an environmental assessment is necessary, the department may describe the following:

(a) The purpose and need for the project.

(b) The project, including its costs.

(c) The alternatives considered and the reasons for their acceptance or rejection.

(d) The existing environment.

(e) Any potential adverse impacts and mitigative measures.

(f) How mitigative measures will be incorporated into the project, as well as any proposed conditions of financial assistance and the means for monitoring compliance with the conditions.

(7) The department may issue a finding of no significant impact, based upon an environmental assessment which documents that potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(8) An environmental impact statement may be required when the department determines any of the following:

(a) The project will have a significant impact on the pattern and type of land use or the growth and distribution of the population.

(b) The effects of the project's construction or operation will conflict with local or state laws or policies.

(c) The project will have significant adverse impacts on any of the following:

(i) Wetlands.

(ii) Flood plains.

(iii) Threatened or endangered species or habitats.

(iv) Cultural resources, including any of the following:

(A) Park lands.

(B) Preserves.

(C) Other public lands.

(D) Areas of recognized scenic, recreational, agricultural, archeological, or historical value.

(d) The project will cause significant displacement of population.

(e) The project will directly or indirectly, such as through induced development, have significant adverse effect upon any of the following:

(i) Local ambient air quality.

(ii) Local noise levels.

(iii) Surface water and groundwater quantity or quality.

(iv) Shellfish.

(v) Fish.

(vi) Wildlife.

(vii) Wildlife natural habitats.

(f) The project will generate significant public controversy.

(9) Based on the environmental impact statement, a record of decision summarizing the findings of the environmental impact statement shall be issued identifying those conditions under which the project can proceed and maintain compliance with the national environmental policy act of 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341 to 4347.

(10) If 5 or more years have elapsed since a determination of compliance with national environmental policy act, or if significant changes in the project have taken place, the department shall reevaluate the project for compliance with the national environmental policy act requirements. The department may do any of the following:

(a) Reaffirm the original finding of no significant impact or the record of decision through the issuance of a public notice or statement of finding.

(b) Issue an amendment to a finding of no significant impact or revoke a finding of no significant impact and issue a public notice that the preparation of an environmental impact statement is required.

(c) Issue a supplement to a record of decision or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(11) Action regarding approval of a project plan or provision of financial assistance shall not be taken during a 30-day public comment period after the issuance of a finding of no significant impact or record of decision.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5409 Application for fund assistance; contents; availability of revenue sources; acceptance of applications by department; liability for incurred costs.

Sec. 5409. (1) A water supplier whose project plan is approved or under review by the department under section 5407 may apply for assistance

from the fund by submitting an application to the department. A complete application shall include all of the following, if applicable, as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with obligations of debt instruments existing at the time assistance is requested, and pledged to both of the following purposes:

(i) The timely repayment of principal and interest.

(ii) Adequate revenues to fund the operation and maintenance of the project.

(b) Evidence of an approved project plan.

(c) A certified resolution from a water supplier that is a municipality, or a letter of appointment from a water supplier that is not a municipality, designating an authorized representative for the project.

(d) A certification by an authorized representative of the water supplier affirming that the supplier has the legal, institutional, technical, financial, and managerial capability to build, operate, and maintain the project.

(e) A letter of credit, insurance, or other credit enhancement to support the credit position of the water supplier, as required by the department.

(f) A set of plans and specifications, developed in accordance with Act 399, which is suitable for bidding.

(g) A certification from an authorized representative of the water supplier that it has, or will have before the start of construction, all applicable state and federal permits required for construction of the project.

(h) A certification from an authorized representative of the water supplier that an undisclosed fact or event, or pending litigation, will not

materially or adversely affect the project, the prospects for its completion, or the water supplier's ability to make timely loan repayments, if applicable.

(i) If applicable, all executed service contracts or agreements.

(j) An agreement that the water supplier will operate the waterworks system in compliance with applicable state and federal laws.

(k) An agreement that the water supplier will not sell, lease, abandon, or otherwise dispose of the waterworks system without an effective assignment of obligations and the prior written approval of the department and the authority.

(l) An agreement that:

(i) For water suppliers that are municipalities, all accounts will be maintained in accordance with generally accepted accounting practices, generally accepted government auditing standards, and chapter 75 of title 31 of the United States Code, 31 U.S.C. 7501 to 7507, as required by the federal safe drinking water act.

(ii) For water suppliers that are not municipalities, all accounts will be maintained in accordance with generally accepted accounting practices and generally accepted auditing standards.

(m) An agreement that all water supplier contracts with contractors will require them to maintain project accounts in accordance with the requirements of this subsection and provide notice that any subcontractor may be subject to a financial audit as part of an overall project audit.

(n) An agreement that the water supplier will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial records of the project, and that the water supplier will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

(o) An agreement that all pertinent records shall be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation, a claim, an appeal, or an audit is begun before the end of the 3-year period, records shall be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer. As used in this subdivision, “initiation of the operation” means the date certain set by the water supplier and accepted by the department, on which use of the project begins for the purposes for which it was constructed.

(p) If the project is segmented, as provided in section 5406(3), a schedule for completion of the project and adequate assurance that the project will be completed with or without assistance from the fund or that the segmented project will be operational without completion of the entire project.

(q) An agreement that the project will proceed in a timely fashion if the application for assistance is approved.

(r) An application fee, if required by the department.

(2) A demonstration that a dedicated source of revenue will be available for operating and maintaining the waterworks system and repaying the incurred debt.

(3) The department shall accept applications for assistance from water suppliers in the fundable range of the priority list and shall determine whether an application for assistance is complete.

(4) The state is not liable to a water supplier, or any other person performing services for the water supplier, for costs incurred in developing or submitting an application for assistance under this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5410 Water suppliers; responsibility to obtain permits or clearances; incorporation of provisions, conditions, and mitigative measures; review of documents by department; enforcement.
Sec. 5410. (1) A water supplier who receives assistance under this part is responsible for obtaining any federal, state, or local permits or clearances required for the project and shall perform any surveys or studies that are required in conjunction with the permits or clearances.

(2) A water supplier who receives assistance under this part shall incorporate all appropriate provisions, conditions, and mitigative measures included in the applicable studies, surveys, permits, clearances, and licenses into the construction documents. These documents are subject to review by the department for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures shall be enforced by the water supplier or its designated representative and shall apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5411 Application for assistance; review by department; order of approval; incorporation of other documents; eligibility certification.
Sec. 5411. (1) The department shall review a complete application for assistance for a proposed project submitted under section 5409. If the department approves the application for assistance, the department shall issue an order of approval to establish the specific terms of the assistance. The order of approval shall include, but need not be limited to, all of the following:

(a) The term of the assistance.

(b) The maximum principal amount of the assistance.

(c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the premium charged.

(2) The order of approval under subsection (1) shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) After issuance of the order of approval under subsection (1), the department shall certify to the authority that the water supplier is eligible to receive assistance.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5412 Bypassed projects.
Sec. 5412. (1) The department may bypass projects that fail to meet the schedule negotiated and agreed upon between the water supplier and the department, or that do not have approved project plans and specifications and an approvable application 90 days prior to the last day of the state fiscal year, whichever comes first.

(2) A water supplier may submit a written request to the department to extend a project schedule for not more than 60 days. The request shall provide the reason for the noncompliance with the schedule. A water supplier may file 1 additional 30-day extension request to its schedule.

(3) A project bypassed under this section shall not be considered for an order of approval until all other projects have either been funded or rejected. This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle.

(4) The department shall provide affected water suppliers with a written notice of intent to bypass not less than 30 days before the bypass action.

(5) For projects bypassed under this section, the department shall transmit to the water supplier an official notice of bypass for the fundable project.

(6) A bypass action under this section does not modify any compliance dates established pursuant to a permit, order, or other document issued by the department or entered as part of an action brought by the state or a federal agency.

(7) After a project is bypassed, the department may award assistance to projects outside the fundable range. Assistance shall be made available to projects outside the fundable range in priority order contingent upon the supplier's satisfaction of all applicable requirements for assistance within the time period established by the department, but not to exceed 60 days from the date of notification. The department shall notify water suppliers with projects outside the fundable range of bypass action, of the amount of bypassed funds available for obligation, and of the deadline for submittal of a complete, approvable application.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5413 Determination to terminate assistance; issuance of order by department; cause; written notice to water supplier; repayment of outstanding loan balance not affected; other state and federal requirements not relieved; responsibility for settlement costs.
Sec. 5413. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(e) Failure to accept an offer of assistance from the fund within a period of 30 days after receipt of a proposed loan agreement from the authority.

(3) The department shall give written notice to the water supplier by certified letter of the intent to issue an order of termination. This notification shall be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5414 Determination to terminate assistance; petition by water supplier; issuance of order by department; cause; repayment of

outstanding loan balance not affected; other state or federal laws not relieved; responsibility for settlement costs.
Sec. 5414. (1) A water supplier may petition the department to make a determination that assistance to that water supplier should be terminated.

(2) Upon receipt of a petition under subsection (1), the department may issue an order recommending the authority to take appropriate action to terminate the assistance for a project for cause. The order is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order of termination to the authority recommending appropriate action.

(4) The termination of assistance by the authority does not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5415 Annual establishment of interest rates; criteria.
Sec. 5415. (1) The department shall annually establish the interest rates to be assessed for projects receiving assistance under this part. These rates of interest shall be in effect for loans made during the next state fiscal year.

(2) In establishing the interest rates under subsection (1), all of the following criteria shall be considered:

(a) Future demands.

(b) Present demands.

(c) Market conditions.

(d) Cost of compliance with program elements.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5416 Administration and implementation costs; payment sources.

Sec. 5416. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal safe drinking water act.

(b) A local match provided by the water supplier receiving assistance not to exceed the department's administrative costs associated with providing the assistance.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5417 Powers of department.
Sec. 5417. In implementing this part, the department may do 1 or more of the following:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient for the implementation of this part.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, enter into agreements with any person or the federal, state, or a local government, or participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Expend federal and state money allocated under the federal safe drinking water act for any of the following purposes, in accordance with that act:

(i) Fund activities authorized under section 1452(g)(2) of the federal safe drinking water act, which may include fund administration and the provision of set-asides annually identified as part of an intended use plan.

(ii) Fund implementation of a technical assistance program created in Act 399 and used by the state to provide technical assistance to public water systems serving not more than 10,000 persons.

(iii) Fund activities authorized under section 1452(k) of the federal safe drinking water act, which may include the lending of money for certain source water protection efforts, assisting in the implementation of capacity development strategies, conducting source water assessments, and implementing wellhead protection programs.

(d) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(e) Employ personnel as is necessary, and contract for the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(f) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(g) Review and approve all necessary documents in a water supplier's application for assistance and issue an order authorizing assistance to the authority.

h) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(i) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(j) Apply for a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(k) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and select projects to be funded.

(l) Prepare and submit an annual intended use plan and an annual report as required under the federal safe drinking water act. The department shall annually invite stakeholders including, but not limited to,

representatives of water utilities, local units of government, agricultural interests, industry, public health organizations, medical organizations, environmental organizations, consumer organizations, and drinking water consumers who are not affiliated with any of the other represented interests, to 1 or more public meetings to provide recommendations for the development of the annual intended use plan as it relates to the set-asides allowed under the federal safe drinking water act.

(m) Perform other functions necessary or convenient for the implementation of this part.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5418 Appeal; judicial review.

Sec. 5418. Determinations made by the department may be appealed in writing to the director. Determinations made by the director are final. Judicial review may be sought under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

History: Add. 1997, Act 26, Imd. Eff. June 17, 1997
Popular Name: Act 451
Popular Name: NREPA

324.5419 Repealed. 2002, Act 451, Eff. Sept. 30, 2003.

Compiler's Notes: The repealed section pertained to implementation of arsenic testing program.
Popular Name: Act 451
Popular Name: NREPA

AIR RESOURCES PROTECTION

Part 55
AIR POLLUTION CONTROL

324.5501 Definitions.

Sec. 5501. As used in this part:

(a) “Air contaminant” means a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.

(b) “Air pollution” means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics, under conditions and circumstances, and of a duration that are or can become injurious to human health or welfare, to animal life, to plant life, or to property, or that interfere with the enjoyment of life and property in this state, and excludes all aspects of employer-employee relationships as to health and safety hazards. With respect to any mode of transportation, nothing in this part or in the rules promulgated under this part shall be inconsistent with the federal regulations, emission limits, standards, or requirements on various modes of transportation. Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices.

(c) “Air pollution control equipment” means any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(d) “Category I facility” means a fee-subject facility that is a major stationary source as defined in section 302 of title III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, an affected source as defined pursuant to section 402 of title IV of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7651a, or a major stationary source as defined in section 169a of subpart 2 of part C of title I of the clean air act, chapter 360, 91 Stat. 742, 42 U.S.C. 7491.

(e) “Category II facility” means a fee-subject facility that is a major source as defined in section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or a facility subject to requirements of section 111 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411, except that a category II facility that also meets the definition of a category I facility is a category I facility.

(f) “Category III facility” means any fee-subject facility that is not a category I or category II facility.

(g) “Clean air act” means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and regulations promulgated under the clean air act.

(h) “Emission” means the emission of an air contaminant.

(i) “Farm operation” has the meaning ascribed to it in the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(j) “Fee-subject air pollutant” means particulates, expressed as PM-10 pursuant to 1996 MR 11, R 336.1116(k), sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under section 111 or 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683 and 1685, 42 U.S.C. 7411 and 7412, or title III of the clean air act, chapter 360, 77 Stat. 400, 42 U.S.C. 7601 to 7612, 7614 to 7617, 7619 to 7622, and 7624 to 7627.

(k) “Fee-subject facility” means the following sources:

(i) Any major source as defined in 40 C.F.R. 70.2.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411, when the standard, limitation, or other requirement becomes applicable to that source.

(iii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, when the standard, limitation, or other requirement becomes applicable to that source.

However, a source is not a fee-subject facility solely because it is subject to a regulation, limitation, or requirement under section 112(r) of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(iv) Any affected source under title IV.

(v) Any other source in a source category designated by the administrator of the United States environmental protection agency as required to obtain an operating permit under title V, when the standard, limitation, or other requirement becomes applicable to that source.

(l) “Fund” means the emissions control fund created in section 5521.

(m) “General permit” means a permit to install, permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, for a category of similar sources, processes, or process equipment. General provisions for issuance of general permits shall be provided for by rule.

(n) “Generally accepted agricultural and management practices” has the meaning ascribed to it in the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(o) “Major emitting facility” means a stationary source that emits 100 tons or more per year of any of the following:

(i) Particulates.

(ii) Sulfur dioxides.

(iii) Volatile organic compounds.

(iv) Oxides of nitrogen.

(p) “Process” means an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.

(q) “Process equipment” means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process.

(r) “Responsible official” means for the purposes of signing and certifying as to the truth, accuracy, and completeness of permit applications, monitoring reports, and compliance certifications any of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or an authorized representative of that person if the representative is responsible for the overall operation of 1 or more manufacturing, production, or operating facilities applying for or subject to a permit under this part and either the facilities employ more than 250 persons or have annual sales or expenditures exceeding $25,000,000.00, or if the delegation of authority to the representative is approved in advance by the department.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor.

(iii) For a county or municipality or a state, federal, or other public agency: a principal executive officer or ranking elected official. For this purpose, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(iv) For sources affected by the acid rain program under title IV: the designated representative insofar as actions, standards, requirements, or prohibitions under that title are concerned.

(s) “Schedule of compliance” means, for a source not in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a schedule of remedial measures including an enforceable sequence of

actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months. Schedule of compliance means, for a source in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a statement that the source will continue to comply with these requirements. With respect to any applicable requirement of this part, rules promulgated under this part, and the clean air act effective after the date of issuance of an operating permit, the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis, unless the underlying applicable requirement requires a more detailed schedule.

(t) "Source" means a stationary source as defined in section 302(z) of title III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, and has the same meaning as stationary source when used in comparable or applicable circumstances under the clean air act. A source includes all the processes and process equipment under common control that are located within a contiguous area, or a smaller group of processes and process equipment as requested by the owner or operator of the source, if in accordance with the clean air act.

(u) "Title IV" means title IV of the clean air act, pertaining to acid deposition control, chapter 360, 104 Stat. 2584, 42 U.S.C. 7651 to 7651o.

(v) "Title V" means title V of the clean air act, chapter 360, 104 Stat. 2635, 42 U.S.C. 7661 to 7661f.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 245, Imd. Eff. July 8, 1998
Popular Name: Act 451
Popular Name: NREPA

324.5502 Issuance of permit to install or operating permit to municipal solid waste incinerator; applicability of subsection (1); municipal solid waste incinerator existing prior to June 15, 1993.
Sec. 5502. (1) Except as provided in subsection (2), the department shall

not issue a permit to install or an operating permit to a municipal solid waste incinerator unless the municipal solid waste incinerator is located at least 1,000 feet from all of the following:

(a) A residential dwelling.

(b) A public or private elementary or secondary school.

(c) A preschool facility for infants or children.

(d) A hospital.

(e) A nursing home.

(2) Subsection (1) does not apply to a municipal solid waste incinerator that existed prior to June 15, 1993, or to the modification; alteration; expansion, including, but not limited to, the addition of 1 or more combustion units and any accompanying features or fixtures; or retrofit of such a municipal solid waste incinerator after June 15, 1993, regardless of whether the activity requires a permit.

(3) For the purposes of this section, a municipal solid waste incinerator existed prior to June 15, 1993 if either of the following applies:

(a) It was issued a permit to operate or a permit to install for installation, construction, modification, alteration, or retrofit prior to June 15, 1993, unless it was denied a permit to operate prior to June 15, 1993.

(b) It is located at a geographical site at which 1 or more incinerator units incinerated waste during the 6 months prior to June 15, 1993.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 227, Imd. Eff. Dec. 14, 1995 ;-- Am. 1998, Act 6, Imd. Eff. Feb. 6, 1998
Popular Name: Act 451
Popular Name: NREPA

324.5503 Powers of department.

Sec. 5503. The department may do 1 or more of the following:

(a) Promulgate rules to establish standards for ambient air quality and for emissions.

(b) Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(c) In accordance with this part and rules promulgated under this part, deny, terminate, modify, or revoke and reissue permits for cause. If an application for a permit is denied or is determined to be incomplete by the department, the department shall state in writing with particularity the reason for denial or the determination of incompleteness, and, if applicable, the provision of this part or a rule promulgated under this part that controls the decision.

(d) Compel the attendance of witnesses at proceedings of the department upon reasonable notice.

(e) Make findings of fact and determinations.

(f) Make, modify, or cancel orders that require, in accordance with this part, the control of air pollution.

(g) Enforce permits, air quality fee requirements, and the requirements to obtain a permit.

(h) Institute in a court of competent jurisdiction proceedings to compel compliance with this part, rules promulgated under this part, or any determination or order issued under this part.

(i) Enter and inspect any property as authorized under section 5526.

(j) Receive and initiate complaints of air pollution in alleged violation of this part, rules promulgated under this part, or any determination, permit,

or order issued under this part and take action with respect to the complaint as provided in this part.

(k) Require reports on sources and the quality and nature of emissions, including, but not limited to, information necessary to maintain an emissions inventory.

(l) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution.

(m) Encourage voluntary cooperation by all persons in controlling air pollution and air contamination.

(n) Encourage the formulation and execution of plans by cooperative groups or associations of municipalities, counties or districts, or other governmental units, industries, and others who severally or jointly are or may be the source of air pollution, for the control of pollution.

(o) Cooperate with the appropriate agencies of the United States or other states or any interstate or international agencies with respect to the control of air pollution and air contamination or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(p) Conduct or cause to be conducted studies and research with respect to air pollution control, abatement, or prevention.

(q) Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to air pollution control.

(r) Determine by means of field studies and sampling the degree of air pollution in the state.

(s) Provide advisory technical consultation services to local communities.

(t) Serve as the agency of the state for the receipt of money from the federal government or other public or private agencies and the expenditure of that money after it is appropriated for the purpose of air pollution control studies or research or enforcement of this part.

(u) Do such other things as the department considers necessary, proper, or desirable to enforce this part, a rule promulgated under this part, or any determination, permit, or order issued under this part, or the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Air Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16 , compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5504 Medical waste incineration facility; operating permit required; form and contents of application; compliance; validity and renewal of permit; review of operating permits; retrofitting facility; interim operating permit; rules; receipt of pathological or medical wastes generated off-site; records; definitions.
Sec. 5504. (1) Beginning on June 6, 1991 or on the effective date of the rules promulgated under subsection (5), whichever is later, a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the department.

(2) An application for an operating permit under subsection (1) shall be submitted in the form and contain the information required by the department. The department shall issue an operating permit only if the facility is in compliance with this part and the rules promulgated under this part.

(3) A permit issued under this section shall be valid for 5 years. Upon expiration, a permit may be renewed.

(4) Within 2 years after the effective date of the rules promulgated under subsection (5), the department shall review all operating permits issued under this part for facilities that incinerate medical waste that were issued permits prior to the promulgation of the rules under subsection (5). If, upon review, the department determines that the facility does not meet the requirements of the rules promulgated under subsection (5) and cannot be retrofitted to comply with these rules, the department shall issue an interim operating permit that is valid for 2 years only. If the facility only needs retrofitting in order to comply with the rules, the facility shall be granted an interim permit that is valid for 1 year only. However, in either case the facility shall comply with this part and all other rules promulgated under this part for the interim period. An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with the rules promulgated under subsection (5), the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility, at a facility owned and operated by the person who owns and operates that facility, or at the private practice office of a physician who has privileges to practice at that facility, if the facility is a hospital. The department shall renew an operating permit for a facility only if the facility is in compliance with this part and the rules promulgated under this part.

(5) The department shall promulgate rules to do both of the following:

(a) Regulate facilities that incinerate medical waste. These rules shall cover at least all of the following areas:

(i) Incinerator design and operation.

(ii) Ash handling and quality.

(iii) Stack design.

(iv) Requirements for receiving medical waste from generators outside the facility.

(v) Air pollution control requirements.

(vi) Performance monitoring and testing.

(vii) Record keeping and reporting requirements.

(viii) Inspection and maintenance.

(b) Regulate the operation of facilities that incinerate only pathological waste and limited other permitted solid waste.

(6) A permit issued under this section may allow a facility to receive pathological or medical wastes that were generated off the site of the facility. However, the owner or operator of the facility shall keep monthly records of the source of the wastes and the approximate volume of the wastes received by the facility.

(7) As used in this section:

(a) “Medical waste” means that term as it is defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(b) “Pathological waste” means that term as it is defined in part 138 of the public health code.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 336.1901 et seq. of the Michigan Administrative Code.

324.5505 Installation, construction, reconstruction, relocation, alteration, or modification of process or process equipment; permit to install or operate required; rules; trial operation; rules for issuance of general permit or certain exemptions; temporary locations; nonrenewable permits; failure of department to act on applications; appeal of permit actions.

Sec. 5505. (1) Except as provided in subsection (4), a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the department a permit to install, or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity.

(2) The department shall promulgate rules to establish a permit to install program to be administered by the department. Except as provided in subsections (4) and (5), the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant. The start date for emissions offsets eligible to be applied to a permit to install shall be the date established by federal rule or, if a date is not established by federal rule, January 1 of the year after the emissions baseline year used for the purpose of preparing the relevant state implementation plan. The department shall make available information in the permit database and the air emissions inventory established under section 5503(k), to identify emissions reductions that may be used as emissions offsets. This subsection does not authorize the department to seek permit changes to make emissions reductions available for use as emissions offsets.

(3) A permit to install may authorize the trial operation of a process or process equipment to demonstrate that the process or process equipment is operating in compliance with the permit to install issued under this section.

(4) The department may promulgate rules to provide for the issuance of general permits and to exempt certain sources, processes, or process equipment or certain modifications to a source, process, or process equipment from the requirement to obtain a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6). However, the department shall not exempt any new source or modification that would meet the definition of a major source or major modification under parts C and D of title I of the clean air act, 42 USC 7470 to 7515.

(5) The department may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) if applicable, that authorizes installation, operation, or trial operation, as applicable, of a source, process, or process equipment at numerous temporary locations. Such a permit shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, the rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to part C of title I of the clean air act, 42 USC 7470 to 7492, at each location, and shall require the owner or operator of the process, source, or process equipment to notify the department at least 10 days in advance of each change in location.

(6) The department may promulgate rules to establish a program that authorizes issuance of nonrenewable permits to operate for sources, processes, or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to section 5506.

(7) The failure of the department to act on an administratively and technically complete application for a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6), in accordance with a time requirement established pursuant to this part, rules promulgated under this part, or the clean air act may be treated as a final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department on the application without additional delay.

(8) Any person may appeal the issuance or denial by the department of a permit to install, a general permit, or a permit to operate authorized in rules promulgated under subsection (6), for a new source in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the final permit action, except that a petition may be filed after that deadline only if the petition is based solely on grounds arising after the

deadline for judicial review. Such a petition shall be filed no later than 90 days after the new grounds for review arise. Appeals of permit actions for existing sources are subject to section 5506(14).

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2005, Act 57, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA

324.5506 Operating permit.

Sec. 5506. (1) After the date established pursuant to subsections (3) and (4)(n), if an application for an operating permit is required to be submitted, a person shall not operate a source that is required to obtain an operating permit under section 502a of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, and which is thereby subject to the requirements of this section except in compliance with an operating permit issued by the department. A permit issued under this section does not convey a property right or an exclusive privilege.

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit, including an application for renewal of an operating permit, but final action has not been taken on the application, the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application. A source required to have a permit under this section is not in violation of subsection (1) before the date on which the source is required to submit an application pursuant to subsections (3) and (4)(n). Except as otherwise provided in subsection (5), expiration of an operating permit terminates a person's right to operate a source. This subsection does not waive an applicable requirement to obtain a permit under section 5505.

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the department within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1), or on an earlier date specified by rule, a compliance plan and an administratively

complete application for an operating permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a timely and administratively complete application, and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application, except that the department shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit program becomes effective. The schedule shall assure that at least 1/3 of the applications will be acted on by the department annually over a period not to exceed 3 years after the operating permit program becomes effective.

(4) The department shall promulgate rules to establish an operating permit program required under title V to be administered by the department. This permit program shall include all of the following and, at a minimum, shall be consistent with the requirements of title V:

(a) Provisions defining the categories of sources that are subject to the operating permit requirements of this section. Operating permits under this section are not required for any source category that is not required to obtain an operating permit under section 502(a) of the clean air act, title V of chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a.

(b) Requirements for operating permit applications, including standard application forms, the minimum information that must be submitted with an administratively complete application, and criteria for determining in a timely fashion the administrative completeness of an application.

(c) A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(d) Provisions for inspection, entry, monitoring, record keeping, and reporting applicable to each operating permit issued under this section.

(e) Requirements and provisions for expeditiously determining when applications are technically complete, for processing applications.

(f) Provisions for transmitting copies of each operating permit application and proposed and final permits, including each modification or renewal, to the administrator of the United States environmental protection agency, and for notifying all other states whose air quality may be affected and are contiguous to this state and for providing an opportunity for those states to provide written recommendations on each operating permit application and proposed permit, pursuant to the requirements of section 505(a) and (d) of the clean air act, title V of chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(g) Provisions for issuance of operating permits and, in accordance with this part and rules promulgated under this part, for denial, termination, modification, revocation, renewal, and revision of operating permits for cause.

(h) Provisions to allow for changes within a permitted source without a revision to the operating permit, if the changes are not modifications under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, and the changes do not exceed the emissions allowed under the operating permit, if the owner or operator of the source provides the department and the administrator of the United States environmental protection agency with written notification at least 7 days in advance of the proposed changes. However, the department may provide a different time frame for an emergency as defined in section 5527. The emissions allowed under the operating permit include any enforceable emission limitation, standard, or other condition, including a work practice standard, determined by the department to be required by an applicable requirement of this part, rules promulgated under this part, or the clean air act, or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this part, rules promulgated under this part, or the clean air act, to which the source would otherwise be subject. These provisions shall include the following:

(i) Changes that contravene an express permit condition. Such changes shall not include changes that would violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act, or changes that would contravene any applicable requirement for monitoring, record keeping, reporting, or compliance certification.

(ii) Changes that involve emissions trading if trading has been approved by the administrator of the United States environmental protection agency as a part of the state implementation plan.

(i) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.4(b)(14), that are not addressed or prohibited by the operating permit, if all of the following criteria are met:

(i) The change meets all applicable requirements of this part, the rules promulgated under this part, and the clean air act and does not violate any existing emission limitation, standard, or other condition of the operating permit.

(ii) The change does not affect any applicable requirement of the acid rain program under title IV and is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(iii) The source provides prompt written notice to the department and the administrator of the United States environmental protection agency, except for changes that qualify as insignificant processes or activities pursuant to section 5507(2).

(j) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.7(e)(2), that may be made immediately after the source files an application with the department, if all of the following criteria are met:

(i) The change does not violate any applicable requirement of this part, the rules promulgated under this part, or the clean air act.

(ii) The change does not significantly affect an existing monitoring, record keeping, or reporting requirement in the operating permit.

(iii) The change does not require or modify a case-by-case determination of an emission limitation or other standard, or a source-specific determination, for temporary sources, of ambient air impacts, or a visibility or increment analysis.

(iv) The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this part, the rules promulgated under this part, or the clean air act, to which the source would otherwise be subject.

(v) The change is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(k) Provisions for expeditiously handling administrative changes within a permitted source, pursuant to 40 C.F.R. 70.7(d). These changes are limited to the following:

(i) Correction of a typographical error.

(ii) A change in the name, address, or phone number of any person identified in the permit, or other similar minor administrative change.

(iii) A change that requires more frequent monitoring or reporting by the person owning or operating the source.

(iv) A change in ownership or operational control of the source, if the department determines that no other change in the operating permit is necessary, and if a written agreement containing a specific date for transfer of operating permit responsibility, coverage, and liability between the current and new owners or operators has been submitted to the department.

(v) Incorporation into the operating permit of the requirements of a permit to install issued pursuant to section 5505, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this section, including the content of the permit, and the provisions for participation by the United States environmental protection agency and other affected states and participation of the public under section 5511.

(l) Provisions for including reasonably anticipated alternate operating scenarios in an operating permit, pursuant to 40 C.F.R. 70.6(a)(9).

(m) Provisions to allow for the trading of emission increases and decreases within a permitted source solely for the purpose of complying with an enforceable emissions cap that is established in the permit pursuant to 40 C.F.R. part 70.4(b)(12)(iii), independent of any otherwise applicable requirements of this part, the rules promulgated under this part, or the clean air act.

(n) A schedule of the dates when submittal of an application for an operating permit is required for the source categories subject to this section and a phased schedule for taking final action on those applications.

(5) Each operating permit issued under this section shall be for a fixed term not to exceed 5 years. A permit applicant shall submit a timely application for renewal of an operating permit at least 6 months, but not more than 18 months, prior to the expiration of the term of the existing operating permit. If a timely and administratively complete application is submitted, but the department has not approved or denied the renewal permit before the expiration of the term of the existing permit, the existing permit shall not expire until the renewal permit is approved or denied.

(6) Each operating permit issued pursuant to this section shall include those enforceable emissions limitations and standards applicable to the source, if any, and other conditions necessary to assure compliance with the applicable requirements of this part, rules promulgated under this

part, and the clean air act, a schedule of compliance, and a requirement that the owner or operator of a source submit to the department, at least every 6 months, a report summarizing the results of any required monitoring. Each operating permit issued pursuant to this section shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged.

(7) The department shall require revision of an operating permit prior to the expiration of the permit consistent with section 5506(4)(g), for any of the following reasons or to do any of the following:

(a) To incorporate new applicable emissions limitations, standards, or rules promulgated under this part or regulations promulgated under the clean air act, issued or promulgated after the issuance of the permit, if 3 or more years remain in the term of the permit. A revision shall occur as expeditiously as practicable, but not later than 18 months after the promulgation of the emission limitation, standard, rule, or regulation. A revision is not required if the effective date of the emission limitation, standard, rule, or regulation is after the expiration date of the permit.

(b) To incorporate new applicable standards and requirements of the acid rain program under title IV into the operating permits of sources affected by that program.

(c) If the department determines that the permit contains a material mistake; that information required by this part, rules promulgated under this part, or the clean air act was omitted; or that an inaccurate statement was made in establishing the emissions limitations, standards, or conditions of the permit.

(d) If the department determines that the permit must be revised to assure compliance with the applicable requirements of this part, rules promulgated under this part, or the clean air act.

(8) At the request of the permit holder, a permit revision under subsection (7) may be treated as a permit renewal if it complies with the

applicable requirements for permit renewals of this part, rules promulgated under this part, and the clean air act.

(9) A person who owns or operates a source subject to an operating permit issued pursuant to this section shall promptly report to the department any deviations from the emissions limitations, standards, or conditions of the permit and shall annually certify to the department that the source has been and is in compliance with all emissions limitations, standards, and conditions of the permit, except for those deviations reported to the department, during the reporting period. A responsible official shall sign all reports submitted pursuant to this subsection.

(10) The department shall not approve or otherwise issue any operating permit for a source required to obtain an operating permit pursuant to section 502(a) of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, if the administrator of the United States environmental protection agency objects to issuance of the permit in a timely manner pursuant to section 505(b) of title V of the clean air act, chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(11) Each operating permit shall contain a statement that compliance with an operating permit issued in accordance with this section is compliance with subsection (1). In addition, the statement shall provide that compliance with the operating permit is compliance with other applicable requirements of this part, rules promulgated under this part, and the clean air act, as of the date of permit issuance if either of the following requirements is met:

(a) The permit specifically includes the applicable requirement.

(b) The permit includes a determination that any other requirements that are specifically referred to in the determination are not applicable.

(12) An application for an operating permit may include a request that the permit include reference to specific requirements of this part, rules promulgated under this part, or the clean air act that the person owning or operating the source believes are not applicable to the source. The

operating permit shall include a determination of applicability for the requirements included in the request.

(13) Subsection (11) does not apply to a change at a source made pursuant to subsection (4)(h), (i), or (j). Subsection (11) does not apply to a change in a source made pursuant to subsection (4)(k) until the change is incorporated into the operating permit.

(14) A person who owns or operates an existing source that is required to obtain an operating permit under this section, a general permit, or a permit to operate authorized under rules promulgated under section 5505(6) may file a petition with the department for review of the denial of his or her application for such a permit, the revision of any emissions limitation, standard, or condition, or a proposed revocation of his or her permit. This review shall be conducted pursuant to the contested case and judicial review procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any person may appeal the issuance or denial of an operating permit in accordance with section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws. A petition for judicial review is the exclusive means of obtaining judicial review of a permit and shall be filed within 90 days after the final permit action. Such a petition may be filed after that deadline only if it is based solely on grounds arising after the deadline for judicial review and if the appeal does not involve applicable standards and requirements of the acid rain program under title IV. Such a petition shall be filed within 90 days after the new grounds for review arise.

(15) The failure of the department to act on a technically and administratively complete application or renewal application for an operating permit in accordance with a time requirement established pursuant to subsection (3) and rules promulgated under subsection (4)(n) is final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay on the application or renewal application.

(16) The department may, after notice and opportunity for public hearing, pursuant to the requirements of section 5511, issue a general permit covering numerous similar sources, processes, or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this section. A permit that authorizes operation of a source at numerous temporary locations shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the department at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

(17) As used in this section, “technically complete” means, for the purposes of an application for an operating permit required by this section, all of the information required for an administratively complete application and any other specific information requested by the department that may be necessary to implement and enforce all applicable requirements of this part, the rules promulgated under this part, or the clean air act, or to determine the applicability of those requirements. An application is not technically complete if it omits information needed to determine the applicability of any lawful requirement or to enforce any lawful requirement or any information necessary to evaluate the amount of the annual air quality fee for the source.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5507 Administratively complete action; exemption from information requirements; "compliance plan" defined.
Sec. 5507. (1) An administratively complete application means an application for an operating permit required in section 5506 that is submitted on standard application forms provided by the department and includes all of the following:

(a) Source identifying information, including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.

(b) A description of the source's processes and products using the applicable standard industrial classification codes.

(c) A description of all emissions of air contaminants emitted by the source that are regulated under this part, the rules promulgated under this part, and the clean air act.

(d) A schedule for submission of annual compliance certifications during the permit term, unless more frequent certifications are specified by an underlying applicable requirement.

(e) A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(f) For each process, except for any insignificant processes listed by the department pursuant to subsection (2), all of the following:

(i) A description of the process using the standard classification code.

(ii) Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.

(iii) Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards unless such limitation or standard is required to assure compliance with a specific applicable requirement.

(iv) Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.

(v) Limitations on source operation affecting emissions or any work practice standards, if applicable.

(vi) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vii) Identification and description of all emission points in sufficient detail to establish the basis for fees or to determine applicable requirements.

(viii) Other information required by any applicable requirement.

(ix) A statement of the methods proposed to be used for determining compliance with the applicable requirements under the operating permit, including a description of monitoring, record keeping, and reporting requirements and test methods.

(x) An explanation of any proposed exemptions from otherwise applicable requirements.

(xi) Information necessary to define any alternative operating scenarios that are to be included in the operating permit or to define permit terms and conditions implementing section 5506(4)(l).

(xii) A compliance plan.

(xiii) A schedule of compliance.

(2) The department shall promulgate a list of insignificant processes or activities, which are exempt from all or part of the information requirements of this section. For any insignificant processes or activities that are exempt because of size or production rate, the application shall include a list of the insignificant processes and activities.

(3) As used in section 5506 and this section, “compliance plan” means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet these requirements on a timely basis.

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5508 “Section 112” defined; source, process, or process equipment not subject to best available control technology for toxics requirements or health based screening level requirements.

Sec. 5508. (1) As used in this section, “section 112” means section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412.

(2) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(d) or for which a control technology determination has been made pursuant to section 112(g) or 112(j) is not subject to the best available control technology for toxics (T-BACT) requirements of rules promulgated under this part for any of the following:

(a) The hazardous air pollutants listed in section 112(b).

(b) Other toxic air contaminants that are volatile organic compounds, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also volatile organic compounds.

(c) Other toxic air contaminants that are particulate matter, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also particulate matter.

(d) Other toxic air contaminants that are similar to the compounds controlled by the standard promulgated under section 112(d) or controlled by the determination made under section 112(g) or 112(j).

(3) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(f) is not subject to the health based screening level requirements in rules promulgated under this part for the hazardous air pollutants listed in section 112(b).

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5509 "Malfunction" defined; rules; prohibition; actions taken by department; enforcement; conditions for applicability of subsections (3) to (5).

Sec. 5509. (1) As used in this section, "malfunction" means any sudden failure of a source, air pollution control equipment, process, or process equipment to operate in a normal or usual manner. A malfunction exists only for the time reasonably necessary to implement corrective measures. Malfunction does not include failures arising as a result of substandard maintenance that does not conform to industry standards, or periods when the source is being operated carelessly or in a manner that is not consistent with good engineering practice or judgment.

(2) By May 13, 1995, the department shall promulgate general rules, and may promulgate rules that pertain to specific categories of sources, that are consistent with, but are not limited to, the requirements of the clean air act, to establish standards of performance, emission standards, and requirements for monitoring, record keeping, and reporting that will apply during start-up, shutdown, and malfunction of a source, process, or process equipment. The rules shall require that during periods of start-up, shutdown, and malfunction, the operator shall to the extent reasonably possible operate a source, process, or process equipment in a manner consistent with good air pollution control practices for minimizing emissions.

(3) During periods of start-up, shutdown, or malfunction of a source, process, or process equipment, the emission of an air contaminant in excess of a standard or emission limitation, or a violation of any other requirement, established by this part, a rule promulgated under this part, or specified in a permit to install, a permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, is prohibited unless the following applicable requirements and any applicable rules promulgated pursuant to subsection (2) are complied with:

(a) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable,

operate a source, process, or process equipment in a manner consistent with good air pollution control practice for minimizing emissions.

(b) Notice of a malfunction of a source, process, or process equipment that results in excess emissions of an air contaminant shall be provided to the department if the malfunction results in excess emissions that continue for more than 2 hours. Notice by any reasonable means includes but is not limited to oral, telephonic, or electronic notice, and shall be provided as soon as reasonably possible, but no later than 2 business days after the discovery of the malfunction. Written notice of malfunction shall be provided within 10 days after the malfunction has been corrected. Written notice shall specify all of the following:

(i) The cause of the malfunction, if known.

(ii) The date, time, location, and duration of the malfunction.

(iii) The actions taken to correct and prevent the reoccurrence of the malfunction.

(iv) Actions taken to minimize emissions during the malfunction, if any.

(v) The type and, where known or where it is reasonably possible to estimate, the quantity of any excess emissions of air contaminants.

(vi) Contemporaneous operational logs and continuous emission monitoring information where continuous emission monitoring is required by the clean air act or rules promulgated under this part or is specified as a condition of a permit issued under this part or an order entered under this part.

(c) The malfunctioning source, process, or process equipment shall have been maintained and operated in a manner consistent with the applicable provisions of a malfunction abatement plan approved under this part, if any.

(d) During start-up or shutdown, the source, process, or process equipment shall be operated in accordance with applicable start-up or shutdown provisions of its installation permit, nonrenewable permit to operate, or operating permit, if any.

(4) Notwithstanding the provisions of subsection (3), the department may take action under section 5518(1) to immediately discontinue and take action to contain an imminent and substantial endangerment to public health, safety, or welfare.

(5) Notwithstanding the provisions of subsection (3), enforcement action may be taken against a person who violates section 5531(4), (5), or (6).

(6) Subsections (3) to (5) do not apply upon the effective date of the general rules required under subsection (2) or November 13, 1996, whichever is first.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: The general rules referenced in subsection (6) were promulgated and became effective July 26, 1995.
Popular Name: Act 451
Popular Name: NREPA

324.5510 Denial or revocation of permit; circumstances.

Sec. 5510. In accordance with this part and rules promulgated under this part, the department may, after notice and opportunity for public hearing, deny or revoke a permit issued under this part if any of the following circumstances exist:

(a) Installation, modification, or operation of the source will violate this part, rules promulgated under this part, or the clean air act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

(b) Installation, construction, reconstruction, relocation, alteration, or operation of the source presents or may present an imminent and substantial endangerment to human health, safety, or welfare, or the environment.

(c) The person applying for the permit makes a false representation or provides false information during the permit review process.

(d) The source has not been installed, constructed, reconstructed, relocated, altered, or operated in a manner consistent with the application for a permit or as specified in a permit.

(e) The person owning or operating the source fails to pay an air quality fee assessed under this part.

(f) The person proposes a major offset source or the owner or operator of a proposed major offset modification that owns or operates another source in the state that has the potential to emit 100 tons or more per year of any air contaminant regulated under the clean air act and that source is in violation of this part, rules promulgated under this part, the clean air act, or a permit or order issued under this part, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5511 List of permit applications; list of consent order public notices; notice, opportunity for public comment and public hearing required for certain permit actions.

Sec. 5511. (1) The department shall establish and maintain a list of all applications for permits submitted pursuant to sections 5505 and 5506. The list shall report the status of each application. The information on the list shall be updated by the department on a monthly basis. The department shall send a copy of the pertinent sections of the list to the chairperson of the county board of commissioners of each county. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. The department may also develop an electronic data base that includes the capability of making this list

available to the public. This list shall include all of the following information:

(a) The name of the permit applicant.

(b) The street address, if available, the county, and the municipality in which the source is located or proposed to be located.

(c) The type of application, such as installation, operation, renewal, or general permit.

(d) The date the permit application was received by the department.

(e) The date when the permit application is determined to be administratively complete, if applicable.

(f) A brief description of the source, process, or process equipment covered by the permit application.

(g) Brief pertinent comments regarding the progress of the permit application, including the dates of public comment periods and public hearings, if applicable.

(2) The department shall establish and maintain a list of all proposed consent order public notices. This information shall be updated by the department on a monthly basis. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. This list shall include all of the following information:

(a) The name of the parties to the proposed consent order.

(b) The street address, if available, and the county and municipality in which the source is located.

(c) A brief description of the source.

(d) A brief description of the alleged violation to be resolved by the proposed consent order.

(e) A brief description of the respondent's position regarding the alleged violation if the respondent requests such inclusion and supplies to the department a brief statement of the respondent's position regarding the alleged violation.

(3) The department shall not issue a permit to install or a nonrenewable permit to operate pursuant to section 5505 for a major source or for a major modification under title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under section 5506, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the department shall not issue a permit for which there is a known public controversy without providing public notice including an opportunity for public comment and public meeting. For the purposes of an operating permit issued under section 5506, a significant modification does not include any modifications to a permit made pursuant to section 5506(4)(h), (i), (j), or (k). For a general permit issued pursuant to section 5505(4) or section 5506(16), public notice and opportunity for public comment and a public hearing shall only be provided before the base general permit is approved, not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

(a) Public notice shall be provided by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, and by other means determined to be necessary by the department to assure adequate notice to the public. Notice shall also be provided to persons on a mailing list, developed by the department, including those persons who request in writing to be on that list, and to any other person who requests in writing to be notified of a permit action involving a specific source.

(b) The notice shall identify the source; the name and address of the responsible official; the mailing address of the department; the activity or activities involved in the proposed permit action or consent order; the emissions change involved in any significant permit modification; the name, address, and telephone number of a representative of the department from whom interested persons may obtain additional information, including copies of the draft permit or proposed consent order, the application, all relevant supporting material, and any other materials available to the department that are relevant to the permit or consent order decision; a brief description of the comment procedures required by this section; and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

(c) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(d) The department shall keep a record of the commenters and the issues raised during the public comment period and public hearing, if held, and these records shall be available to the public.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5512 Rules.
Sec. 5512. (1) The department shall promulgate rules for purposes of doing all of the following:

(a) Controlling or prohibiting air pollution.

(b) Complying with the clean air act.

(c) Controlling any mode of transportation that is capable of causing or contributing to air pollution.

(d) Reviewing proposed locations of stationary emission sources.

(e) Reviewing modifications of existing emission sources.

(f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air standards.

(g) Establishing suitable emission standards consistent with ambient air quality standards established by the federal government and factors including, but not limited to, conditions of the terrain, wind velocities and directions, land usage of the region, and the anticipated characteristics and quantities of potential air pollution sources. This part does not prohibit the department from denying or revoking a permit to operate a source, process, or process equipment that would adversely affect human health or other conditions important to the life of the community.

(h) Implementing sections 5505 and 5506.

(2) Unless otherwise provided in this part, each rule, permit, or administrative order promulgated or issued under this part prior to November 13, 1993 shall remain in effect according to its terms unless the rule or order is inconsistent with this part or is revised, amended, or repealed.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5513 Car ferries and coal-fueled trains.

Sec. 5513. Notwithstanding any other provision of this part or the rules promulgated under this part, car ferries having the capacity to carry more than 110 motor vehicles and coal-fueled trains used in connection with tourism or an historical museum or carrying works of art or items of historical interest are not subject to regulation under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5514 Disposal of U.S. flag by burning.

Sec. 5514. A congressionally chartered patriotic organization that disposes of an unserviceable flag of the United States by burning that flag is not subject to regulation or penalty for violating a state law or local ordinance pertaining to open burning of materials or substances.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5515 Investigation; voluntary agreement; order; petition for contested case hearing; final order or determination; review.

Sec. 5515. (1) If the department believes that a person is violating this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a violation of this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part exists, the department shall attempt to enter into a voluntary agreement with the person.

(2) If the department believes that a person is violating an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a person has failed to comply with the terms of an order issued under this part, the department may attempt to enter into a voluntary agreement with the person.

(3) If a voluntary agreement is not entered into under subsection (1), the department may issue an order requiring a person to comply with this part, a rule promulgated under this part, a determination made under this part, or a permit issued under this part. If the department issues an order it shall be accompanied by a statement of the facts upon which the order is based.

(4) A person aggrieved by an order issued under subsection (3) may file a petition for a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A petition shall be submitted to the department within 30 days of the effective date of the order. The department shall schedule the matter for hearing within 30 days of receipt of the petition for a contested case hearing. A final order or determination of the department upon the matter following the hearing is conclusive, unless reviewed in accordance with Act No. 306 of the Public Acts of 1969, in the circuit court for the county of Ingham or for the county in which the person resides.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5516 Public hearing; information available to the public; use of confidential information.

Sec. 5516. (1) A public hearing with reference to pollution control may be held before the department. Persons designated to conduct the hearing shall be described as presiding officers and shall be disinterested and technically qualified persons.

(2) A copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report or information required under this part, rules promulgated under this part, or permits or orders issued under this part shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) A person whose activities are regulated under this part may designate a record or other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents, as being only for the confidential use of the department. The department shall notify the person asserting confidentiality of a request for public records under section 5 of the

freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, the scope of which includes information that has been designated by the regulated person as being confidential. The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part demonstrates to the satisfaction of the department that the information should not be disclosed. If there is a dispute between the person asserting confidentiality and the person requesting information under Act No. 442 of the Public Acts of 1976, the department shall make the decision to grant or deny the request. After the department makes a decision to grant a request, the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the department's decision. This does not prevent the use of the information by the department in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section. This section does not render data on the quantity, composition, or quality of emissions from any source confidential. Data on the amount and nature of air contaminants emitted from a source shall be available to the public.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5517 Petition for relief from rule.

Sec. 5517. Application for relief from a rule promulgated by the department shall be made by petition to the circuit court for the county of Ingham or for the county in which the petitioner resides. The petition shall be verified as in a civil action. Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies,

shall set forth the rule or part of the rule that the petitioner claims is unreasonable or prejudicial to the petitioner, and shall specify the grounds for the claim. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled, in the alternative or otherwise. The petition may be made by 1 or more persons, jointly or severally, who are aggrieved by a rule, whether or not the petitioner is or was a party to the proceeding in which the rule was promulgated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5518 Notice to discontinue pollution; hearing; suit brought by attorney general in circuit court; effectiveness and duration of order; notice to county emergency management coordinator.
Sec. 5518. (1) If the department finds that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the department shall notify the person by written notice that he or she must immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both. The written notice shall specify the facts that are the basis of the allegation. Within 7 days, the department shall provide the person the opportunity to be heard and to present any proof that the discharge does not constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment.

(2) Notwithstanding any other provision of this part, upon receipt of evidence that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the attorney general may bring suit on behalf of the state in the appropriate

circuit court to immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both.

(3) An order issued by the department under subsection (1) is effective upon issuance and shall remain in effect for a period of not more than 7 days, unless the attorney general brings a civil action to restrain the alleged endangerment pursuant to subsection (2) or section 5530 before the expiration of that period. If the attorney general brings such an action within the 7-day period, the order issued by the department shall remain in effect for an additional 7 days or such other period as is authorized by the court in which the action is brought.

(4) Prior to taking an action under subsection (1), the department shall attempt to notify the emergency management coordinator for the county in which the source is located who is appointed pursuant to the emergency management act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5519, 324.5520 Repealed. 1998, Act 245, Imd. Eff. July 8, 1998.

Compiler's Notes: The repealed sections pertained to submission of emissions information to the department and payment of emission fees.
Popular Name: Act 451
Popular Name: NREPA

324.5521 Emissions control fund.

Sec. 5521. (1) The emissions control fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(3) Upon the expenditure or appropriation of funds raised through fees in this part for any purpose other than those specifically listed in this part, authorization to collect fees under this part is suspended until such time as the funds expended or appropriated for purposes other than those listed in this part are returned to the emissions control fund.

(4) Beginning October 1, 1994 and thereafter money shall be expended from the fund, upon appropriation, only for the following purposes as they relate to implementing the operating permit program required by title V:

(a) Preparing generally applicable rules or guidance regarding the operating permit program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit, permit revision, or permit renewal, the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal.

(c) General administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry.

(d) Implementing and enforcing the terms of any operating permit, not including any court costs or other costs associated with an enforcement action.

(e) Emissions and ambient monitoring.

(f) Modeling, analysis, or demonstration.

(g) Preparing inventories and tracking emissions.

(h) Providing direct and indirect support to facilities under the small business clean air assistance program created in part 57.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 245, Imd. Eff. July 8, 1998
Popular Name: Act 451
Popular Name: NREPA

****** 324.5522 THIS SECTION MAY NOT APPLY: See subsection (12) ******

324.5522 Fee-subject facility; air quality fees; calculation of facility emissions for previous year; annual report detailing activities of previous fiscal year; action by attorney general for collection of fees; applicability of section; condition.
Sec. 5522. (1) Until October 1, 2011, the owner or operator of each fee-subject facility shall pay air quality fees as required and calculated under this section. The department may levy and collect an annual air quality fee from the owner or operator of each fee-subject facility in this state. The legislature intends that the fees required under this section meet the minimum requirements of the clean air act and that this expressly stated fee system serve as a limitation on the amount of fees imposed under this part on the owners or operators of fee-subject facilities in this state.

(2) The annual air quality fee shall be calculated for each fee-subject facility, according to the following procedure:

(a) Except as provided in subdivision (d), for category I facilities, the annual air quality fee shall be the sum of a facility charge and an emissions charge as specified in subdivision (e). The facility charge shall be $4,485.00.

(b) For category II facilities, the annual air quality fee shall be the sum of a facility charge and an emissions charge as specified in subdivision (e). The facility charge shall be $1,795.00.

(c) For category III facilities, the annual air quality fee shall be $250.00.

(d) For municipal electric generating facilities that are category I facilities and that emit more than 450 tons but less than 18,000 tons of fee-subject air pollutants, the annual air quality fee shall be the following

amount, based on the number of tons of fee-subject air pollutants emitted:

(i) More than 450 tons but less than 4,000 tons, $24,816.00.

(ii) At least 4,000 tons but not more than 5,300 tons, $24,816.00 plus $45.25 per ton of fee-subject air pollutant in excess of 4,000 tons.

(iii) More than 5,300 tons but not more than 12,000 tons, $85,045.00.

(iv) More than 12,000 tons but less than 18,000 tons, $159,459.00.

(e) The emissions charge for category I and category II facilities shall equal the emission charge rate of $45.25, multiplied by the actual tons of fee-subject air pollutants emitted. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class shall be charged only once. The actual tons of fee-subject air pollutants emitted is considered to be the sum of all fee-subject air pollutants emitted at the fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(i) 4,000 tons.

(ii) 1,000 tons per pollutant, if the sum of all fee-subject air pollutants except carbon monoxide emitted at the fee-subject facility is less than 4,000 tons.

(3) The auditor general shall conduct a biennial audit of the federally mandated operating permit program required in title V. The audit shall include the auditor general's recommendation regarding the sufficiency of the fees required under subsection (2) to meet the minimum requirements of the clean air act.

(4) After January 1, but before January 15 of each year, the department shall notify the owner or operator of each fee-subject facility of its assessed annual air quality fee. Payment is due within 90 calendar days of the mailing date of the air quality fee notification. If an assessed fee is

challenged under subsection (6), payment is due within 90 calendar days of the mailing date of the air quality fee notification or within 30 days of receipt of a revised fee or statement supporting the original fee, whichever is later. The department shall deposit all fees collected under this section to the credit of the fund.

(5) If the owner or operator of a fee-subject facility fails to submit the amount due within the time period specified in subsection (4), the department shall assess the owner or operator a penalty of 5% of the amount of the unpaid fee for each month that the payment is overdue up to a maximum penalty of 25% of the total fee owed.

(6) If the owner or operator of a fee-subject facility desires to challenge its assessed fee, the owner or operator shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department within 45 calendar days of the mailing date of the air quality fee notification described in subsection (4). A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days of receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or a statement setting forth the reason or reasons why the fee was not revised. Payment of the challenged or revised fee is due within the time frame described in subsection (4). If the owner or operator of a facility desires to further challenge its assessed fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) If requested by the department, by March 15 of each year, or within 45 days of a request by the department, whichever is later, the owner or operator of each fee-subject facility shall submit information regarding the facility's previous year's emissions to the department. The information shall be sufficient for the department to calculate the facility's emissions for that year and meet the requirements of 40 CFR 51.320 to 51.327.

(8) By July 1 of each year, the department shall provide the owner or operator of each fee-subject facility required to pay an emission charge pursuant to this section with a copy of the department's calculation of the facility emissions for the previous year. Within 60 days of this notification, the owner or operator of the facility may provide corrections to the department. The department shall make a final determination of the emissions by December 15 of that year. If the owner or operator disagrees with the determination of the department, the owner or operator may request a contested case hearing as provided for under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(9) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairpersons of the standing committees of the senate and house of representatives with primary responsibility for environmental protection issues related to air quality, and the chairpersons of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the department's activities of the previous fiscal year funded by the fund. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing title V and non-title V air quality enforcement, compliance, or permitting activities.

(b) All of the following information related to the permit to install program authorized under section 5505:

(i) The number of permit to install applications received by the department.

(ii) The number of permit to install applications for which a final action was taken by the department. The number of final actions should be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The number of permits to install approved that were required to complete public participation under section 5511(3) before final action and the number of permits to install approved that were not required to complete public participation under section 5511(3) prior to final action.

(iv) The average number of final permit actions per permit to install reviewer full-time equivalent position.

(v) The percentage and number of permit to install applications that were reviewed for administrative completeness within 10 days of receipt by the department.

(vi) The percentage and number of permit to install applications that were reviewed for technical completeness within 30 days of receipt of an administratively complete application by the department.

(vii) The percentage and number of permit to install applications submitted to the department that were administratively complete as received.

(viii) The percentage and number of permit to install applications for which a final action was taken by the department within 60 days of receipt of a technically complete application for those not required to complete public participation under section 5511(3) prior to final action, or within 120 days of receipt of a technically complete application for those which are required to complete public participation under section 5511(3) prior to final action.

(c) All of the following information for the renewable operating permit program authorized under section 5506:

(i) The number of renewable operating permit applications received by the department.

(ii) The number of renewable operating permit applications for which a final action was taken by the department. The number of final actions should be reported as the number of applications approved, the number

of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of permit applications initially processed within the required time.

(iv) The percentage and number of permit renewals and modifications processed within the required time.

(v) The number of permit applications reopened by the department.

(vi) The number of general permits issued by the department.

(d) The number of letters of violation sent.

(e) The amount of penalties collected from all consent orders and judgments.

(f) For each enforcement action that includes payment of a penalty, a description of what corrective actions were required by the enforcement action.

(g) The number of inspections done on sources required to obtain a permit under section 5506 and the number of inspections of other sources.

(h) The number of air pollution complaints received, investigated, not resolved, and resolved by the department.

(i) The number of contested case hearings and civil actions initiated and completed, and the number of voluntary consent orders, administrative penalty orders, and emergency orders entered or issued, for sources required to obtain a permit under section 5506.

(j) The amount of revenue in the fund at the end of the fiscal year.

(10) The report under subsection (9) shall also include the amount of revenue for programs under this part received during the prior fiscal year from fees, from federal funds, and from general fund appropriations. Each of these amounts shall be expressed as a dollar amount and as a percent of the total annual cost of programs under this part.

(11) The attorney general may bring an action for the collection of the fees imposed under this section.

(12) This section does not apply if the administrator of the United States environmental protection agency determines that the department is not adequately administering or enforcing the renewable operating permit program and the administrator promulgates and administers a renewable operating permit program for this state.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 245, Imd. Eff. July 8, 1998 ;-- Am. 2001, Act 49, Imd. Eff. July 23, 2001 ;-- Am. 2005, Act 169, Imd. Eff. Oct. 10, 2005 ;-- Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.5523 Issuance of permits and administration and enforcement of part, rules, and state implementation plan; delegation granted by department to certain counties.

Sec. 5523. (1) A county in which a city with a population of 750,000 or more is located may apply for a delegation from the department to issue state permits and administer and enforce the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. After a public hearing, the department shall grant the delegation if the department finds that the county's application demonstrates all of the following:

(a) That the county program complies with the applicable provisions of this part, the rules promulgated under this part, the clean air act, and the state implementation plan.

(b) That the county has, and will continue to have, the capacity to carry out the applicable provisions of this part, rules promulgated under this

part, the clean air act, and the state implementation plan including, but not limited to, adequate and qualified staff to do all of the following:

(i) Monitor ambient air at locations specified by the department using equipment and procedures specified by the department.

(ii) Process and review applications for installation permits, operating permits, tax exemptions, and construction waivers pursuant to sections 5505 and 5506, part 59, and the clean air act, demonstrating a thorough knowledge of permit applicability, procedures, and regulations by developing permits that are free of significant errors and inaccuracies as defined in the performance standards section of the annual contract between the department and participating counties.

(iii) Perform necessary sampling and laboratory analyses.

(iv) Conduct regular and complete inspections and record reviews of all significant sources of air pollution.

(v) Respond to citizen complaints related to air pollution.

(vi) Notify sources of identified violations of applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan and conduct appropriate enforcement, up to and including administrative, civil, and criminal enforcement.

(vii) Perform dispersion modeling analyses, collect emissions release information, and develop necessary state implementation plan demonstrations.

(viii) Carry out other activities required by this part, rules promulgated under this part, the clean air act, and the state implementation plan.

(c) That the county has adequate funding to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. This shall include identification of funding from air quality fees and any federal, state, or county funds

along with an identification of the activities that are funded by each funding source. The county funding shall be sufficient to provide the required grantee match for any federal air pollution grant.

(d) That the county has performed in accordance with the terms of the most recent contract, if any, between the state and the county that describes the work activities and program to be carried out by the county. This shall be demonstrated through state audit reports and the county's prompt and permanent correction of any deficiencies identified in state audit reports.

(e) That the county program contains provisions for public notice and public participation consistent with this part, the rules promulgated under this part, and the clean air act.

(f) That the county has the capacity to administer the state air quality fee program in the manner prescribed in section 5522 for all fee-subject facilities subject to this part, located within the county, and subject to the delegated program of the county. This shall include an ability to identify fee-subject facilities, calculate and assess fees, implement collections, maintain a dedicated account, and process fee challenges.

(2) A delegation under this section shall be for a term of not more than 5 years and not less than 2 years, and may be renewed by the department. The delegation shall be in the form of a written contract that does all of the following:

(a) Describes the activities the county shall carry out during the term of the delegation.

(b) Provides for the delegated program to be consistent with implementation of the state's air program, using state procedures, forms, databases, and other means.

(c) Provides for ongoing communication between the county and state to assure consistency under subdivision (b).

(3) One hundred eighty days prior to the expiration of the term of delegation, the county may submit an application to the department for renewal of their delegation of authority. The department shall hold a public hearing and following the public hearing make its decision on a renewal of delegation at least 60 days prior to the expiration of the term of the delegation. The department shall deny the renewal of a delegation of authority upon a finding that the county no longer meets the criteria described in subsection (1) or provisions of the delegation contract. The county may appeal a finding under subsection (1) or this subsection to a court of competent jurisdiction.

(4) A county delegated authority under this section annually shall submit a report to the department that documents the county's ability to meet the criteria described in subsection (1) and the delegation contract during the past 12 months.

(5) In addition to the report of the county under subsection (4), the auditor general of the state shall annually submit to the governor, the legislature, and the department an independent report regarding whether a county meets the criteria provided in subsection (1) and a review of the fiscal integrity of a county delegated authority under this section. The auditor general's report shall also determine the county's pro rata share of the state's support services for title V programs that are attributable to and payable by a county.

(6) Within 60 days after a county delegated authority under this section submits its annual report as required under subsection (4), the department shall notify the county, in writing, whether the report of the county meets the requirements of this section or states, with particularity, the deficiencies in that report or any findings in the auditor general's report that render the county in noncompliance with the criteria in subsection (1). The county shall have 90 days to correct any stated deficiencies. If the department finds that the deficiencies have not been corrected by the county, the department shall notify the county, in writing, within 30 days of the submission of the county's corrections and may terminate a county's delegation. The county shall have 21 days from receipt of the decision of termination in which to appeal the department's

decision to a court of competent jurisdiction. If the department fails to notify the county within 60 days, the report shall be considered satisfactory for the purposes of this subsection.

(7) Notwithstanding any other statutory provision, rule, or ordinance, a county delegated authority under this section to administer and enforce this part shall issue state permits and implement its responsibilities only in accordance with its delegation, the delegation contract, this part, rules promulgated under this part, the clean air act, and the applicable provisions of the state implementation plan. State permits issued by a county that is delegated authority under this section have the same force and effect as permits issued by the department, and if such a county issues a state permit pursuant to section 5505 or 5506, no other state or county permit is required pursuant to section 5505 or 5506, respectively.

(8) Upon receipt of a permit application, prior to taking final action to issue a state permit or entering into a consent order, the county shall transmit to the department a copy of each administratively complete permit application, application for a permit modification or renewal, proposed permit, or proposed consent order. The county shall transmit to the department a copy of each state permit issued by the county and consent order entered within 30 days of issuance of the state permit or entry of the consent order.

(9) Notwithstanding a delegation under this part, the department retains the authority to bring any appropriate enforcement action under sections 5515, 5516, 5518, 5526, 5527, 5528, 5529, 5530, 5531, and 5532 as authorized under this part and the rules promulgated under this part to enforce this part and the rules promulgated under this part. The department may bring any appropriate action to enforce a state permit issued or a consent order entered into by a county to which authority is delegated.

(10) Notwithstanding any other provision of this part, in a county that has been delegated authority under this section, that county shall impose and collect fees in the manner prescribed in section 5522 on all fee-subject facilities subject to this part and located within the corporate

boundaries and subject to the delegated program of the county. The department shall not levy or collect an annual air quality fee from the owner or operator of a fee-subject facility who pays fees pursuant to this section. A county that is delegated authority under this section shall not assess a fee for a program or service other than as provided for in this part or title V or assess a fee covered by this part or title V greater than the fees set forth in section 5522. A county that is delegated authority under this section shall pay to the state the pro rata share of the state's support services for title V programs attributable to the county.

(11) Fees imposed and collected by a county with delegated authority under this section shall be paid to the county treasury.

(12) The county treasurer of a county delegated authority under this section shall create a clean air implementation account in the county treasury, and the county treasurer shall deposit all fees received pursuant to the delegation authorized under this section in the account. The fees shall be expended only in accordance with section 5521(6), the rules promulgated under this part, and the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 245, Imd. Eff. July 8, 1998
Popular Name: Act 451
Popular Name: NREPA

324.5524 Fugitive dust sources or emissions.

Sec. 5524. (1) The provisions of this section, including subsection (2), shall apply to any fugitive dust source at all mining operations, standard industrial classification major groups 10 through 14; manufacturing operations, standard industrial classification major groups 20 through 39; railroad transportation, standard industrial classification major group 40; motor freight transportation and warehousing, standard industrial classification major group 42; electric services, standard industrial classification group 491; sanitary services, standard industrial classification group 495; and steam supply, standard industrial classification group 496, which are located in areas listed in table 36 of R 336.1371 of the Michigan administrative code.

(2) Except as provided in subsection (8), a person responsible for any fugitive dust source regulated under this section shall not cause or allow the emission of fugitive dust from any road, lot, or storage pile, including any material handling activity at a storage pile, that has an opacity greater than 5% as determined by reference test method 9d. Except as otherwise provided in subsection (8) or this section, a person shall not cause or allow the emission of fugitive dust from any other fugitive dust source that has an opacity greater than 20% as determined by test method 9d. The provisions of this subsection shall not apply to storage pile material handling activities when wind speeds are in excess of 25 miles per hour (40.2 kilometers per hour).

(3) In addition to the requirements of subsection (2), and except as provided in subdivisions (e), (f), and (g), a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions:

(a) Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions:

(i) All storage piles of materials, where the total uncontrolled emissions of fugitive dust from all such piles at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year, shall be protected by a cover or enclosure or sprayed with water or a surfactant solution, or treated by an equivalent method, in accordance with the operating program required by subsection (4).

(ii) All conveyor loading operations to storage piles specified in subparagraph (i) shall utilize spray systems, telescopic chutes, stone ladders, or other equivalent methods in accordance with the operating program required by subsection (4). Batch loading operations to storage piles specified in subparagraph (i) shall utilize spray systems, limited drop heights, enclosures, or other equivalent methods in accordance with the operating program required by subsection (4). Unloading operations from storage piles specified in subparagraph (i) shall utilize rake

reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods in accordance with the operating program required by subsection (4).

(iii) All traffic pattern access areas surrounding storage piles specified in subparagraph (i) and all traffic pattern roads and parking facilities shall be paved or treated with water, oils, or chemical dust suppressants. All paved areas, including traffic pattern access areas surrounding storage piles specified in subparagraph (i), shall be cleaned in accordance with the operating program required by subsection (4). All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection (4).

(iv) All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying, pelletizing, screw conveying, or other equivalent methods.

(v) Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding, or be treated by an equivalent method in accordance with an operating program required under subsection (4). This subparagraph shall not apply to high-lines at steel mills.

(b) If particulate collection equipment is operated pursuant to this section, emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter).

(c) A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% without employing 1 or more of the following control methods:

(i) The use of completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20% or more by weight.

(ii) The use of tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5% but less than 20%.

(iii) Loading trucks so that no part of the load making contact with any sideboard, side panel, or rear part of the load comes within 6 inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%.

(d) All vehicles for transporting bulk materials off-site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws, and with R 28.1457 of the Michigan administrative code.

(e) The provisions of subdivisions (c) and (d) do not apply to vehicles with less than a 2-ton capacity that are used to transport sand, gravel, stones, peat, or topsoil.

(f) The provisions of subdivision (c)(i) and (ii) do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying.

(g) The provisions of subdivision (c) do not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees fahrenheit or greater.

(4) All fugitive dust sources subject to the provisions of this section shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the department and with applicable provisions of this section. Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility.

The operating program shall be implemented with the approval of the department.

(5) The operating program required by subsection (4) is subject to review and approval or disapproval by the department and shall be considered approved if not acted on by the department within 90 days of submittal. All programs approved by the department shall become a part of a legally enforceable order or as part of an approved permit to install or operate. At a minimum, the operating program shall include all of the following:

(a) The name and address of the facility.

(b) The name and address of the owner or operator responsible for implementation of the operating program.

(c) A map or diagram of the facility showing all of the following:

(i) Approximate locations of storage piles.

(ii) Conveyor loading operations.

(iii) All traffic patterns within the facility.

(d) The location of unloading and transporting operations with pollution control equipment.

(e) A detailed description of the best management practices utilized to achieve compliance with this section, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals, and dust suppressants utilized, and equivalent methods utilized.

(f) A test procedure, including record keeping, for testing all waste or recycled oils used for fugitive dust control for toxic contaminants.

(g) The frequency of application, application rates, and dilution rates if applicable, of dust suppressants by location of materials.

(h) The frequency of cleaning paved traffic pattern roads and parking facilities.

(i) Other information as may be necessary to facilitate the department's review of the operating program.

(6) Except for fugitive dust sources operating programs approved by the department pursuant to R 336.1373 of the Michigan administrative code between April 23, 1985 and May 12, 1987, the owner or operator of a source shall submit the operating program required by subsection (4) to the department by August 12, 1987.

(7) The operating program required by subsection (4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this section and shall be submitted to the department for its review and approval or disapproval.

(8) Upon request by the owner or operator of a fugitive dust source, the department may establish alternate provisions to those specified in this section, if all of the following conditions are met:

(a) The fugitive dust emitting process, operation, or activity is subject to either of the following:

(i) The opacity limits of subsection (2).

(ii) The spray requirements of subsection (3)(a)(i) to (v).

(b) An alternate provision shall not be established by the department unless the department is reasonably convinced of all of the following:

(i) That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the department.

(ii) That compliance with the provisions of this section is not technically or economically reasonable.

(iii) That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the department.

(9) Any alternate provisions approved by the department pursuant to subsection (8) shall be submitted to the United States environmental protection agency as an amendment to the state implementation plan.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5525 Definitions.
Sec. 5525. As used in section 5524:

(a) “Control equipment or pollution control equipment” has the meaning ascribed to control equipment in R 336.1103 of the Michigan administrative code.

(b) “Fine product” means materials which will pass through a 20-mesh screen or those particles with aerodynamic diameters of 830 microns or less.

(c) “Fugitive dust” has the meaning ascribed to it in R 336.1106 of the Michigan administrative code.

(d) “Fugitive dust source” means any fugitive dust emitting process, operation, or activity regulated under section 5524.

(e) “Opacity” has the meaning ascribed to it in R 336.1115 of the Michigan administrative code.

(f) “Particulate” means any air contaminant existing as a finely divided liquid or solid, other than uncombined water, as measured by a reference test specified in subsection (5) of R 336.2004 of the Michigan administrative code or by an equivalent or alternative method.

(g) “Potential particulate emissions” means those emissions of particulate matter expected to occur without control equipment, unless such control equipment is, aside from air pollution control requirements, vital to the production of the normal product of the source or to its normal operation. Annual potential particulate emissions shall be based on the maximum annual-rated capacity of the source, unless the source is subject to enforceable permit conditions or enforceable orders which limit the operating rate or the hours of operation or both. Enforceable agreements or permit conditions on the type or amount of materials combusted or processed shall be used in determining the potential particulate emission rate of a source.

(h) “Process” or “process equipment” has the meaning ascribed to it in R 336.1116 of the Michigan administrative code.

(i) “Silt content” means that portion, by weight, of a particulate material which will pass through a number 200 (75 micron) wire sieve as determined by the American society of testing material, test C-136-76.

(j) “Test method 9D” means the method by which visible emissions of fugitive dust shall be determined according to test method 9 as set forth in appendix A-reference methods in 40 CFR, part 60, with the following modifications:

(i) The data reduction provisions of section 2.5 of method 9 shall be based on an average of 12 consecutive readings recorded at 15-second intervals.

(ii) For roadways and parking lots, opacity observations shall be made from a position such that the observer's line of vision is approximately perpendicular to the plume direction and approximately 4 feet directly above the surface of the road or parking area from which the emissions

are being generated. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals at the point of maximum plume density. Consecutive readings must be suspended for any 15-second period if a vehicle is in the observer's line of sight. If this occurs, a “V” shall be used in lieu of a numerical value, and a footnote shall be made to indicate that “V” signifies that the observer's view was obstructed by a vehicle. Readings shall continue at the next 15-second period, and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by a “V”. Consecutive readings also shall be suspended for any 15-second period if a vehicle passes through the area traveling in the opposite direction and creates a plume that is intermixed with the plume being read. If this occurs, an “I” shall be used in lieu of a numerical value, and a footnote shall be made to indicate that “I” signifies that the readings were terminated due to interference from intermixed plumes. Readings shall continue when, in the judgment of the observer, the plume created by the vehicle traveling in the opposite direction no longer interferes with the plume originally being read; and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by an “I”. Intermixing of plumes from vehicles traveling in the same direction represents the road conditions, and reading shall continue in the prescribed manner. A reading encompassing an unusual condition (such as a broken bag of cement on the pavement) cannot be used to represent the entire surface condition involved. In such cases, another set of readings, encompassing the average surface condition, must be conducted. For all other fugitive dust sources except roadways and parking lots, opacity observations shall be made from a position that provides the observer a clear view of the source and the fugitive dust with the sun behind the observer. A position at least 15 feet from the source is recommended. To the extent possible, the line of sight should be approximately perpendicular to the flow of fugitive dust and to the longer axis of the emissions. Opacity observations shall be made for the point of highest opacity within the fugitive dust. Since the highest opacity usually occurs immediately above or downwind of the source, the observer should normally concentrate on the area or areas of the plume close to the source.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5526 Investigation; inspection; furnishing duplicate of analytical report; powers of department or authorized representative; entry or access to records refused; powers of attorney general; "authorized representative" defined.

Sec. 5526. (1) The department may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. If in connection with an investigation or inspection, samples of air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing the air pollution. In implementing this subsection, the department or its authorized representative may do any of the following:

(a) Have access to and copy, at reasonable times, any records that are required to be maintained pursuant to this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(b) Inspect at reasonable times any facility, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(c) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. The department may enter

into a contract with a person to sample and monitor as authorized under this subdivision.

(2) If the department, or an authorized representative of the department, is refused entry or access to records and samples under subsection (1) for the purposes of utilizing this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing entry or access to records and samples pursuant to this section.

(b) Commence a civil action to compel compliance with a request for entry and access to records and samples pursuant to this section, to authorize entry and access to records and samples provided for in this section, and to enjoin interference with the utilization of this section.

(3) As used in this section, “authorized representative” means any of the following:

(a) A full- or part-time employee of the department of natural resources or other state department or agency to which the department delegates certain duties under this section.

(b) A county to which authority is delegated under section 5523.

(c) For the purpose of utilizing the powers conferred in subsection (1)(c), a contractor retained by the state or a county to which authority is delegated under section 5523.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5527 Emergency; definition; affirmative defense; burden of proof.

Sec. 5527. (1) As used in this section, “emergency” means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe,

or other condition as to which negligence on the part of the person was not the proximate cause, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part due to unavoidable increases in emissions attributable to the situation. An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part if the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes all of the following:

(a) An emergency occurred and that the defendant can identify the cause or causes of the emergency.

(b) The source was properly operated at the time of the emergency.

(c) During the emergency the defendant took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

(d) The defendant submitted notice of the emergency to the department within 2 working days after the emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the defendant seeking to establish the occurrence of an emergency has the burden of proof.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2000, Act 474, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.5528 Violation of part, rule, terms of permit, or order; agreement to correct violation; consent order; public notice and opportunity for public comment; providing copy of proposed consent order.

Sec. 5528. (1) If the department believes that a violation of this part or a rule promulgated under this part exists, or a violation of the terms of a permit issued under this part exists, the department shall provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(2) If the department believes that a violation of an order issued under this part exists, the department may provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit or order issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(3) The department shall provide public notice and an opportunity for public comment on the terms and conditions of a consent order. Upon the request of any person the department shall provide a copy of the proposed consent order.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5529 Administrative fine; limitation; petition for review of fine.
Sec. 5529. (1) The department may assess an administrative fine of up to $10,000.00 for each instance of violation and, if the violation continues, for each day of continued noncompliance, if the department, on the basis of available information, finds that the person has violated or is in violation of this part or a rule promulgated under this part, has failed to obtain a permit required under this part, violates an order under this part, or has failed to comply with the terms of a permit issued under this part. If a single event constitutes an instance of violation of any combination of this part, a rule promulgated under this part, or a permit issued or order entered under this part, the amount of the administrative fine for that single event shall not exceed $10,000.00 for that violation. The assessment of an administrative fine may be either a part of a compliance order or a separate order issued by the department.

(2) The authority of the department under this section is limited to matters where the total administrative fine sought does not exceed $100,000.00 and the first alleged date of violation occurred within 12 months prior to initiation of the administrative action. Except as may otherwise be provided by applicable law, the department shall not condition the issuance of a permit on the payment of an administrative fine assessed pursuant to this section.

(3) Within 28 days of being assessed an administrative fine from the department, a person may file a petition with the department for review of this fine. Review of the fine shall be conducted pursuant to the contested case procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. If issued as part of a consent order issued pursuant to section 5528, only the amount of the administrative fine and the alleged violation on which the fine is based are subject to the contested case procedures of Act No. 306 of the Public Acts of 1969.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5530 Commencement of civil action by attorney general; relief; costs; jurisdiction; defenses; fines.
Sec. 5530. (1) The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) for any of the following:

(a) Violating this part or a rule promulgated under this part.

(b) Failure to obtain a permit under this part.

c) Failure to comply with the terms of a permit or an order issued under this part.

(d) Failure to pay an air quality fee or comply with a filing requirement under this part.

(e) Failure to comply with the inspection, entry, and monitoring requirements of this part.

(f) A violation described in section 5518(2).

(2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation continues, for each day of continued violation.

(3) In addition to other relief authorized under this section, the attorney general may, at the request of the department, file an action in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state.

(4) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including, but not limited to, reasonable attorney and expert witness fees, to the prevailing or

substantially prevailing party if the court determines that such an award is appropriate.

(5) A civil action brought under this section may be brought in the county in which the defendant is located, resides, or is doing business, or in the circuit court for the county of Ingham, or in the county in which the registered office of a defendant corporation is located, or in the county where the violation occurred.

(6) General defenses and affirmative defenses, that may otherwise apply under state law may apply in an action brought under this section as determined to be appropriate by a court of competent jurisdiction.

(7) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5531 Violations as misdemeanors; violations as felonies; fines; defenses; definitions.
Sec. 5531. (1) A person who knowingly violates any requirement or prohibition of an applicable requirement of this part or a rule promulgated under this part or who fails to obtain or comply with a permit or comply with a final order or order of determination issued under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 per day, for each violation.

(2) A person who knowingly makes a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file any notice, application, record, report, plan, or other document required to be submitted pursuant to this part or a rule promulgated under this part, or who knowingly fails to notify or report information required to be submitted under this part or a rule promulgated under this part, or who knowingly falsifies, tampers with, renders inaccurate, or knowingly fails to install any monitoring

device or method required under this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not more than $10,000.00 per day, for each violation.

(3) A person who knowingly fails to pay any air quality fee owed under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00.

(4) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and because of the quantities or concentrations of the substance released knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.

(5) A person who knowingly releases or causes the release into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury, and the release results in death or serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 6 years or a fine of not more than $25,000.00, or both.

(6) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C.

7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who intended at that time to place another person in imminent danger of death or serious bodily injury, and whose actions do result in death or cause serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $250,000.00, or both.

(7) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury as required under subsections (4), (5), and (6), the defendant is responsible only for actual awareness or actual belief possessed, and knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant. However, in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(8) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(9) A defendant may establish an affirmative defense to a prosecution under this section by showing by a preponderance of the evidence that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of any of the following:

(a) An occupation, a business, or a profession.

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person had been made aware of the risks involved prior to giving consent.

(10) All general defenses, affirmative defenses, and bars to prosecution that may otherwise apply with respect to state criminal offenses may

apply under this section and shall be determined by the courts of this state having jurisdiction according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed by the courts in the light of reason and experience.

(11) Fines shall not be imposed pursuant to this section for a violation that was caused by an act of God, war, strike, riot, catastrophe, or other condition to which negligence or willful misconduct on the part of the person was not the proximate cause.

(12) As used in this section:

(a) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) "Specific chemical" means a hazardous air pollutant listed in section 112(b)(1) of Part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, except for the following compounds:

(i) Antimony compounds.

(ii) Arsenic compounds (inorganic including arsine).

(iii) Beryllium compounds.

(iv) Cadmium compounds.

(v) Chromium compounds.

(vi) Cobalt compounds.

(vii) Coke oven emissions.

(viii) Cyanide compounds.

(ix) Glycol ethers.

(x) Lead compounds.

(xi) Manganese compounds.

(xii) Mercury compounds.

(xiii) Fine mineral fibers.

(xiv) Nickel compounds.

(xv) Polycyclic organic matter.

(xvi) Radionuclides (including radon).

(xvii) Selenium compounds.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5532 Civil or criminal fines; factors to be considered in determining amount.
Sec. 5532. (1) A civil or criminal fine assessed, sought, or agreed upon under this part shall be appropriate to the violation.

(2) In determining the amount of any fine levied under this part, all of the following factors shall be considered:

(a) The size of the business.

(b) The economic impact of the penalty on the business.

(c) The violator's full compliance history and good faith efforts to comply.

(d) The duration of the violation as established by any credible evidence, including evidence other than the applicable test method.

(e) Payment by the violator of penalties previously assessed for the same violation.

(f) The economic benefit of noncompliance.

(g) The seriousness of the violation.

(h) Such other factors as justice may require.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5533 Award; eligibility; rules.

Sec. 5533. The department may pay an award of up to $10,000.00 to an individual who provides information resulting in the assessment of a civil fine by a court in an action brought by the attorney general pursuant to section 5530, or leading to the arrest and conviction of a person under section 5531. An officer or employee of the United States, state of Michigan, an authorized representative of the department as defined in section 5526(3), or any other state or local government who furnishes information described in this section in the performance of an official duty is ineligible for payment under this section. In addition, an employee of the department of natural resources, a designee of the department of natural resources, or a person employed by the department of attorney general is ineligible to receive an award under this section regardless of whether the reported information came to his or her attention while functioning in an official capacity or as a private citizen. A person may not receive an award under this section for a violation of this part made by that person alone or in conjunction with others. An award shall not be made under this section until rules are promulgated by the department prescribing the criteria for making awards.

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

Popular Name: Act 451
Popular Name: NREPA

324.5534 Repealed. 1999, Act 231, Imd. Eff. Dec. 28, 1999.

Compiler's Notes: The repealed section pertained to certain violations exempt from penalties.
Popular Name: Act 451
Popular Name: NREPA

324.5535 Suspension of enforcement; reasons; variance.

Sec. 5535. Notwithstanding any other provision of this part, the department may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person, or the department may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the enforcement of the rule would be an unreasonable hardship upon the person. Upon any suspension of the whole or any part of the rule the department shall grant to the person a variance from that rule. The department shall not suspend enforcement or grant a variance under this section that would violate the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5536 Variance; considerations effecting.

Sec. 5536. In determining under what conditions and to what extent a variance from a rule or regulation that would not violate the clean air act may be granted, the department shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution. The department shall consider the reasonableness of granting a variance conditioned upon the person effecting a partial control of the particular air pollution or a progressive control of the air pollution over a period of time that it considers reasonable under all the circumstances or the department may prescribe other and different reasonable requirements with which the person receiving the variance shall comply.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5537 Variance; granting for undue hardship.

Sec. 5537. The department shall grant a variance from any rule to, and suspend the enforcement of the rule as it applies to, any person who shows in the case of the person and of the source, process, or process equipment that the person operates that his or her compliance with the rule or regulation, and that the acquisition, installation, operation and maintenance of a source or process, or process equipment required or necessary to accomplish the compliance, would constitute an undue hardship on the person and would be out of proportion to the benefits to be obtained by compliance. A variance shall not be granted under this section if the person applying for the variance is causing air pollution that is injurious to the public health or if the granting of the variance would violate the clean air act. Any variance granted shall not be construed as relieving the person who receives it from any liability imposed by other law for the maintenance of a nuisance.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5538 Variance; period granted; report; conditions.

Sec. 5538. Any variance granted pursuant to sections 5535, 5536, and 5537 shall be granted for a period of time, that does not exceed 1 year, as is specified by the department at the time of granting it, but any variance may be continued from year to year. Any variance granted by the department may be granted on the condition that the person receiving it shall report to the department periodically, as the department specifies, as to the progress which the person has made toward compliance with the rule of the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5539 Variance; revocation or modification of order; public hearing and notice required.
Sec. 5539. The department may revoke or modify any order permitting a variance by written order, after a public hearing held upon not less than 10 days' notice.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5540 Purpose of part; alteration of existing rights of actions or remedies.
Sec. 5540. It is the purpose of this part to provide additional and cumulative remedies to prevent and abate air pollution. This part does not abridge or alter rights of action or remedies now or hereafter existing. This part or anything done by virtue of this part shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5541 Construction of part; evidentiary effect of determination by commission.
Sec. 5541. This part does not repeal any of the laws relating to air pollution which are not by this part expressly repealed. This part is ancillary to and supplements the laws now in force, except as they may be in direct conflict with this part. The final order or determination of the department shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5542 Effect on existing ordinances or regulations; local enforcement; cooperation with local governmental units.

Sec. 5542. (1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of the political subdivision, may take such appropriate action as may be necessary for enforcement of the applicable provisions of this part.

(3) The department shall counsel and advise local units of government on the administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 57

SMALL BUSINESS CLEAN AIR ASSISTANCE

324.5701 Definitions.
Sec. 5701. As used in this part:

(a) “Clean air act” means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q and the regulations promulgated under that act.

(b) “Office” means the office of the small business clean air ombudsman.

(c) “Ombudsman” means the small business clean air ombudsman.

(d) “Program” means the small business clean air assistance program.

(e) “Small business” means a business that is independently owned and operated and that is not dominant in its field as defined in 13 C.F.R. 121 and, unless adjusted as authorized under this section or section 5702, is a stationary source that meets all of the following requirements:

(i) Is owned or operated by a person that employs 100 or fewer individuals.

(ii) Is a small business concern as defined in the small business act, Public Law 85-536, 72 Stat. 384.

(iii) Is not a major stationary source as defined in Titles I and III of the clean air act or is a major stationary source as defined in Titles I and III of the clean air act because of its location in a nonattainment area.

(iv) Emits less than 50 tons per year of any air contaminant or air pollutant regulated pursuant to part 55 or the clean air act.

(v) Emits less than 75 tons per year of all air contaminants or air pollutants regulated pursuant to part 55 or the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5702 “Small business stationary source” explained.

Sec. 5702. (1) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source that

does not meet the criteria of subparagraph (iii), (iv), or (v) of section 5701(e) but which does not emit more than 100 tons per year of all air contaminants and air pollutants regulated pursuant to part 55 or the clean air act.

(2) The department, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the clean air act and part 55 without the application of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5703 Office of small business clean air ombudsman; creation; exercise of powers and duties; appointment of executive officer.
Sec. 5703. (1) The office of the small business clean air ombudsman is created within the department of commerce. The office shall exercise its powers and duties independently of any state department or entity.

(2) The principal executive officer of the office is the small business clean air ombudsman, who shall be appointed by the governor.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the

Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5704 Office of ombudsman; responsibilities and duties.
Sec. 5704. The office of the ombudsman is responsible for assessing and ensuring that the goals of the program are being met and in addition shall coordinate or do all of the following:

(a) Conduct independent evaluations of all aspects of the program.

(b) Review and provide comments and recommendations to the United States environmental protection agency and state and local air pollution control authorities regarding the development and implementation of requirements that impact small businesses.

(c) Facilitate and promote the participation of small businesses in the development of rules that impact small businesses.

(d) Assist in providing reports to the governor and legislature and the public regarding the applicability of the requirements of this part, part 55, and the clean air act to small business.

(e) Aid in the dissemination of information, including, but not limited to, air pollution requirements and control technologies, to small businesses and other interested parties.

(f) Participate in or sponsor meetings and conferences with state and local regulatory officials, industry groups, and small business representatives.

(g) Aid in investigating and resolving complaints and disputes from small businesses against the state or local air pollution control authorities, or both.

(h) Periodically review the work and services provided by the program with trade associations and representatives of small business.

(i) Refer small businesses to the appropriate specialist in the program where they may obtain information and assistance on affordable alternative technologies, process changes, and products and operational methods to help reduce air pollution and accidental releases.

(j) Arrange for and assist in the preparation of guideline documents by the program and ensure that the language is readily understandable by laypersons.

(k) Work with trade associations and small businesses to bring about voluntary compliance with the clean air act and part 55.

(l) Work with regional and state offices of the small business administration, the United States department of commerce and state department of commerce, and other federal and state agencies that may have programs to financially assist small businesses in need of funds to comply with environmental requirements.

(m) Work with private sector financial institutions to assist small businesses in locating sources of funds to comply with state and local air pollution control requirements.

(n) Conduct studies to evaluate the impacts of the clean air act and part 55 on the state's economy, local economies, and small businesses.

(o) Work with other states to establish a network for sharing information on small businesses and their efforts to comply with the clean air act and the pertinent air pollution act for their state.

(p) Make recommendations to the department and the legislature concerning the reduction of any fee required under the clean air act or part 55 to take into account the financial resources of small businesses.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled MCL 408.49 of the Michigan Compiled

Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5705 Small business clean air assistance program; creation; purpose.

Sec. 5705. The program is created in the department of commerce. The program shall develop adequate mechanisms for all of the following:

(a) Developing, collecting, and coordinating information on compliance methods and technologies for small businesses.

(b) Encouraging lawful cooperation among small businesses and other persons to further compliance with the clean air act and part 55.

(c) Assisting small business with information regarding pollution prevention and accidental release detection and prevention, including, but not limited to, providing information concerning alternative technologies, process changes, and products and methods of operation that help reduce air pollution.

(d) Establishing a compliance assistance program that assists small businesses in determining applicable requirements for compliance and the procedures for obtaining permits efficiently in a timely manner under the clean air act or part 55, or both.

(e) Providing mechanisms and access to information so that small businesses receive notification of their rights under the clean air act and part 55 in a manner and form that assures reasonably adequate time for small businesses to evaluate their compliance methods or applicable proposed or final rules or standards under the clean air act and part 55.

(f) Informing small businesses of their obligations under the clean air act and part 55, including mechanisms for referring small businesses to qualified auditors or to the state if the state elects to provide audits to

determine compliance with the clean air act and part 55. To the extent permissible by state and federal law, audits shall be separate from the formal inspection and compliance program.

(g) Providing information on how to obtain consideration from the department on requests from small businesses for modifications of any work practice, technological method of compliance, or the schedule of milestones for reductions of emissions preceding an applicable compliance date.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5706 Access to information, records, and documents; assistance to ombudsman.

Sec. 5706. Upon request, the ombudsman shall be given access to all information, records, and documents in the possession of the commission and the department that the ombudsman considers necessary to fulfill the responsibilities of the office other than information described in section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws. The commission and the department shall also assist the ombudsman in fulfilling his or her responsibilities under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5707 Information obtained from small businesses; confidentiality.

Sec. 5707. Information obtained by the office or the program from small businesses that utilize their services shall be held in confidence by those employed by the office or the program to the extent authorized under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, including, but not limited to, those provisions pertaining to exemptions from disclosure for trade secrets and commercial and financial information.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.5708 Small business clean air compliance advisory panel.

Sec. 5708. (1) The small business clean air compliance advisory panel is created within the program.

(2) The advisory panel shall be broadly representative of the regulated small business community and shall include women members and members who are minorities. The advisory panel shall consist of the following members:

(a) Two members appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources.

(b) One member appointed by the republican leader of the senate who is an owner or a representative of owners of small business stationary sources.

(c) One member appointed by the democratic leader of the senate who is an owner or a representative of owners of small business stationary sources.

(d) One member appointed by the republican leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

(e) One member appointed by the democratic leader of the house of representatives who is an owner or a representative of owners of small business stationary sources.

(f) One member appointed by the department.

(3) Members of the advisory panel shall serve for terms of 4 years, or until a successor is appointed, whichever is later. However, of the members first appointed, the members appointed by the governor shall serve for 3 years, the members appointed by the senate shall serve for 1 year, and the members appointed by the house of representatives and the member appointed by the department shall serve for 2 years.

(4) If a vacancy occurs on the advisory panel, the governor, the department, or the appropriate legislative leader who made the appointment shall make an appointment for the unexpired term in the same manner as the original appointment.

(5) The first meeting of the advisory panel shall be called within 90 days of the appointment of all advisory panel members. At the first meeting the advisory panel shall elect from among its members a chairperson and other officers as it considers necessary or appropriate.

(6) A majority of the members of the advisory panel constitutes a quorum for the transaction of business at a meeting of the advisory panel. A majority of the members present and serving are required for official action of the advisory panel.

(7) Members of the advisory panel shall serve without compensation. However, members of the advisory panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the advisory panel.

(8) The advisory panel shall do all of the following:

(a) Consult with the ombudsman and the head of the program to plan the work of the panel, including the frequency of meetings, agenda items, and reports to be issued by the panel.

(b) Determine whether the program should utilize private contractors hired by the program or utilize expertise within the program, or both, to meet the requirements of this part that pertain to providing technical assistance to small businesses.

(c) Prepare advisory reports concerning all of the following:

(i) The effectiveness of the office and program.

(ii) The difficulties encountered and degree and severity of enforcement of part 55.

(iii) The costs of operating the office and the program.

(iv) The average costs of different categories of small businesses in complying with the air quality enforcement program of this state.

(d) Periodically report to the administrator of the United States environmental protection agency regarding compliance by the program with the broad intent of all of the following acts as may be applicable:

(i) Chapter 35 of title 44 of the United States Code, 44 U.S.C. 3501 to 3520, relating to paperwork reduction.

(ii) Sections 601 to 612 of title 5 of the United States Code, 5 U.S.C. 601 to 612, relating to regulatory flexibility.

(iii) Section 504 of title 5 of the United States Code, 5 U.S.C. 504, and section 2412 of title 28 of the United States Code, 28 U.S.C. 2412, relating to equal access to justice.

(e) Review information prepared by the program for small businesses to assure that the information is understandable to laypersons.

(f) Utilize the program to act as staff to develop and disseminate the work product of the advisory panel.

(9) The advisory panel shall provide copies of advisory reports prepared by the advisory panel to the United States environmental protection agency, the department, the legislature, and the department of commerce. In addition, the reports shall be made available to any person upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities, including budgeting procurement and management-related functions, of the office of the small business clean air ombudsman to the Michigan jobs commission, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

Part 59

AIR POLLUTION CONTROL FACILITY; TAX EXEMPTION

324.5901 “Facility” defined.
Sec. 5901. As used in this part, “facility” means machinery, equipment, structures, or any part or accessories of machinery, equipment, or structures, installed or acquired for the primary purpose of controlling or disposing of air pollution that if released would render the air harmful or inimical to the public health or to property within this state. Facility includes an incinerator equipped with a pollution abatement device in effective operation. Facility does not include an air conditioner, dust collector, fan, or other similar facility for the benefit of personnel or of a

business. Facility also means the following, if the installation was completed on or after July 23, 1965:

(a) Conversion or modification of a fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(b) Installation of a new fuel burning system to effect air pollution control. The fuel burner portion only of the system is eligible for tax exemption.

(c) A process change involving production equipment made to satisfy the requirements of part 55 and rules promulgated under that part. The maximum cost allowed shall be 25% of the cost of the new process unit but shall not exceed the cost of the conventional control equipment applied on the basis of the new process production rate on the preexisting process.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5902 Tax exemption certificate; application; contents; approval; notice; hearing; tax exemption.
Sec. 5902. (1) An application for a pollution control tax exemption certificate shall be filed with the state tax commission in a manner and in a form as prescribed by the state tax commission. The application shall contain plans and specifications of the facility, including all materials incorporated or to be incorporated in the facility and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the proposed operating procedure for the control facility.

(2) Before issuing a certificate, the state tax commission shall seek approval of the department and give notice in writing by certified mail to the department of treasury and to the assessor of the taxing unit in which the facility is located or to be located, and shall afford to the applicant and the assessor an opportunity for a hearing. Tax exemption granted

under this part shall be reduced to the extent of any commercial or productive value derived from any materials captured or recovered by any air pollution control facility as defined in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5903 Tax exemption certificate; findings of department; notice to state tax commission; issuance and effective date of certificate.
Sec. 5903. If the department finds that the facility is designed and operated primarily for the control, capture, and removal of pollutants from the air, and is suitable, reasonably adequate, and meets the intent and purposes of part 55 and rules promulgated under that part, the department shall notify the state tax commission, which shall issue a certificate. The effective date of the certificate is the date on which the certificate is issued.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5904 Tax exemptions; statement in certificate.
Sec. 5904. (1) For the period subsequent to the effective date of the certificate and continuing as long as the certificate is in force, a facility covered by the certificate is exempt from real and personal property taxes imposed under the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) Tangible personal property purchased and installed as a component part of the facility is exempt from both of the following:

(a) Sales taxes imposed under the general sales tax act, Act No. 167 of the Public Acts of 1933, being sections 205.51 to 205.78 of the Michigan Compiled Laws.

(b) Use taxes imposed under the use tax act, Act No. 94 of the Public Acts of 1937, being sections 205.91 to 205.111 of the Michigan Compiled Laws.

(3) The certificate shall state the total acquisition cost of the facility entitled to exemption.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5905 Tax exemption certificate; issuance; mailing to applicant, local tax assessors, and treasury department; filing; notice of refusal.
Sec. 5905. The state tax commission shall send an air pollution control tax exemption certificate, when issued, by certified mail to the applicant, and certified copies by certified mail to the assessor of the taxing unit in which any property to which the certificate relates is located or to be located and to the department of treasury, which copies shall be filed of record in their offices. Notice of the state tax commission's refusal to issue a certificate shall be sent by certified mail to the applicant, to the department of treasury, and to the assessor.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5906 Tax exemption certificate; modification or revocation; grounds; notice and hearing; statute of limitations.
Sec. 5906. (1) The state tax commission, on notice by certified mail to the applicant and opportunity for a hearing, shall, on its own initiative or on complaint of the department, the department of treasury, or the assessor of the taxing unit in which any property to which the certificate relates is located, modify or revoke the certificate if any of the following appear:

(a) The certificate was obtained by fraud or misrepresentation.

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of a facility or to operate the facility for the purpose and degree of control specified in the certification or an amended certificate.

(c) The facility covered by the certificate is no longer used for the primary purpose of pollution control and is being used for a different purpose.

(d) Substantial noncompliance with part 55 or any rule promulgated under that part.

(2) On the mailing by certified mail to the certificate holder, the department of treasury, and the local assessor of notice of the action of the state tax commission modifying or revoking a certificate, the certificate shall cease to be in force or shall remain in force only as modified. If a certificate is revoked because it was obtained by fraud or misrepresentation, all taxes that would have been payable if a certificate had not been issued are immediately due and payable with the maximum interest and penalties prescribed by applicable law. A statute of limitations shall not operate in the event of fraud or misrepresentation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5907 Tax exemption certificate; refusal; appeal.
Sec. 5907. A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the finding and order of the state tax commission in the manner and form and within the time provided by the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.5908 State tax commission; rules; administration of part.
Sec. 5908. The state tax commission may adopt rules as it considers necessary for the administration of this part. These rules shall not abridge the authority of the department to determine whether or not air pollution control exists within the meaning of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 61

EMISSIONS FROM VESSELS

324.6101 Vessels; blowing flues prohibited; exceptions.
Sec. 6101. A marine vessel while navigating in the waters of this state within 1 mile of land shall not blow flues unless necessary under an emergency condition for the safe navigation of the vessel or to alleviate or extinguish a flash fire in the boiler up-takes or during departure-arrival operations.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6102 Violation; penalty; separate offenses.
Sec. 6102. A person who is convicted of violating this part is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00. Each occurrence is a separate offense.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 63

MOTOR VEHICLE EMISSIONS TESTING FOR WEST MICHIGAN

324.6301 Meanings of words and phrases.
Sec. 6301. For the purposes of this part, the words and phrases contained in sections 6302 to 6304 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6302 Definitions; A to D.
Sec. 6302. (1) "Alternative fuel" means the following fuel sources used to propel a motor vehicle:

(a) Compressed natural gas.

(b) Diesel fuel.

(c) Electric power.

(d) Propane.

(e) Any other source as defined by rule promulgated by the department.

(2) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part. The department shall consult with the department of natural resources when appropriate to determine that rules and standards will comply with federal requirements and sound environmental considerations.

(3) “Certificate of waiver” means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to this part.

(4) “Clean air act” means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(5) “Consumer protection” means protecting the public from unfair or deceptive practices.

(6) “Contractor” means a person who enters into a contract with the department to operate public motor vehicle inspection stations under this part.

(7) “Cut point” means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(8) “Department” means the state transportation department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6303 Definitions; E to N.

Sec. 6303. (1) “Emission control device” means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) “Initial inspection” means an inspection performed on a motor vehicle for the first time in a test cycle.

(3) “Inspection” means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(4) “Maintenance” means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(5) “Motor vehicle” or “vehicle” means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, of 10,000 pounds or less gross vehicle weight, which is required to be registered for use upon the public streets and highways of this state under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part, motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(6) “National ambient air quality standards” means the air quality standards for outside air as established in the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6304 Definitions; P to T.

Sec. 6304. (1) “Pollutants” means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) “Public inspection station” means a facility for motor vehicle inspection operated under contract with the department as provided in this part.

(3) “Tamper with” means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(4) “Test-only network” means a network of inspection stations that perform official vehicle emissions inspections and in which owners and employees of those stations, or companies owning those stations, are contractually or legally barred from engaging in motor vehicle repair or service, motor vehicle parts sales, and motor vehicle sale and leasing, either directly or indirectly, and are barred from referring vehicle owners to particular providers of motor vehicle repair services.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6305 Motor vehicle emissions inspection and maintenance program fund; account.

Sec. 6305. (1) There is established a motor vehicle emissions inspection and maintenance program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for vehicle emissions inspections under this part shall be deposited in the state treasury to the credit of the motor vehicle emissions inspection and maintenance program fund.

(2) The vehicle emissions inspection account is created in the motor vehicle emissions inspection and maintenance program fund. Money in the vehicle emissions inspection account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions inspection and maintenance program under this part, administration and oversight by the department, enforcement of the motor vehicle emissions inspection and maintenance program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions inspection and maintenance program.

(3) Funds remaining in the motor vehicle emissions inspection and maintenance program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions inspection and maintenance program fund for appropriation in the following year.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6306 Operation of motor vehicle; prohibition; testing; enforcement; inspection and maintenance program; implementation in Kent, Ottawa, and Muskegon counties; exclusion; test procedures and components; vehicles subject to inspection; rules; suspension of vehicle registration; suspension of program.
Sec. 6306. (1) Each motor vehicle subject to this part shall be inspected for emissions as provided in this part. A person shall not operate a motor vehicle subject to this part whose certificate of compliance has expired or who has not received a time extension or waiver and whose vehicle fails to meet emission cut points established by the department or other emission control requirements established by the department in this part. If a vehicle subject to testing under this part has not been tested within the previous 12 months, the prospective seller of the vehicle shall have the vehicle tested and complete necessary repairs before offering the vehicle for sale.

(2) To enforce this section, the department shall implement and administer a motor vehicle emissions inspection and maintenance program designed to meet the performance standards for a motor vehicle emissions inspection and maintenance program as established by the United States environmental protection agency in 40 C.F.R. 51.351 in the counties of Kent, Ottawa, and Muskegon in those areas that are not in attainment of the national ambient air quality standards for ozone. However, those counties that would be in attainment of the national ambient air quality standards for ozone, given base line emissions for that county, but for emissions emanating from outside of the state, are excluded from implementation of such a program unless the department of environmental quality shall affirmatively determine by clear and convincing evidence, based on study of formation and transport of ozone, that the control of motor vehicle emissions would significantly contribute to the attainment of the national ambient air quality standards for ozone as promulgated under the clean air act. The motor vehicle emissions inspection and maintenance program shall include the following test procedures and components:

(a) Biennial testing.

(b) Test-only network.

(c) Transient mass-emission evaporative system, purge, and pressure testing on 1981 and later model year vehicles using the IM240 driving cycle.

(d) Two-speed idle testing, antitampering, and pressure test on 1975 to 1980 vehicles in accordance with the following:

(i) Visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(ii) Pressure test of the evaporative system for light-duty gas vehicles and light-duty gas trucks of 10,000 pounds or less gross vehicle weight.

(e) On-board diagnostic check for vehicles so equipped.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this part.

(4) Equipment and test procedures shall meet the requirements of appendices A through E to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) Vehicles shall be subject to inspection according to the following:

(a) The first initial inspection under this part for each even numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an even numbered calendar year.

(b) The first initial inspection under this part for each odd numbered model year vehicle shall take place within 6 months before the expiration of the vehicle registration in an odd numbered calendar year.

(6) The department, in consultation with the department of state and the department of environmental quality, may promulgate rules for the administration of the motor vehicle emissions inspection and maintenance program, including, but not limited to, all of the following:

(a) Standards for public inspection station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(i) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(ii) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(7) The department may promulgate rules to require the inspection of motor vehicles through the use of remote sensing devices. These rules may provide for use of remote sensing devices for research purposes, but shall not provide for any checklanes or other measures by which motorists will be stopped on highways or other areas open to the general public.

(8) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this part and the rules promulgated under this part and for which the required certificate of compliance has not been obtained.

(9) If any area in this state subject to this part is redesignated by the United States environmental protection agency as being in attainment with the national ambient air quality standards for ozone, a motor vehicle emissions inspection and maintenance program authorized by this part is suspended and shall only be reimplemented if required as a contingency measure included in a maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period.

(10) Implementation of a motor vehicle emissions inspection and maintenance program authorized by this part shall be suspended if the classification of the Grand Rapids and Muskegon ozone nonattainment areas is adjusted from moderate ozone nonattainment areas to transitional or marginal nonattainment areas by the United States environmental protection agency pursuant to its authority under section 181 of the clean air act, 42 U.S.C. 7511, or if the United States environmental protection agency determines that a motor vehicle emissions inspection and maintenance program is not applicable or is not necessary for either of these areas to meet the requirements of the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 564, Imd. Eff. Jan. 16, 1997

Popular Name: Act 451
Popular Name: NREPA

324.6307 Registration renewal; vehicle inspection and certificate of compliance or waiver required; validity; prohibition.

Sec. 6307. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 2 years.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a motor vehicle emissions inspection and maintenance program without a valid certificate of compliance or certificate of waiver.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6308 Repealed. 1996, Act 564, Imd. Eff. Jan. 16, 1997.

Compiler's Notes: The repealed section pertained to exemption of certain areas to requirements of part.
Popular Name: Act 451
Popular Name: NREPA

324.6309 Judicial relief.

Sec. 6309. The state should pursue judicial relief, either alone or in cooperation with other states, from the requirements or penalties imposed by the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6310 Inspection fee; initial inspections; free reinspections; remittance and deposit of inspection fee.

Sec. 6310. (1) The department, in consultation with the department of state, may establish an inspection fee not to exceed $24.00 adjusted annually by the percentage increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar. In establishing the fee or other funding sources, the department shall include the direct and indirect costs of the vehicle emissions inspection, estimated start-up costs, estimated cost for a public information program, administration and oversight by the department, and enforcement costs by the department of state. The fee, if established, shall be paid by the motor vehicle owner to the operator of the inspection station at the time of an initial vehicle emissions inspection.

(2) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each biennial inspection period at a time set by the department.

(3) The owner of a motor vehicle subject to this part that has failed an initial vehicle emissions inspection is entitled to 1 free reinspection after the completion of necessary repairs designed to bring the vehicle into compliance with clean air act standards.

(4) By the fifteenth day of each month, each inspection station shall remit the amount of the inspection fee required for administration and oversight under the contractual agreement entered into with the department to the department of treasury for deposit in the motor vehicle emissions inspection and maintenance program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6311 Vehicles exempt from inspection requirements of part.
Sec. 6311. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) Vehicles that are licensed as historic vehicles under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(d) A motor vehicle that has as its only fuel source an alternative fuel.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the year of the next biennial inspection for the vehicle model year according to section 6306(5).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6312 Public inspection stations; contracts with private entities to conduct inspections; competitive evaluation process; notice of requests for proposals and contract awards; factors to be considered during contractor evaluation process.
Sec. 6312. (1) The department shall contract with a private entity or entities for the design, construction, equipment, establishment, maintenance, and operation of public inspection stations to conduct vehicle emissions inspections as required by this part.

(2) The department shall seek to obtain the highest quality service for the lowest cost through a competitive evaluation process for contractors.

(3) The department shall provide adequate public notice of the requests for proposals by advertising in a newspaper of general circulation in the state not later than November 13, 1993. The department shall award the contract with reasonable promptness by written notice to the responsible offeror whose proposal has been evaluated and is determined to be the most advantageous to the state, taking into consideration the requirements of this part and rules promulgated under this part, or as otherwise required by the department of management and budget.

(4) In addition to the other requirements of this part, the director of the department shall give balanced consideration during the contractor evaluation process to all of the following factors:

(a) The public convenience of the inspection station, including the provisions for average mileage to an inspection station and the waiting time at a station.

(b) The unit cost per inspection.

(c) The degree of technical content of the proposal, including test-accuracy specifications and quality of testing services, and the data and methodology used to prepare the network design, and other technological aspects of the proposal.

(d) The experience of the contractor and the probability of a successful performance by the contractor, including an evaluation of the capacity, resources, and technical and management skills to adequately construct, equip, operate, and maintain a sufficient number of public inspection stations to meet the demand.

(e) The financial stability of the contractor. The department may make reasonable inquiries to determine the financial stability of an offeror. The failure of an offeror to promptly supply information in connection with

such an inquiry is grounds for a determination of nonresponsibility with respect to that offeror.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451

324.6313 Contract provisions.

Sec. 6313. In addition to any other provisions of this part, the contract authorized by section 6312 shall contain all of the following provisions:

(a) The minimum requirements for adequate staff, equipment, management, and hours of operation of inspection stations.

(b) The submission of reports and documentation concerning the operation of official inspection stations as required by this part.

(c) Surveillance to ensure compliance with vehicular emissions standards, procedures, rules, regulations, and laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6314 Public inspection stations.

Sec. 6314. (1) The number and locations of the public inspection stations shall provide convenient service for motorists and shall be consistent with all of the following:

(a) The network of stations shall be sufficient to assure short driving distances and to assure that waiting times to get a vehicle inspected do not exceed 15 minutes more than 4 times a month.

(b) When there are more than 4 vehicles in a queue waiting to be tested, spare lanes shall be opened and additional staff employed to reduce wait times.

(c) A person shall not be required to make an appointment for a vehicle inspection.

(d) There shall be adequate queuing space for each inspection lane at each inspection station to accommodate on the station property all motor vehicles waiting for inspection.

(e) There shall be at least 2 inspection stations located within each county subject to the motor vehicle emissions inspection and maintenance program under this part.

(2) Public inspection stations shall inspect and reinspect motor vehicles in accordance with this part.

(3) A public inspection station shall inspect and reinspect motor vehicles in accordance with the rules promulgated under this part by the department. The inspection station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under section 6305. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection and, if appropriate, the repairs needed or likely to be needed to bring the vehicle into compliance with the standards and criteria.

(4) Stations shall provide a process by which vehicles being reinspected shall be accommodated before vehicles waiting for an initial inspection.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6315 Certificate of waiver.

Sec. 6315. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air act standards in accordance with the inspection report is at least $300.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index rounded to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Owners of vehicles subject to a transient IM240 emission test may apply to the department for a certificate of waiver after failing an initial inspection and a subsequent reinspection even though the dollar limit stated in subsection (1) for the cost of maintenance already performed has not been met. The department shall perform a complete, documented physical and functional diagnosis and inspection. If the diagnosis and inspection shows that no additional emission-related repairs are needed or that the vehicle presents prohibitive inspection problems or is inappropriate for inspection, the department may issue a certificate of waiver.

(4) Issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(5) A temporary certificate of waiver, valid for not more than 15 days, may be issued to a motor vehicle to allow time for necessary maintenance and reinspection. A temporary certificate of waiver may be issued not more than twice for the same motor vehicle.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6316 Implementation of continuing education programs; protection of public from fraud and abuse; ensuring proper and accurate emission inspection results; evaluation; compilation of data; report.
Sec. 6316. (1) The department, directly or by contract, shall implement continuing education programs to begin 6 months before the commencement of the public inspection program in a county. A continuing education program shall consist of a component designed to

educate the general public about the motor vehicle emissions inspection and maintenance program and a component to inform those who will perform maintenance requirements under this part.

(2) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. This shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty-covered repairs for eligible vehicles that fail a test.

(3) The department shall evaluate, inspect, and provide quality assurance for the inspection and maintenance program established under this part to ensure proper and accurate emission inspection results. The department shall be responsible for issuance of certificates of waiver and time extensions.

(4) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6317 Certificate of compliance; issuance.

Sec. 6317. A contractor shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6318 Furnishing certain information about repair facility; guidelines; failure of vehicle to pass inspection; availability of certificates of waiver.

Sec. 6318. (1) An employee, owner, or operator of a public inspection station shall not furnish information about the name or other description of a repair facility or other place where maintenance may be obtained. The department shall develop guidelines for provision of this information in cooperation with the department of state, and shall provide the house and senate standing committees dealing with transportation matters with those guidelines before January 1, 1995.

(2) Each public inspection station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice which states the following:

"A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.".

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6315.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6319 Tampering with motor vehicle.

Sec. 6319. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by

employees of the department for purposes of monitoring and enforcement of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6320 Providing false information to public inspection station or department.

Sec. 6320. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6321 Violations as misdemeanor; fine; separate offenses.

Sec. 6321. (1) A person who violates section 6317, forges, counterfeits, or alters an inspection certificate, or knowingly possesses an unauthorized inspection certificate is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6318, 6319, or 6320 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 65

MOTOR VEHICLE EMISSIONS TESTING FOR SOUTHEAST MICHIGAN

324.6501 Meanings of words and phrases.
Sec. 6501. For the purposes of this part, the words and phrases contained in sections 6502 to 6504 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6502 Definitions; C, D.
Sec. 6502. (1) "Certificate of compliance" means a serially numbered written instrument or document that is issued to the owner of a motor vehicle upon passing an inspection or reinspection and is evidence that the motor vehicle complies with the standards and criteria adopted by the department under this part.

(2) "Certificate of waiver" means a serially numbered written document or sticker indicating that the standards and criteria of the department have been met for a motor vehicle pursuant to the requirements of this part.

(3) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q. Clean air act includes the regulations promulgated under the clean air act.

(4) "Consumer protection" means protecting the public from unfair or deceptive practices.

(5) “Cut point” means the level of pollutants emitted that is used in determining whether a particular make and model of motor vehicle passes or fails all or a part of an inspection.

(6) “Department” means the state transportation department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6503 Definitions; E to N.

Sec. 6503. (1) “Emission control device” means a catalytic converter, thermal reactor, or other component part used by a vehicle manufacturer to reduce emissions or to comply with emission standards prescribed by regulations promulgated by the United States environmental protection agency under the clean air act.

(2) “Fleet testing station” means a testing station that is authorized to conduct inspections on 10 or more vehicles owned or leased by 1 person.

(3) “Initial inspection” means an annual inspection performed on a motor vehicle for the first time in a test cycle.

(4) “Inspection” means testing of a motor vehicle for compliance with emission control requirements of this part and the clean air act.

(5) “Maintenance” means the repair or adjustment of a motor vehicle to bring that motor vehicle into compliance with emission control requirements of this part and rules promulgated under this part.

(6) “Motor vehicle” means a self-propelled vehicle as defined in section 79 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.79 of the Michigan Compiled Laws, that has a gross vehicle weight rating of 10,000 pounds or less and which is required to be registered for use upon the public streets and highways of this state under Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws. For purposes of this part,

motor vehicle includes those vehicles owned by the government of the United States, this state, and any political subdivision of this state.

(7) "National ambient air quality standards" means the air quality standards for outside air as established in the clean air act.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6504 Definitions; P to T.
Sec. 6504. (1) "Pollutants" means nitrogen oxides, carbon monoxide, hydrocarbons, and other toxic substances emitted from the operation of a motor vehicle.

(2) "Tamper with" means to remove or render inoperative, to cause to be removed or rendered inoperative, or to make less operative an emission control device or an element of an emission control device that is required by the clean air act to be installed in or on a motor vehicle.

(3) "Test cycle" means a 12-month period corresponding with the expiration date for registration of the vehicle.

(4) "Testing station" means a facility for motor vehicle inspection as provided in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6505 Access to records; requests in writing; identification of record; reasonable charge.
Sec. 6505. (1) Access to records of the department and the department of state shall be in accordance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Requests for access to records shall be in writing and shall identify the specific record.

(3) There shall be a reasonable charge for the reproduction and mailing of identifiable records.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6506 Testing or repair of motor vehicles; implementation of emissions inspection test program in Wayne, Oakland, and Macomb counties.
Sec. 6506. On and after the effective date of the 1996 amendatory act that amended this section, the owner of a motor vehicle who resides in Wayne, Oakland, or Macomb county shall not be required to have the motor vehicle tested or repaired under this act unless an emissions inspection test program is implemented under the conditions described in section 6507.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996
Popular Name: Act 451
Popular Name: NREPA

324.6507 Emissions inspection test program in Wayne, Oakland, and Macomb counties; conditions for implementation; contingency measures; adoption of cut points; equipment and test procedures; rules; suspension of vehicle registration.
Sec. 6507. (1) The department may implement and administer only under the conditions set forth in subsection (2) an emissions inspection test program designed to meet the performance standards for a motor vehicle emissions testing program as established by the United States environmental protection agency in 40 C.F.R. 51.352 in the counties of Wayne, Oakland, and Macomb, using bar 90 testing equipment, including a visual antitampering check, or an equivalent system approved by the United States environmental protection agency. This inspection and maintenance program, if implemented, shall be carried

out by licensed testing stations as authorized by the department. The visual antitampering check described in this subsection includes visual antitampering inspection of the catalytic converter, gas cap, PCV valve, air pump, and fuel inlet restrictor on light duty gas vehicles and light duty gas trucks with a gross vehicle weight rating of 10,000 pounds or less.

(2) The decentralized test and repair program described in subsection (1) shall only be implemented as a contingency measure included in the maintenance plan approved by the United States environmental protection agency as part of the redesignation as an ozone attainment area. The contingency measure shall include authority to expand the program to Washtenaw county in addition to the counties described in subsection (1) if other measures are not sufficient to meet the maintenance plan. The department may only implement the contingency measure if there is observation of an actual violation of the ozone national ambient air quality standard under 40 C.F.R. 50.9 during the maintenance period. The department may only exercise the contingency measure set forth in this subsection if:

(a) The department notifies the legislature that the event set forth in this subsection has occurred and that the contingency will be implemented after a period of 45 days.

(b) The legislature fails to adopt any amendments to this part that alter the requirements of this section within the 45-day period.

(3) The cut points set forth in test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency are hereby adopted for the emissions testing program authorized in this section.

(4) Equipment and test procedures for the program described in subsection (1) shall meet the requirements of appendices A through D to subpart S of 40 C.F.R. 51 and the test procedures, quality control requirements, and equipment specifications issued by the United States environmental protection agency.

(5) The department, in consultation with the department of state and the department of natural resources, may promulgate rules for the administration of the inspection and maintenance program under this section including, but not limited to:

(a) Standards for testing station equipment, including emission testing equipment.

(b) Emission test cut points and other emission control requirements based on the clean air act and the state implementation plan.

(c) Exemptions from inspections as authorized under this part.

(d) Standards and procedures for the issuance of certificates of compliance and certificates of waiver from inspection and maintenance program requirements.

(e) Rules to ensure that owners of motor vehicles registered in this state who temporarily reside out of state are not unduly inconvenienced by the requirements of this part. The rules may include any of the following:

(i) Reciprocal agreements with other states that require motor vehicle inspections that are at least as stringent as those required under this part and rules promulgated under this part.

(ii) Provision for time extensions of not more than 2 years for persons temporarily residing in a state, the District of Columbia, or a territory of the United States with which this state has not entered into a reciprocal agreement for vehicle emissions inspection and maintenance. Additional time extensions shall be granted to persons temporarily residing out of state because of military service.

(6) Upon receipt of documentation from the department, the department of state may suspend the registration of any vehicle that is not in compliance with this section and the rules promulgated under this section and for which the required certificate of compliance has not been obtained.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996
Popular Name: Act 451
Popular Name: NREPA

324.6508 Motor vehicle emissions testing program fund; account.
Sec. 6508. (1) There is established a motor vehicle emissions testing program fund to be maintained as a separate fund in the state treasury and to be administered by the department. Money received and collected for motor vehicle emissions inspections and for delinquency charges under this part and from any other source shall be deposited in the state treasury to the credit of the motor vehicle emissions testing program fund.

(2) The motor vehicle emissions inspection account is created in the motor vehicle emissions testing program fund. Money in this account shall be appropriated by the legislature for the purposes of a public education program to be conducted by the department, start-up costs required to implement requirements of the motor vehicle emissions testing program under this part, administration and oversight by the department and the independent third-party organization, enforcement of the motor vehicle emissions testing program through the vehicle registration process by the department of state, gasoline inspection and testing, and other activities related to the motor vehicle emissions testing program.

(3) Funds remaining in the motor vehicle emissions testing program fund at the end of a fiscal year shall not lapse to the general fund but shall remain in the motor vehicle emissions testing program fund for appropriation in the following year.

(4) If any of the funds collected from the fee in section 6511(1) for administration and oversight including reimbursement of independent third-party organizations are appropriated or expended for any purposes other than those specifically listed in subsection (2), section 6520(2), and section 6532, the authority to collect fees granted under section 6511(1) shall be suspended until the funds appropriated or expended for purposes

other than those specifically listed in subsection (2), section 6520(2), and section 6532 are returned to the fund established in subsection (1).

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6509 Renewal of registration; issuance of certificate of compliance or certificate of waiver required; validity of certificate.
Sec. 6509. (1) The department of state shall not renew the registration of a motor vehicle subject to this part unless the vehicle has been inspected as provided in this part and a certificate of compliance or a certificate of waiver has been issued.

(2) Certificates of compliance and certificates of waiver issued under this part are valid for 1 test cycle.

(3) If not exempted by this part or rules promulgated under this part, a person shall not drive a motor vehicle registered in an area required to have a vehicle emission and maintenance program without a valid certificate of compliance or certificate of waiver.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6510 Testing station; prohibited conduct.
Sec. 6510. (1) A testing station shall not falsely represent that the motor vehicle has passed or failed an inspection or reinspection.

(2) A testing station shall not falsely represent repairs or falsely estimate the price for repairs that are necessary to allow a person to obtain a certificate of compliance or a certificate of waiver.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6511 Testing station; fee; use of fee; conditions requiring free reinspection or issuance of certificate of compliance; initial inspections; remittance and disposition of fee.

Sec. 6511. (1) A testing station may charge a person a fee of not more than $13.00. This part or the rules promulgated under this part do not prohibit a testing station from providing inspections for a fee of less than $13.00. However, the fee charged shall not be less than $3.00. Three dollars from the fee charged under this subsection shall be remitted by the testing station to the department of treasury as provided in subsection (7) and shall be used by the department for administration and oversight. One dollar from the $3.00 shall be used by the department to reimburse the independent third-party organization pursuant to section 6520. A testing station shall not make a separate charge for issuing a certificate of compliance, notice of failure, or certificate of waiver.

(2) A testing station shall provide 1 free reinspection of a motor vehicle if the motor vehicle failed a previous inspection performed by the testing station and if the motor vehicle is presented for reinspection within 90 days of the previous inspection, except that a testing station is not obligated to perform a free reinspection if the person presenting the motor vehicle for reinspection does not present the notice of failure previously issued by the testing station.

(3) A testing station that has performed repairs to bring into compliance a motor vehicle that has failed an inspection at another testing station within the previous 90 days, as evidenced by the notice of failure, shall provide to the person presenting the motor vehicle a free reinspection and shall provide a certificate of compliance for the motor vehicle if it passes the reinspection.

(4) A testing station shall provide 1 free reinspection of a motor vehicle if a fee was charged by the testing station for an initial inspection of the motor vehicle that was not completed under any condition described in the rules.

(5) Initial inspections must take place within 6 months before the expiration of the registration for the vehicle or the expiration of the

certificate of compliance, time extension, or certificate of waiver issued under this part. Vehicles subject to this part that are not required to be registered in this state shall be presented for inspection during each annual inspection test cycle at a time set by the department.

(6) By the fifteenth day of each month, each testing station shall remit the amount of the fee required for administration and oversight under subsection (1) to the department of treasury for deposit in the motor vehicle emissions testing program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996
Popular Name: Act 451
Popular Name: NREPA

324.6512 Vehicles exempt from inspection requirements.
Sec. 6512. The following vehicles are exempt from the inspection requirements of this part:

(a) Motor vehicles that are exempted by rules promulgated by the department because of prohibitive inspection problems or inappropriateness for inspection.

(b) A motor vehicle manufactured before the 1975 model year.

(c) A motor vehicle that has as its only fuel source compressed natural gas, diesel fuel, propane, electric power, or any other source as defined by rule promulgated by the department.

(d) A vehicle that is licensed as a historic vehicle under section 803a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.803a of the Michigan Compiled Laws.

(e) A motorcycle.

(f) A motor vehicle used for covert monitoring of inspection facilities.

(g) A new motor vehicle, immediately after issuance of the vehicle's first title until the next annual inspection for the vehicle model year.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6513 Motor vehicles subject to part and rules; exceptions.

Sec. 6513. (1) The motor vehicles subject to this part and the rules promulgated under this part include the following:

(a) Each registered motor vehicle for the model years 1975 and later that is owned by a person whose permanent place of residence is in a county subject to this part.

(b) All motor vehicles for the model years 1975 and later that belong to a fleet and that are predominately garaged, operated, or maintained in a county subject to this part.

(2) A vehicle identified on a certificate of title issued by the department of state as an assembled vehicle is not subject to this part and the rules promulgated under this part.

(3) A motor vehicle is not subject to this part and the rules promulgated under this part if its application for registration renewal is accompanied by both a memorandum of federal clean air act exemption issued pursuant to federal regulation and a certification by the applicant identifying the vehicle, and if the application for registration is filed with the department.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996
Popular Name: Act 451
Popular Name: NREPA

324.6514 Motor vehicles purchased as new vehicles; evidence.
Sec. 6514. Any 1 of the following shall be accepted by the department of state as evidence that a motor vehicle was purchased as a new motor vehicle within the previous 12 months:

(a) A registration or certificate of title indicating the motor vehicle is of a model year which has been offered for sale in this state for not more than 12 months.

(b) A record of the department of state indicating that the motor vehicle was purchased as new within the previous 12 months.

(c) A seller's statement to the buyer that indicates that the motor vehicle being sold is a new motor vehicle and that is dated within the previous 12 months.

(d) A manufacturer's statement of origin showing the first retail sale as being within the previous 12 months.

(e) A bill of sale from a manufacturer or a dealer franchised to sell new motor vehicles of that particular make that indicates that the motor vehicle being sold is new and that is dated within the previous 12 months.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6515 Application for motor vehicle registration as evidence of owner's permanent place of residence.
Sec. 6515. An application for a motor vehicle registration shall be accepted by the department of state as evidence of a motor vehicle owner's permanent place of residence.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6516 Inspection of motor vehicles; license to operate testing station; separate license and fee; mobile or temporary location; remote sensing devices; use of other instruments; display of license.
Sec. 6516. (1) A person shall not engage in the business of inspecting motor vehicles under this part except as authorized by a license to operate a testing station issued by the department pursuant to part 13.

(2) A person shall not be licensed to operate a testing station unless the person has an established place of business where inspections are to be performed during regular business hours, where records required by this part and the rules promulgated under this part are to be maintained, and that is equipped with an instrument or instruments of a type that comply with and are capable of performing inspections of motor vehicles under this part.

(3) A person licensed as a testing station shall perform inspections under this part at the established place of business for which the person is licensed. A person shall inform the department immediately of a change in the address of an established place of business at which the person is licensed as a testing station.

(4) A person shall obtain a separate license and pay a separate fee for each established place of business at which a testing station is to be operated.

(5) A testing station may establish and operate mobile or temporary testing station locations if they meet all of the following conditions:

(a) The instrument used at the mobile or temporary location is capable of meeting the performance specifications for instruments set forth in rules promulgated under this part while operating in the mobile or temporary station environment.

(b) The owner of a motor vehicle inspected at the mobile or temporary location shall be provided with a free reinspection of the motor vehicle, at the established place of business of the testing station or at any mobile or temporary testing station location operated by the testing station.

(c) Personnel at the licensed established place of business location shall, at all times, know the location and hours of operation of the mobile or temporary testing station or stations.

(d) The records required by this part and the rules promulgated under this part relating to inspections performed and the instrument or instruments used at a mobile or temporary testing station shall be maintained at a single established place of business that is licensed as a testing station.

(e) The documents printed as required by the rules promulgated under this part by an instrument used at a mobile or temporary testing station location shall contain the testing station number and the name, address, and telephone number of the testing station's established place of business.

(6) A testing station may use remote sensing devices as a complement to testing otherwise required by this part.

(7) A testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(8) A testing station shall display a valid testing station license issued by the department in a place and manner conspicuous to its customers.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.6517 Testing station license; application; information; fee; effective date and duration of license; reinstatement of surrendered, revoked, or expired repair facility registration; resumption of operation.
Sec. 6517. (1) An application for a testing station license shall include a description of the business to be licensed. The description shall include,

in addition to other information required by this part and the rules promulgated under this part, all of the following:

(a) The repair facility registration number issued to the applicant if the applicant is licensed under the motor vehicle service and repair act, 1974 PA 300, MCL 257.1301 to 257.1340.

(b) The name of the business and the address of the business location for which a testing station license is being sought.

(c) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(d) The name of and identification number issued by the department for each emission inspector employed by the applicant.

(e) A description, including the model and serial number, of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part and the date the instrument was purchased by the applicant.

(f) The estimated capacity of the applicant to perform inspections.

(2) The fee for a testing station license is $50.00 and shall accompany the application for a license submitted to the department.

(3) A testing station license shall take effect on the date it is approved by the department and shall remain in effect until this part expires, the license is surrendered by the station, revoked or suspended by the department, or until the motor vehicle repair facility registration of the business has been revoked or suspended by the department of state, surrendered by the facility, or has expired without timely renewal.

(4) If a testing station license has expired by reason of surrender, revocation, or expiration of repair facility registration, the business shall

not resume operation as a testing station until the repair facility registration has been reinstated and a new, original application for a testing station license has been received and approved by the department and a new license fee paid.

(5) When the repair facility registration has been suspended, the testing station may resume operation without a new application when the repair facility registration suspension has ended.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 166, Imd. Eff. Apr. 17, 1996 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.6518 Testing station; change of ownership; notice.

Sec. 6518. (1) If the ownership of a testing station changes, a new original license and payment of a new license fee is required, and the station shall not operate until its application is approved by the department. For the purposes of this section, "change of ownership" means a change in the ownership of a station which is either a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of a change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6519 Display of certain information; prohibited conduct.

Sec. 6519. (1) A testing station shall display at the established place of business an information sign that bears an identifying symbol developed

by the department and is worded as follows: “OFFICIAL EMISSION TESTING STATION”.

(2) The sign shall be displayed on the outside premises of the testing station so that it is clearly and readily visible and readable to persons in motor vehicles as they enter the testing station property.

(3) A testing station shall also conspicuously display the price charged by the station for an inspection preceded by a dollar sign and printed in Arabic numerals.

(4) A testing station shall maintain posted business hours during which time representatives of the independent third party required to make certifications of the equipment used by the testing station and the emission inspectors used by the testing station may conduct inspections of the station, instruments and records required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the testing station.

(5) A testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6520 Testing station; certification by third-party organization.
Sec. 6520. (1) A testing station shall submit annually to the department evidence of certification of its testing equipment and emission inspectors by an independent third-party organization. The certification shall provide that the testing equipment and emission inspectors meet the requirements of this part and the rules promulgated under this part and the requirements of the clean air act. If deficiencies are noted by the third-party certifying organization, the testing station shall submit a written explanation of corrective action accepted by the third-party organization with the certification.

(2) The department shall contract with the third-party organization to establish a random inspection system for testing stations. Funds from the fee imposed pursuant to section 6511 shall be used for this purpose.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6521 Fleet testing station; permit; requirements.
Sec. 6521. (1) A fleet owner or lessee shall not perform inspections under this part or the rules promulgated under this part except as authorized under a permit to operate a fleet testing station issued by the department pursuant to part 13.

(2) A person shall not receive a permit to operate a fleet testing station unless the person has an established location where inspections are to be performed, where records required by this part and the rules promulgated under this part are to be maintained, that is equipped with an instrument or instruments of a type that comply with this part or the rules promulgated under this part, and that is capable of performing inspections of motor vehicles under this part and the rules promulgated under this part.

(3) A person with a permit to operate a fleet testing station shall perform inspections under this part and the rules promulgated under this part only at the established location for which the person has the permit. A person shall inform the department immediately of a change in the address of the established location for which the person has a permit to operate a fleet testing station.

(4) A fleet testing station shall not cause or permit an inspection of a motor vehicle to be performed by a person other than an emission inspector using an instrument of a type that complies with the rules promulgated under this part.

(5) An application for a fleet testing station shall include a description of the operation to be licensed. The description shall include, in addition to

other information required by this part and the rules promulgated under this part, all of the following:

(a) The name of the business and the address of the location for which a fleet testing station permit is being sought.

(b) The name and address of each owner of the business in the case of a sole proprietorship or a partnership and, in the case of a corporation, the name and address of each officer and director and of each owner of 25% or more of the corporation.

(c) The name of and identification number issued by the department for each emission inspector employed by the applicant.

(d) A description, including the model and serial number of each instrument to be used by the applicant to perform inspections or reinspections under this part and the rules promulgated under this part, and the date the equipment was purchased by the applicant.

(e) A description of the fleet to be inspected, including the number and types of motor vehicles.

(f) A statement signed by the applicant certifying that the applicant maintains and repairs, on a regular basis, the fleet vehicles owned by the applicant.

(6) A fleet testing station permit shall take effect on the date it is approved by the department and shall expire 1 year from that date. A fleet testing station permit shall be renewed automatically, unless the fleet testing station informs the department not to renew it or unless the department has revoked the permit.

(7) A person shall obtain a separate permit for each location at which fleet inspections are performed.

(8) By the fifteenth day of each month, each fleet testing station shall remit $1.00 for each vehicle inspected during the preceding month to the

department of treasury for deposit in the motor vehicle emissions testing program fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.6522 Fleet testing station; change of ownership; notice.

Sec. 6522. (1) If the ownership of a fleet testing station changes, a new permit is required, and the fleet testing station shall not operate until its application for a new permit is approved by the department. For purposes of this section, "change of ownership" means a change in the ownership of a station that is a sole proprietorship or a partnership; the replacement of a sole proprietorship with a partnership, a corporation, or another sole proprietorship; the replacement of a partnership with a sole proprietorship, a corporation, or another partnership; or the replacement of a corporation with a sole proprietorship, a partnership, or another corporation.

(2) A corporation shall notify the department within 30 days of any change in ownership that involves the accumulation of 25% or more of the ownership by a person who did not previously own 25% or more of the corporation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6523 Fleet testing station; limitation.

Sec. 6523. A fleet testing station shall perform inspections under this part and the rules promulgated under this part only upon its own fleet motor vehicles, unless separately licensed as a testing station.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6524 Fleet testing station; inspection by independent third party; prohibited conduct.
Sec. 6524. (1) A fleet testing station, its records, equipment required by this part and the rules promulgated under this part, and the motor vehicle emission inspection procedures employed by the fleet testing station shall be open to inspection by an independent third party as otherwise required by this part.

(2) A fleet testing station shall not hinder, obstruct, or otherwise prevent an inspection required by this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6525 False representations.
Sec. 6525. A fleet testing station shall not falsely represent that a motor vehicle has passed or failed an inspection or reinspection.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6526 Fleet testing station; issuance of certificate of compliance.
Sec. 6526. A fleet testing station shall issue a certificate of compliance for a vehicle that has passed an inspection or reinspection or received a low emission tune-up.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6527 Inspection appointment; issuance of certificate of compliance; report describing reason for rejection.
Sec. 6527. (1) A person shall not be required to make an appointment for a vehicle inspection.

(2) A testing station shall inspect and reinspect motor vehicles in accordance with this part and the rules promulgated under this part by

the department. The station shall issue a certificate of compliance for a motor vehicle that has been inspected and determined to comply with the standards and criteria of the department pursuant to the rules promulgated under this part. If a certificate of compliance is not issued, the inspection station shall provide a written inspection report describing the reason for rejection.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6528 Certificate of waiver; issuance; conditions; certain costs not considered in determining eligibility; criteria; temporary certificate; fee.

Sec. 6528. (1) A certificate of waiver shall be issued for a motor vehicle that fails an initial inspection and a subsequent reinspection if the actual cost of maintenance already performed and designed to bring the vehicle into compliance with clean air standards in accordance with the inspection report is at least $200.00, adjusted in January of each year by the increase or decrease in the Detroit consumer price index and rounded off to the nearest whole dollar.

(2) The costs covered by vehicle warranty and the costs necessary to repair or replace any emission control equipment that has been removed, dismantled, tampered with, misfueled, or otherwise rendered inoperative shall not be considered in determining eligibility for a certificate of waiver pursuant to subsection (1).

(3) Except for the program described in section 6506, issuance of a certificate of waiver shall be conditioned upon meeting the criteria established by regulations promulgated by the United States environmental protection agency in 40 C.F.R. 51.360.

(4) A temporary certificate of waiver, valid for not more than 14 days, may be issued to the owner of a motor vehicle by the secretary of state to allow time for necessary maintenance and reinspection. The secretary of state may charge the fee permitted for a temporary registration under

section 802(5) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.802 of the Michigan Compiled Laws.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6529 Approval as emission inspector.
Sec. 6529. (1) A person shall not perform inspections under this part or the rules promulgated under this part unless the person receives approval from the department as an emission inspector.

(2) Before a person is approved as an emission inspector, the person shall have passed an examination approved by the department that is designed to test the person's competency to perform inspections.

(3) A person who fails an examination to obtain approval as an emission inspector may retake the examination when it is next offered.

(4) A person's approval by the department as an emission inspector shall take effect on the date it is issued by the department and shall expire upon surrender by the person or upon revocation by the department.

(5) The department, after notice and opportunity for a hearing, may deny, suspend, or revoke a person's approval as an emission inspector if the department finds that an applicant or an emission inspector does any of the following:

(a) Commits fraud, misrepresentation, trickery, or deceit in connection with the inspection or repair of a motor vehicle under this part or a rule promulgated under this part.

(b) Violates this part or a rule promulgated under this part.

(c) Improperly performs an instrument maintenance, recordkeeping, or inspection procedure required by the rules promulgated under this part.

(d) Incompetently performs an inspection.

(e) Is denied certification by the independent third party responsible for certifications under this part.

(6) Instead of proceeding under subsection (5), or as a means of settling a matter pursuant under subsection (5), the department may do any of the following:

(a) Enter into an assurance of discontinuance with an applicant or an emission inspector.

(b) Enter into a probation agreement with an applicant or an emission inspector.

(c) Enter into a suspension, revocation, or denial agreement with an applicant or an emission inspector.

(d) Require an applicant or an emission inspector to take training or an examination, or both.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6530 Inspection; certificate of compliance or waiver obtained at licensed testing station.

Sec. 6530. Unless the person is licensed as a fleet testing station, a person who owns a motor vehicle required to be inspected under this part and the rules promulgated under this part shall have the motor vehicle inspected and shall obtain a certificate of compliance or a waiver only at a testing station licensed under this part and the rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6531 Compliance; determination by department; system for selection of qualified vehicles.

Sec. 6531. The department may issue a certificate of compliance for a motor vehicle when the department makes a determination that the motor vehicle complies with the requirements of this part and the rules promulgated under this part. The department shall establish a system for selecting which motor vehicles qualify for the department's determination as to compliance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6532 Protection of public from fraud and abuse; quality assurance; evaluation of cost; effectiveness and benefits of inspection program; report.

Sec. 6532. (1) The department shall institute procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the inspection and maintenance program. These procedures and mechanisms shall include a challenge mechanism by which a vehicle owner can contest the results of an inspection. It shall include mechanisms for protecting whistleblowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test.

(2) The department shall provide quality assurance for the inspection and maintenance program established under this part through certification of competency by a third party to ensure proper and accurate emission inspection results. The third party each year shall certify the testing equipment and the emission inspectors employed by a testing station.

(3) The department shall compile data and undertake studies necessary to evaluate the cost, effectiveness, and benefits of the motor vehicle inspection program. The department shall compile data on failure rate, compliance rate, the number of certificates issued, and other similar matters in accordance with 40 C.F.R. 51.365 and 51.366. The department shall make an annual report on the operation of the motor vehicle inspection program to the standing committees of the legislature that

primarily address issues pertaining to public health or protection of the environment by January 1, 1995, and each year thereafter.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6533 Testing station; fleet testing station; issuance of certificate of compliance; conditions.

Sec. 6533. A testing station or a fleet testing station shall not issue a certificate of compliance for a motor vehicle that has not been inspected and has not met or exceeded emission cut points established by the department in accordance with this part and the rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6534 Information to be provided by public inspection station; availability of certificate of waiver.

Sec. 6534. (1) An employee, owner, or operator of a public inspection station shall not furnish information, except information provided by the state or otherwise required by this part, about the name or other description of a repair facility or other place where maintenance may be obtained.

(2) Each testing station shall furnish the following information upon failure of the vehicle to pass inspection:

(a) A written inspection report listing each reason that the vehicle failed the emissions inspection.

(b) A notice that states the following:

“A vehicle's failure to pass the emissions inspection may be related to a malfunction covered under warranty.”.

(3) Certificates of waiver shall be available at each public inspection station pursuant to section 6528.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6535 Tampering with motor vehicle.

Sec. 6535. A person shall not tamper with a motor vehicle that has been certified to comply with this part and the rules promulgated under this part so that the motor vehicle is no longer in compliance. For purposes of this part, tampering does not include the alteration of a motor vehicle by employees of the department for purposes of monitoring and enforcement of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6536 Providing false information about repair costs prohibited.

Sec. 6536. A person shall not provide false information to a public inspection station or the department about estimated or actual repair costs or repairs needed to bring a motor vehicle into compliance. A person shall not claim an amount spent for repair if the repairs were not made or the amount not spent.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6537 Violations as misdemeanor; fine.

Sec. 6537. (1) A person who violates section 6533 or forges, counterfeits, or alters an inspection certificate or who knowingly possesses an unauthorized inspection certificate, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or by a fine of not more than $1,000.00. Each violation constitutes a separate offense.

(2) Except as otherwise provided in subsection (1), a person who violates section 6534, 6535, or 6536 is guilty of a misdemeanor.

(3) A person who drives a motor vehicle in violation of this part or rules promulgated under this part is subject to a civil fine of not more than $500.00. Each violation constitutes a separate offense.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6538 Transfer and availability of vehicle emissions inspection and maintenance fund.

Sec. 6538. Funds remaining in the vehicle emissions inspection and maintenance fund created by former Act No. 83 of the Public Acts of 1980 shall be transferred on January 1, 1996 to the motor vehicle emissions testing program fund created in this part. These funds shall be available for appropriation to the department for start-up costs to implement the motor vehicle emissions testing program in this part, to conduct a public information program to educate the general public about requirements of this part, and for other activities related to the motor vehicle emissions testing program.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.6539 Repeal of MCL 257.1051 to 257.1076.

Sec. 6539. Act No. 83 of the Public Acts of 1980, being sections 257.1051 to 257.1076 of the Michigan Compiled Laws, is repealed January 1, 1996.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8323 Confirmation of groundwater contamination; duties of director; development of activity plan by person responsible for contamination; approval or rejection by director; continuation of certain activities; order to cease or modify activities; hearing.
Sec. 8323. (1) Upon confirming contamination of groundwater by a pesticide pursuant to part 87 at a single location, the director shall do all of the following:

(a) Assist in the coordination of local activities designed to prevent further contamination of groundwater.

(b) Conduct envelope monitoring.

(c) Perform an evaluation of activities that may have contributed to the contamination.

(d) Make a determination as to the degree to which groundwater stewardship practices were being utilized.

(e) Make a determination as to the potential source or sources of the contamination.

(2) If confirmed concentrations of pesticides exceed the groundwater resource response level or a confirmed contaminant has migrated into groundwater off of the property, the director shall require a person whose action or negligence was potentially responsible for the contamination to develop an activity plan. A person required to develop an activity plan shall develop and submit the activity plan to the director within 90 days after receiving notice from the director. Upon receipt of an activity plan, the director shall approve or reject the plan within 90 days. If rejected, the director shall provide a description of reasons for rejection. Upon receipt of a rejection, the person shall within 90 days develop an acceptable activity plan.

(3) If the activities on a contamination site are determined by the director to be in accordance with all applicable components of the groundwater stewardship practices and groundwater protection rules, activities that are not responsible for or potentially responsible for the contamination incident may continue.

(4) If activities on a contamination site are determined by the director not to be in accordance with this part, the director may issue an order to cease or modify activities on the site involving pesticide use. A person aggrieved by an order issued under this section may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8324 Groundwater protection rules.
Sec. 8324. (1) The director shall promulgate a groundwater protection rule that defines the scope and region of implementation of the rule if any of the following occur:

(a) A pesticide has been confirmed in groundwater at levels exceeding its groundwater resource response level in at least 3 distinct locations as a result of similar activities as determined under section 8323(1) and the director determines that voluntary adoption of the groundwater stewardship practices pursuant to part 87 has not been effective in preventing groundwater contaminant concentrations from exceeding the groundwater resource response level.

(b) The EPA proposes to suspend or cancel registration of the pesticide, prohibits or limits the pesticide's sale or use in the state, or otherwise initiates action against the pesticide because of groundwater concerns.

(2) The director may promulgate a groundwater protection rule for a specific pesticide if the pesticide contains an active ingredient with a

method detection limit greater than its groundwater resource response level.

(3) In determining the need for and scope of a groundwater protection rule, the director shall consider the type of contaminant or contaminants and the extent to which any of the following apply:

(a) The source or sources of the contaminant or contaminants can be identified.

(b) An identified source or sources are associated with a specific activity or activities.

(c) Local response to the contamination is adequate to protect groundwater.

(d) There are state label restrictions as allowed under sections 18 and 24 of FIFRA, chapter 125, 86 Stat. 995 and 997, 7 U.S.C. 136p and 136v, that could adequately address the problem.

(e) Restricted use classification could adequately address the problem.

(f) The use, value, and vulnerability of the resource and whether the groundwater is a currently or reasonably expected source of drinking water.

(g) The technical and economic feasibility of any mandated practices on persons in the region.

(h) The overall productivity and economic viability of the state's agriculture.

(4) In determining the region of implementation for a groundwater protection rule, the director shall consider both of the following:

(a) The reliability and geographical distribution of groundwater sample test data.

(b) The extent to which local aquifer sensitivity conditions can be considered characteristics of a larger region.

(5) The director may approve alternative operations to those defined in a groundwater protection rule if they can be shown to provide the equivalent level of groundwater protection.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8325 Rules.
Sec. 8325. (1) The director shall promulgate rules for implementing this part, including, but not limited to, rules providing for the following:

(a) The collection, examination, and reporting the results of examination of samples of pesticides or devices.

(b) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.

(c) The designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state. The director may include in the rule the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides.

(d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers and agricultural pesticide dealers.

(e) The maintenance of records by certified commercial applicators with respect to applications of restricted use pesticides.

(f) Good practice in the use of pesticides.

(g) Notification or posting, or both, designed to inform persons entering certain public or private buildings or other areas where the application of a pesticide, other than a general use ready-to-use pesticide, has occurred.

(h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate.

(i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools.

(j) Responsibility of a building manager to post signs provided to him or her by a commercial applicator.

(k) Designation of posted school bus stops as sensitive areas.

(l) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3).

(2) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules pertaining to all of the following:

(a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(b) The development of training programs for integrated pest management systems in schools, public buildings, and health care facilities.

(c) The duty of commercial applicators to inform customers of potential risks and benefits associated with the application of pesticides.

(3) By June 27, 1990, the director shall submit rules to the joint committee on administrative rules pertaining to the protection of

agriculture employees who hand harvest agricultural commodities regarding all of the following:

(a) The establishment of field reentry periods after the application of agricultural pesticides.

(b) The posting and notification of areas where pesticides have been applied.

(c) The use of protective clothing, safety devices, hand washing, or other methods of protection from pesticide exposure.

(d) Notification of agricultural workers of poison treatment facilities.

(4) If the EPA at any time adopts and publishes agricultural worker protection standards, the federal standards shall supersede rules promulgated under subsection (3).

(5) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules. These rules shall include all of the following:

(a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators.

(b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(c) The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 285.636.1 et seq. of the Michigan Administrative Code.

324.8326 Pesticide advisory committee; creation; appointment, qualifications, and terms of members; vacancies; meetings; quorum; duties and responsibilities; meetings open to the public.

Sec. 8326. (1) A pesticide advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director.

(b) The director of the department of natural resources.

(c) A representative of the department of natural resources selected by the director of the department of natural resources who has expertise regarding water quality programs.

(d) The director of public health.

(e) The director of the Michigan cooperative extension service.

(2) The director shall appoint additional members to the committee, 1 each representing the following:

(a) The Michigan pest control association.

(b) Licensed outdoor commercial applicators.

(c) Producers of agricultural commodities.

(d) Licensed aerial applicators.

(e) Nongovernmental organizations for environmental preservation.

(f) Farm employees.

(g) Those in the medical or health science profession experienced in the toxicology of pesticides.

(h) Agricultural chemical industry.

(i) Nongovernmental organizations representing human health interests.

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

(4) The pesticide advisory committee shall consult with and advise the director in the administration of this part and shall have the following responsibilities:

(a) To analyze and summarize information pertaining to pesticide use, including, but not limited to, the number and types of pesticide use violations and the underlying causes and circumstances involving pesticide misuse, and to develop a profile of violators of this part.

(b) To evaluate potential contamination related to the size and disposal of pesticide containers for home, agricultural, industrial, and commercial use and make recommendations to the legislature.

(c) To utilize available information pertaining to the misuse of pesticides to determine whether the training programs offered by the director are effective in curtailing misuses.

(d) To review all training requirements for applicators and persons licensed under this part, including the specific review of the components of each area tested under this part, and to make recommendations to the director regarding training and testing. Notwithstanding the responsibilities of the committee under this subdivision, the specific test questions prepared to implement the requirements of this part shall remain confidential.

(e) To annually publish a report to be submitted to the governor, the legislature, and the director. The report shall include all of the following:

(i) A review of the recommendations of the committee.

(ii) Recommendations regarding amendatory language for this part.

(iii) Recommendations regarding resources necessary to adequately implement this part.

(iv) A summary of the annual enforcement actions taken under this part.

(5) All meetings of the committee shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8327 Order to cease use of, or to refrain from intended use of, pesticide; effect of noncompliance; inspection; rescission of order.
Sec. 8327. (1) When the director has probable cause to believe that an applicator is using or intending to use a pesticide in an unsafe or inadequate manner or in a manner inconsistent with its labeling, the director shall order the applicator to cease the use of or refrain from the intended use of the pesticide. The order may be either oral or written and shall inform the applicator of the reason for the order.

(2) Upon receipt of the order, the applicator shall immediately comply with the director's order. Failure to comply constitutes cause for revocation of the applicator's license or certification or registration and subjects the applicator to the penalty imposed under section 8333.

(3) The director shall rescind the order upon being satisfied that the applicator has complied with the order.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2002, Act 418, Imd. Eff. June 5, 2002
Popular Name: Act 451
Popular Name: NREPA

324.8328 Local governments; powers.
Sec. 8328. (1) Except as otherwise provided in this section, it is the express legislative intent that this part preempt any local ordinance, regulation, or resolution that purports to duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, then that local unit of government may pass an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (7). The local unit of government's enforcement response for a violation of the ordinance that involves the use of a pesticide is limited to issuing a cease and desist order as prescribed in section 8327.

(3) A local unit of government may enact an ordinance identical to this part and rules promulgated under this part regarding the posting and notification of the application of a pesticide. Subject to subsection (8), enforcement of such an ordinance may occur without prior authorization from the department and without a contract with the department for the enforcement of this part and rules promulgated under this part. The local unit of government shall immediately notify the department upon

enactment of such an ordinance and shall immediately notify the department of any citations for a violation of that ordinance. A person who violates an ordinance enacted under this subsection is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(4) A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and which regulates the distribution, sale, storage, handling, use, application, transportation, or disposal of pesticides under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the use of a pesticide within that unit of government has resulted or will result in the violation of other existing state laws or federal laws.

(5) An ordinance enacted pursuant to subsections (2), (3), and (4) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (4) shall not be enforced by a local unit of government until approved by the commission of agriculture. If the commission of agriculture denies an ordinance enacted pursuant to subsection (4), the commission of agriculture shall provide a detailed explanation of the basis of the denial within 60 days.

(6) Upon identification of unreasonable adverse effects on the environment or public health by a local unit of government as evidenced by a resolution submitted to the department, the department shall hold a local public meeting within 60 days after the submission of the resolution to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the use of pesticides. Within 30 days after the local public meeting, the department shall issue

a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(7) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated pursuant to this part. The department shall have sole authority to assess fees, register and certify pesticide applicators, license commercial applicators and restricted use pesticide dealer firms, register pesticide products, cancel or suspend pesticide registrations, and regulate and enforce all provisions of this part pertaining to the application and use of a pesticide to an agricultural commodity or for the purpose of producing an agricultural commodity.

(8) For any ordinance enacted pursuant to this section, the local unit of government shall provide that persons enforcing the ordinance comply with the training and enforcement requirements as determined by the director. A local unit of government shall reimburse the department for actual costs incurred in training local government personnel.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 172, Imd. Eff. Apr. 18, 1996
Popular Name: Act 451
Popular Name: NREPA

324.8329 Order to stop prohibited conduct; proceeding in rem for condemnation; disposition of pesticide or device; award of court costs, fees, storage, and other expenses.
Sec. 8329. (1) When the director has reasonable suspicion that a pesticide or device is distributed, stored, transported, offered for sale, or used in violation of this part, the director may issue an order to stop the prohibited conduct. The person shall immediately comply with the order.

(2) A pesticide or device that is transported, or is in original unbroken packages, or is sold or offered for sale in this state, or is imported from a foreign country, in violation of this part, is liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if:

(a) In the case of a pesticide, any of the following circumstances exist:

(i) It is adulterated or misbranded.

(ii) It is not registered pursuant to this part.

(iii) Its labeling fails to bear the information required by FIFRA or by regulations promulgated under FIFRA.

(iv) Its coloring is different than that required under FIFRA.

(v) Any claims or directions for its use differ from the representations made with its registration.

(b) In the case of a device, it is misbranded.

(c) In the case of a pesticide or device, when used in accordance with the requirements imposed under this part it causes unreasonable adverse effects on the environment.

(3) If the pesticide or device is condemned, it shall be disposed of by destruction or sale as the court directs. If the pesticide or device is sold, the proceeds less the court costs shall be credited to the general fund. A pesticide or device shall not be sold contrary to this part or the laws of the jurisdiction in which it is sold. Upon payment of the costs of the condemnation proceedings and the execution and delivery of a sufficient bond conditioned that it shall not be sold or disposed of contrary to this part or the laws of the jurisdiction in which it is sold, the court may direct that it be delivered to the owner. The proceedings of condemnation cases shall conform as nearly as possible to proceedings in admiralty, except that either party may demand trial by jury of an issue of fact joined in a case, and the proceedings shall be brought by and in the name of the people of the state.

(4) Court costs, fees, storage, and other proper expenses shall be awarded against the person, intervening as claimant of the pesticide or device upon entry of a decree of condemnation.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2002, Act 418, Imd. Eff. June 5, 2002
Popular Name: Act 451
Popular Name: NREPA

324.8330 Containers; labels; colored or discolored pesticides; handling, storage, display, or transportation of pesticides; adding or taking substance from pesticide; filing and inspection of shipping data.

Sec. 8330. (1) Pesticides distributed, transported, sold, or exposed or offered for sale in this state shall be in the registrant's or manufacturer's unbroken immediate container and shall have attached to it a label conforming to the labeling requirements as prescribed under this part or the rules promulgated under this part. The unbroken container requirement of this subsection does not apply to an applicator who is transporting a pesticide between the place of storage and the area of application.

(2) A pesticide container shall be free from damage that renders the pesticide unsafe.

(3) A pesticide that is required to be colored shall not be distributed, sold, exposed, or offered for sale unless the pesticide is colored as prescribed.

(4) A pesticide shall be handled, stored, displayed, or transported so that it will not endanger human beings and the environment or endanger food, feed, or other products that are stored, displayed, or transported with the pesticide.

(5) A person shall not detach, alter, deface, or destroy any portion of a label or labeling provided for in this part or rules promulgated under this part, or add a substance to or take a substance from a pesticide in a manner that may defeat the purpose of this part or FIFRA.

(6) A pesticide vendor shall keep on file, subject to inspection by an authorized agent of the director for a period of 1 year, all invoices, freight bills, truckers' receipts, waybills, and similar shipping data

pertaining to pesticides that would establish date and origin of the shipments.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2002, Act 418, Imd. Eff. June 5, 2002
Popular Name: Act 451
Popular Name: NREPA

324.8331 False information; resisting, impeding, or hindering director.

Sec. 8331. A person shall not give false information in a matter pertaining to this part, or resist, impede, or hinder the director or his or her authorized representatives in the discharge of their duties.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8332 Hearings.

Sec. 8332. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8333 Violation; administrative fine; warning; action to recover fine; misdemeanors; injunction; action by attorney general; compliance as affirmative defense; gross negligence; applicability of revised judicature act.

Sec. 8333. (1) A person who violates this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted alone or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for a hearing that a person has violated or attempted to violate any provision

of this part, may impose an administrative fine of not more than $1,000.00 for each violation of this part.

(3) If the director finds that a violation or attempted violation occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under this section.

(5) A person who violates this part or attempts to violate this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00, or both, for each offense.

(6) The director may bring an action to enjoin a violation of this part or an attempted violation of this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(7) The attorney general may file a civil action in which the court may impose on any person who violates this part or attempts to violate this part a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the pesticide control fund created in section 8318.

(8) In defense of an action filed under this section, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation of this part or attempted violation of this part, he or she was in compliance with label directions and with this part and rules promulgated under this part at the time of the alleged violation.

(9) A civil cause of action does not arise for injuries to any person or property if a private agricultural applicator, or a registered applicator who stores, handles, or applies pesticides only for a private agricultural purpose, was not grossly negligent and stored, handled, or applied pesticides in compliance with this part, rules promulgated under this part, and the pesticide labeling.

(10) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2002, Act 418, Eff. Sept. 3, 2002
Popular Name: Act 451
Popular Name: NREPA

324.8334 Exemptions from penalties.
Sec. 8334. The penalties provided for violations of this part do not apply to any of the following:

(a) A carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the pesticide or devices.

(b) Public officials of this state and the federal government while engaged in the performance of their official duties in administering the state or federal pesticide laws or regulations.

(c) A person who ships a substance or mixture of substances being tested in which the only purpose is to determine its toxicity or other properties and from the use of which the user does not expect to receive any pest control benefit.

(d) The shipment or movement of an unregistered or canceled pesticide for the specific purposes of disposal or storage.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8335 Probable cause as precluding recovery of damages.
Sec. 8335. A court shall not allow the recovery of damages from an administrative action taken or an order stopping the sale or use or requiring seizure if the court finds that there was probable cause for the action or order.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8336 Effect of part on other civil or criminal liability; act or omission occurring before June 25, 1976.
Sec. 8336. (1) This part does not terminate or in any way modify any liability, civil or criminal, which is in existence on June 25, 1976.

(2) For the purposes of determining any penalty or liability in respect to an act or omission occurring before June 25, 1976, former Act No. 297 of the Public Acts of 1949, and former Act No. 233 of the Public Acts of 1959 shall apply.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 85

FERTILIZERS

324.8501 Definitions; A to M.
Sec. 8501. As used in this part:

(a) "Adulterated product" means a product that contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label, or if adequate

warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown on the label.

(b) "Agricultural use" means that term as defined in section 36101.

(c) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(d) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer.

(e) "Aquifer sensitivity region" means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit.

(f) "Brand or product name" means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(g) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(h) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or blended as specifically requested by the consumer prior to blending.

(i) "Department" means the department of agriculture.

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

(k) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(l) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(m) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.

(n) "Fertilizer material" means a fertilizer that is any of the following:

(i) Contains not more than 1 of the following as primary nutrients:

(A) Total nitrogen (N).

(B) Available phosphate (P2O5).

(C) Soluble potash (K2O).

(ii) Has 85% or more of its plant nutrient content present in the form of a single chemical compound.

(iii) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(o) "Fund" means the fertilizer control fund created under section 8514.

(p) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate (P2O5), and soluble potash (K2O), of a fertilizer and shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(q) "Groundwater" means underground water within the zone of saturation.

(r) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(s) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(t) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(u) "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

(v) "Licensee" means the person who receives a license to manufacture or distribute fertilizers under this part.

(w) "Lot" means an identifiable quantity of fertilizer that can be sampled officially according to methods adopted under section 8510, that amount contained in a single vehicle, or that amount delivered under a single invoice.

(x) "Manufacture" means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1998, Act 276, Imd. Eff. July 27, 1998 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007 ;-- Am. 2008, Act 13, Imd. Eff. Feb. 29, 2008
Popular Name: Act 451
Popular Name: NREPA

324.8501a Definitions; M to U.
Sec. 8501a. As used in this part:

(a) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(b) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.

(c) "Official sample" means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable sampling methods under section 8510.

(d) "Order" means a cease and desist order issued under section 8511.

(e) "Package" or "packaged" means any type of product regulated by this part that is distributed in individual labeled containers.

(f) "Percent" and "percentage" mean the percentage by weight.

(g) "Person" means an individual, partnership, association, firm, limited liability company, or corporation.

(h) "Primary nutrients" means total nitrogen, available phosphate, or soluble potash, or any combination of those nutrients.

(i) "Registrant" means the person who registers a product under this part.

(j) "Soil conditioner" means any substance that is used or intended for use to improve the physical characteristics of soil, including, but not limited to, materials such as peat moss and peat products, composted products, synthetic soil conditioners, or other products that are worked into the soil or are applied on the surface to improve the properties of the soil for enhancing plant growth. Soil conditioner does not include guaranteed plant nutrients, agricultural liming materials, pesticides, unmanipulated animal or vegetable manures, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth. A soil conditioner for which claims are made of nutrient value is considered a fertilizer for the purposes of this part.

(k) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as use in connection with home gardens, lawns, shrubbery, flowers, golf courses, parks, and cemeteries, and may include fertilizers used for research or experimental purposes.

(l) "Ton" means a net weight of 2,000 pounds avoirdupois.

(m) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007
Compiler's Notes: Act 451
Popular Name: NREPA

324.8502 Label; invoice.

Sec. 8502. (1) A packaged fertilizer distributed in this state, including packaged mixed fertilizer and soil conditioner, shall have placed on or affixed to the package or container a label setting forth in clearly legible and conspicuous form the following:

(a) The net weight of the contents of the package, except that soil conditioners, peat, or peat moss may be designated by volume.

(b) Brand or product name.

(c) Name and address of the licensed manufacturer or distributor.

(d) Grade. However, the grade is not required when no primary nutrients are claimed. This subdivision does not apply to peat or peat moss, material sold as a soil conditioner, or fertilizer for which no primary nutrients are claimed.

(e) Guaranteed analysis. This subdivision does not apply to peat or peat moss or material sold as a soil conditioner.

(2) A fertilizer distributed in this state in bulk, except a custom blend, shall be accompanied by a written or printed invoice or statement to be

furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Brand or product name.

(e) Grade. However, the grade is not required when no primary nutrients are claimed.

(f) Guaranteed analysis.

(g) Net weight.

(3) A custom blend shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Either the net weight and guaranteed analysis of the custom blend or the guaranteed analysis and net weight of each material used in the formulation of the custom blend or both.

(4) Fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name and address of the licensed manufacturer or distributor and the name and grade of the product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8503 Order and form of guaranteed analysis; minimum percentage of plant nutrients; additional plant nutrients; other beneficial compounds or substances.

Sec. 8503. (1) The guaranteed analysis shall show the minimum percentage of plant nutrients claimed in the following order and form:

(a) Total nitrogen (N). _____%
Available phosphate (P2O5). _____%
Soluble potash (K2O). _____%

(b) When applied to mixed fertilizers, grade shall be given in whole numbers only. However, specialty fertilizers with a guarantee of less than 1% of total nitrogen, available phosphate, and soluble potash may use fractional units. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(c) When applied to custom blends, grade can either be given in whole numbers or in numbers expressed to the nearest 1/10 of a percent in the form of a decimal in the analysis.

(d) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

(2) Additional plant nutrients, other than nitrogen, phosphorus, and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis, at levels not less than those established by rules. Other beneficial compounds or substances, determinable by laboratory methods, may be guaranteed if approved by the director.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007

Popular Name: Act 451
Popular Name: NREPA

324.8504 License to manufacture or distribute fertilizer; fee; application; notice of additional distribution points; exception; expiration.

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

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

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

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

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

(a) The name and address of the applicant.

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

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

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

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.8505 Distribution of specialty fertilizer or soil conditioner; registration; application; labels to accompany application; copy of registration approval; expiration; fees.
Sec. 8505. (1) A person shall not distribute a specialty fertilizer or soil conditioner unless it is registered with the department. An application listing each brand and product name of each grade of specialty fertilizer or soil conditioner shall be made on a form furnished by the director and shall be accompanied with the fees described in subsection (2) for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application. Upon approval of an application by the director, a copy of the registration approval shall be furnished to the applicant. All registrations expire on December 31 of each year.

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

(a) Registration fee of $25.00.

(b) Appropriate groundwater and freshwater protection fees provided for in section 8715.

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

(4) A manufacturer or distributor of custom blend specialty fertilizers for home lawns, golf courses, recreational areas, or other nonfarm areas shall not be required to register each grade distributed but shall license

their firm on an application furnished by the director for an annual fee of $100.00 and shall label the fertilizer as provided in section 8502. The label of each fertilizer distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8506 Inspection fee; tonnage reports as basis of payment; waiver; penalty; unpaid fees and penalties as basis of judgment; responsibility for reporting tonnage and paying inspection fee.
Sec. 8506. (1) An inspection fee of 10 cents per ton shall be paid to the department for all fertilizers or soil conditioners sold or distributed in this state. For peat or peat moss, the inspection fee shall be 2 cents per cubic yard. This fee shall not apply to registered specialty fertilizers or soil conditioners sold or distributed only in packages of 10 pounds or less.

(2) Payment of the inspection fee shall be made on the basis of tonnage reports setting forth the number of tons of each grade of fertilizer and soil conditioner and the number of cubic yards of peat or peat moss sold or distributed in this state. The reports shall cover the periods of the year and be made in a manner specified by the director in rules, and shall be filed with the department not later than 30 days after the close of each period. The time may be extended for cause for an additional 15 days only on written request to, and approval by, the department. Remittance

to cover the inspection fee shall accompany each tonnage report. Payments due of less than $5.00 are waived, and refunds of less than $5.00 will not be processed, unless requested in writing. For any report not filed with the department by the due date, a penalty of $50.00 or 10% of the amount due, whichever is greater, shall be assessed. Unpaid fees and penalties constitute a debt and become the basis of a judgment against the licensee. Records upon which the statement of tonnage is based are subject to department audit.

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8507 Records; disclosure of information.
Sec. 8507. (1) Each licensee and registrant shall maintain for a period of 3 years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee or registrant and shall make the records available for inspection and audit during normal business hours on request of the department. Each distributor shall maintain for a period of 3 years shipping data such as invoices and freight bills pertaining to fertilizer and soil conditioner that establish date and origin of the shipment, and shall make the records available for inspection and audit on request of the department.

(2) Tonnage payments, tonnage reports, or other information furnished or obtained under this part shall not be disclosed in a way that will divulge the business operations of any 1 person.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8508 Construction and application of part.
Sec. 8508. (1) This part does not require the payment of inspection fees for sales or exchanges of fertilizers or soil conditioners between manufacturers who mix fertilizer or soil conditioner materials for sale, or prevent the free and unrestricted shipment of fertilizers or soil conditioners for further processing to manufacturers licensed under this part.

(2) This part does not apply to a carrier in respect to a fertilizer or soil conditioner delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8509 Prohibitions.
Sec. 8509. A person shall not do any of the following:

(a) Sell or distribute fertilizer or soil conditioner in violation of the requirements of this part or the rules promulgated under this part.

(b) Make a guarantee, claim, or representation in connection with the sale of fertilizer or soil conditioner, or in its labeling, which is false, deceptive, or misleading.

(c) Manufacture or distribute a fertilizer or soil conditioner without a license as required by this part or distribute a specialty fertilizer or soil conditioner unless registered as required by this part.

(d) Make a false or misleading statement in an application for a license or in an inspection fee or statistical report or in any other statement or report filed with the department pursuant to this part.

(e) Attach or cause to be attached an analysis stating that a fertilizer contains a higher percentage of a plant nutrient than it in fact contains.

(f) Distribute an adulterated product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8510 Inspecting, sampling, and analyzing fertilizer and soil conditioners; methods; rules; access to premises; stopping conveyances; submission of information to department; confidentiality.
Sec. 8510. (1) The director shall inspect, sample, and analyze fertilizers and soil conditioners distributed within this state at a time and place and to the extent necessary to determine compliance with this part.

(2) The methods of sampling and analysis under subsection (1) shall be those as established by the association of American plant food control officials or the association of analytical communities, international, as those standards exist on the effective date of the amendatory act that added this subsection, and are incorporated by reference. The department may promulgate rules to update these standards. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the director may adopt, by rule, such other methods as are considered appropriate.

(3) Department representatives and inspectors shall have free access during regular business hours and extended operating hours to all premises where fertilizers or soil conditioners are manufactured, sold, or stored, and to all trucks or other vehicles and vessels used in the transportation of a fertilizer or soil conditioner in this state, to determine compliance with this part. Department representatives and inspectors may stop any conveyance transporting fertilizer or soil conditioner for the purpose of inspecting and sampling the products and examining their labeling.

(4) A manufacturer or distributor of fertilizer or soil conditioner shall submit to the department, upon request, product samples, copies of labeling, or any other data or information that the department may request concerning composition and claims and representations made for

fertilizers and soil conditioners manufactured or distributed by the manufacturer or distributor within this state.

(5) The director may, upon reasonable notice, require a person to furnish any information relating to the identification, nature, and quantity of fertilizers that are or have been used on a particular site and to current or past practices that may have affected groundwater quality. Information required under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8511 Selection of sample from package or bulk lot for comparison with label; order to cease and desist; seizing, or stopping sale of, fertilizer or soil conditioner; conditions; filing action with court.
Sec. 8511. (1) The director, by a duly authorized agent, may select from any package or bulk lot of commercial fertilizer or soil conditioner exposed for sale in this state a sample to be used for the purposes of an official analysis for comparison with the label affixed to the package or bulk lot on sale. The director may at any time order a person to cease and desist from manufacturing, storing, distributing, selling, or registering a product regulated by this part, or may seize or stop the sale of a fertilizer or soil conditioner that is misbranded or adulterated, fails to meet a label claim or guarantee, is being manufactured or distributed by an unlicensed person, or otherwise fails to comply with this part.

(2) An order shall be written and shall inform the manufacturer, storage operator, distributor, seller, or registrant of the grounds for issuance of the order. The person receiving the order shall immediately comply with the order. Failure to comply shall subject the person to the penalty imposed under this part.

(3) The director shall rescind the order immediately upon being satisfied by inspection of compliance with the order. The inspection shall be conducted as soon as possible at the verbal or written request of the responsible party. The rescinding order of the director may be verbal and the person may rely on the verbal rescinding order. However, a verbal order shall be followed by a written rescinding order.

(4) The director may issue and enforce a written order prohibiting the sale, use, or removal of a product regulated by this part to the owner or custodian of any product or product lot and requiring the product to be held by the owner or custodian at a designated place when the director finds that the product is being distributed in violation of this part. The order remains in effect until the director determines that the person is complying with the law or until the violation has been otherwise legally disposed of by written authority. The director shall release the product for sale, use, or removal upon compliance with this part and payment of all costs and expenses incurred in connection with the issuance and enforcement of the order.

(5) Any product or product lot not in compliance with this part is subject to seizure upon an action filed by the director in a court of competent jurisdiction in the county in which the product is located. If the court finds the product to be in violation of this part and orders the condemnation of the product, the product shall be disposed of in any manner consistent with the quality of the product and the laws of this state except that the disposition of the product shall not be ordered by the court without first providing the claimant an opportunity to petition the court for release of the product or for permission to process or relabel the product to bring it into compliance with this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1998, Act 276, Imd. Eff. July 27, 1998
Popular Name: Act 451
Popular Name: NREPA

324.8512 Nitrates in groundwater exceeding certain limits associated with aquifer sensitivity or fertilizer use; educational materials provided to fertilizer users; authority of department director;

eligibility of regional stewardship to receive certain grants; authorization to land-apply materials containing fertilizers at agronomic rates.

Sec. 8512. (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director of the department shall provide educational materials to fertilizer users within that region and may do 1 or more of the following:

(a) Establish a regional stewardship team to assist in the coordination of local activities designed to prevent further contamination of groundwater and to identify all probable sources of nitrate.

(b) Conduct further monitoring to determine the concentration and spatial distribution of nitrates in the aquifer.

(c) Perform an evaluation of activities in the monitoring region to determine the sources of nitrate that may have contributed to the contamination.

(d) Implement a stewardship program in the aquifer sensitivity region pursuant to part 87.

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities, which plan must include an assessment of all probable sources of nitrates.

(f) Establish a program that provides incentives for users to increase nitrogen use efficiency.

(2) Upon approval of a regional plan by the director of the department, the regional stewardship team is eligible to receive grants from the freshwater protection fund established by part 87.

(3) The director of the department may, upon written request, authorize persons to land-apply materials containing fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8513 Rules; bulk storage of fertilizers.

Sec. 8513. The department may promulgate rules regarding the bulk storage of fertilizers.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 285.641.1 et seq. and R 285.642.1 et seq. of the Michigan Administrative Code.

324.8514 Fertilizer control fund; creation; deposits; lapse; expenditures.

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

(2) The state treasurer shall receive for deposit in the fund all fees, administrative or civil fines, and payments for the costs of investigations incurred by the department collected under this part. In addition, the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

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

(a) The administration and enforcement of this part.

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 503, Eff. Mar. 30, 2007
Popular Name: Act 451
Popular Name: NREPA

324.8515 Revocation or refusal of license or registration; grounds; hearing; exception for refusal to sell ammonium nitrate fertilizer.
Sec. 8515. (1) The director of the department may revoke the license of a manufacturer or distributor or the registration of a fertilizer product or soil conditioner, or may refuse to license a manufacturer or distributor or to register a fertilizer product or soil conditioner, upon satisfactory evidence that the licensee has engaged in fraudulent or deceptive practices or has evaded or attempted to evade this part or the rules promulgated under this part.

(2) A license or registration shall not be revoked or refused until the licensee or applicant has been given the opportunity by the director of the department to appear for a hearing.

(3) The department shall not suspend or revoke the license of a distributor or manufacturer who refuses to sell ammonium nitrate fertilizer to a person who fails to comply with the request for information required under section 8518 or who refuses to sell ammonium nitrate fertilizer to a person who purchases that fertilizer out of season, in unusual amounts, or under a pattern or circumstances considered unusual, as described in section 8518.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2005, Act 68, Imd. Eff. July 11, 2005

Popular Name: Act 451
Popular Name: NREPA

324.8516 Enforcement; rules.

Sec. 8516. The director of the department shall enforce this part and may promulgate rules.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.8517 Local ordinance, regulation, or resolution; preemption; adoption; enforcement; identification of unreasonable adverse effects; local public meeting; contract by director with local government; compliance with training and enforcement requirements.

Sec. 8517. (1) Except as otherwise provided in this section, this part preempts any local ordinance, regulation, or resolution that would duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not adopt, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, that local unit of government may adopt an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (6). The local unit of government's enforcement response for a violation of the ordinance that involves the manufacturing, storage, distribution, sale, or agricultural use of products regulated by this part is limited to issuing a cease and desist order in the manner prescribed in section 8511.

(3) A local unit of government may adopt an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing,

storage, distribution, sale, or agricultural use of a product regulated by this part only under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part within that unit of government has resulted or will result in the violation of other existing state or federal laws.

(4) An ordinance adopted under subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance adopted under subsection (3) shall not be enforced by a local unit of government until approved by the commission of agriculture. The commission of agriculture shall provide a detailed explanation of the basis of a denial within 60 days.

(5) Within 60 days after the legislative body of a local unit of government submits to the department a resolution identifying unreasonable adverse effects on the environment or public health as provided for in subsection (3)(a), the department shall hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(6) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated under this part. The department has sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and regulate and enforce provisions of section 8512.

(7) A local unit of government that adopts an ordinance under subsection (2) or (3) shall require persons enforcing the ordinance to comply with training and enforcement requirements determined appropriate by the director.

History: Add. 1998, Act 276, Imd. Eff. July 27, 1998 ;-- Am. 2008, Act 14, Imd. Eff. Feb. 29, 2008
Popular Name: Act 451
Popular Name: NREPA

324.8518 Ammonium nitrate fertilizer; storage methods; information to be obtained by retailers; records; refusal of retailer to sell.

Sec. 8518. (1) A retailer shall secure at all times ammonium nitrate fertilizer to provide reasonable protection against vandalism, theft, or unauthorized access. Secured storage includes, but is not limited to, the following methods:

(a) Fencing.

(b) Lighting.

(c) Locks.

(2) Retailers shall obtain the following information regarding any sale of ammonium nitrate fertilizer:

(a) Date of sale.

(b) Quantity purchased.

(c) License number of the purchaser's valid state operator's license with the appropriate endorsement, if applicable, or other picture identification card number approved for purchaser identification by the department.

(d) The purchaser's name, current address, and telephone number.

(e) The agency relationship, if any, between the purchaser and the person picking up or accepting delivery of the ammonium nitrate fertilizer.

(3) Records created pursuant to this section shall be maintained by the retailer for a minimum of 2 years on a form or using a format recommended by the department. Records shall be made available for inspection and audit upon request of the director of the department.

(4) Records generated by means of the tracking system established under subsection (2) are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Any retailer of ammonium nitrate fertilizer may refuse to sell to any person attempting to purchase ammonium nitrate fertilizer out of season, in unusual patterns or circumstances, or in unusual amounts as determined by the retailer.

History: Add. 2005, Act 68, Imd. Eff. July 11, 2005
Popular Name: Act 451
Popular Name: NREPA

324.8519 Hearing; request.

Sec. 8519. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007
Compiler's Notes: Act 451
Popular Name: NREPA

324.8520 Violations; penalties; remedies; injunctive action; civil action; defenses; liability for damages; applicability of provisions of revised judicature act.

Sec. 8520. (1) A person who violates this part or rules promulgated under this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted directly or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for an administrative hearing that a person has violated or attempted to violate any provision of this part or a rule promulgated under this part, may impose an administrative fine of not more than $1,000.00 for each violation or attempted violation.

(3) If the director finds that a violation or attempted violation has occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(5) A person who violates this part or a rule promulgated under this part, or attempts to violate this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00 for each violation or attempted violation, in addition to any administrative fines imposed.

(6) A person who knowingly and with malicious intent violates this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $25,000.00 for each offense.

(7) The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(8) The attorney general may file a civil action in which the court may impose on any person who violates this part or a rule promulgated under this part or attempts to violate this part or a rule promulgated under this part a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action

in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the fund.

(9) In defense of an action filed under this section for a violation of this part, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation or attempted violation, he or she was in compliance with this part and rules promulgated under this part.

(10) A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other sanctions provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

(11) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this part.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007
Compiler's Notes: Act 451
Popular Name: NREPA

324.8521 Penalties and sanctions; exceptions.

Sec. 8521. The penalties and sanctions provided for violations of this part do not apply to any of the following:

(a) A commercial carrier while lawfully engaged in transporting a commercial fertilizer within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the commercial fertilizer.

(b) The shipment or movement of any commercial fertilizer considered to be in violation of this part, for the specific purposes of disposal or storage when conducted under the approval of the director.

(c) Public officials of this state and the federal government while engaged in the performance of their official duties in administering this part or rules promulgated under this part.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007
Compiler's Notes: Act 451
Popular Name: NREPA

324.8522 Finding of probable cause.

Sec. 8522. A court shall not allow the recovery of damages by a person against whom an administrative action was brought resulting in an order stopping the sale or use of fertilizer or fertilizer material or requiring its seizure if the court finds that there was probable cause for the action or order.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007
Compiler's Notes: Act 451
Popular Name: NREPA

Part 91

SOIL EROSION AND SEDIMENTATION CONTROL

324.9101 Definitions; A to W.

Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

(2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

(3) "Conservation district" means a conservation district authorized under part 93.

(4) "Consultant" means either of the following:

(a) An individual who has a current certificate of training under section 9123.

(b) A person who employs 1 or more individuals who have current certificates of training under section 9123.

(5) "County agency" means an officer, board, commission, department, or other entity of county government.

(6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.

(7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.

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

(9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.

(11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.

(12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

(13) "Municipality" means any of the following:

(a) A city.

(b) A village.

(c) A charter township.

(d) A general law township that is located in a county with a population of 200,000 or more.

(14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) "Seawall maintenance" means an earth change activity landward of the seawall.

(16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

(17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

(18) "State agency" means a principal state department or a state public university.

(19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.

(20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2001, Act 227, Imd. Eff. Jan. 2, 2002 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA

324.9102, 324.9103 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Compiler's Notes: The repealed sections pertained to definitions and soil erosion and sedimentation control program.
Popular Name: Act 451
Popular Name: NREPA

324.9104 Rules; availability of information.

Sec. 9104. (1) The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to soil erosion control and sedimentation control. The department shall notify and make copies of proposed rules available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies for review and comment before promulgation.

(2) The department shall make available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies educational information on soil erosion and sedimentation control techniques and the benefits of implementing soil erosion and sedimentation control measures. County enforcing agencies and municipal enforcing agencies shall distribute this information to persons receiving permits under a county program or a local ordinance and to other interested persons.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1701 et seq. of the Michigan Administrative Code.

324.9105 Administration and enforcement of rules; resolution; ordinance; interlocal agreement; review; notice of results; informal meeting; probation; consultant; inspection fees; rescission of order, stipulation, or probation.

Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:

(a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.

(b) With regard to earth changes of authorized public agencies.

(2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.

(3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance and may set forth such other matters as the county board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.

(5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall approve a county's program if all of the following conditions are met:

(a) The county has passed a resolution or enacted an ordinance as provided in this section.

(b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.

(c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:

(i) Whether a mechanism is in place to provide funding to administer the county's program.

(ii) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(iii) The effectiveness of the county's past compliance and enforcement efforts.

(iv) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the county.

(v) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.

(vi) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.

(7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.

(8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.

(9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1 year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.

(10) If any of the following occur, the department shall hire a consultant to administer the county's program:

(a) The county does not notify the department of its intent to hire a consultant under subsection (9).

(b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).

(c) The county remains unapproved following the department's review under subsection (9).

(11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.

(12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1701 et seq. of the Michigan Administrative Code.

324.9106 Ordinances.

Sec. 9106. (1) Subject to subsection (3), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance shall not be applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this

part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment shall be considered to have been approved by the department.

(3) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

(a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.

(c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether the municipality has met the requirements of this subdivision, the department shall consider all of the following:

(i) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.

(ii) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.

(iii) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively

administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.

(B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the municipality's past compliance and enforcement efforts.

(D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.

(E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.

(F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.

(4) If the department determines that a municipality is not approved under subsection (3) or that a municipality that was previously approved under subsection (3) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.

(5) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.

(6) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at that time. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA

324.9107 Notice of violation.

Sec. 9107. If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9108 Permit; deposit as condition for issuance.

Sec. 9108. As a condition for the issuance of a permit, the county enforcing agency or municipal enforcing agency may require the applicant to deposit with the clerk of the county or municipality in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the county or municipality or to the county enforcing agency or municipal enforcing agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures

as may be required by the county enforcing agency or municipal enforcing agency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9109 Agreement between public agency or county or municipal enforcing agency and conservation district; purpose; reviews and evaluations of agency's programs or procedures; agreement between person engaged in agricultural practices and conservation district; notification; enforcement.
Sec. 9109. (1) An authorized public agency, county enforcing agency, or municipal enforcing agency may enter into an agreement with a conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed earth changes, earth change plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, conservation districts may perform periodic reviews and evaluations of the authorized public agency's, county enforcing agency's, or municipal enforcing agency's programs or procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. These reviews and evaluations shall be submitted to the department for appropriate action.

(2) A person engaged in agricultural practices may enter into an agreement with the appropriate conservation district to pursue agricultural practices in accordance with and subject to this part, the rules promulgated under this part, and any applicable local ordinance. If a person enters into an agreement with a conservation district, the conservation district shall notify the county enforcing agency or municipal enforcing agency or the department in writing of the agreement. Upon entering into the agreement under this subsection, a person is not subject to permits required under this part, but is required to develop project specific soil erosion and sedimentation control plans and

is subject to the remedies provided for in this part for violations of this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9110 Designation as authorized public agency; application; submission of procedures; variance; approval.
Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

(2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.

(3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this subsection.

(4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:

(a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.

(c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subdivision, the department shall consider all of the following:

(i) Funding to administer the agency's soil erosion and sedimentation control program.

(ii) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.

(iii) The adequacy of the agency's soil erosion and sedimentation control procedures.

(iv) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control

procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.

(B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the agency's past compliance and enforcement efforts.

(D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.

(E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.

(5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the designation of the state agency or agency of a local unit of government as an authorized public agency.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA

324.9111 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

Compiler's Notes: The repealed section pertained to statements and certificates relating to plats.
Popular Name: Act 451
Popular Name: NREPA

324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.

Sec. 9112. (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.

(2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.

(3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:

(a) The permit, including the permit obligations and conditions.

(b) Responsibility for any violations of the permit that exist on the date the property is transferred.

(4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:

(a) The permit obligations and conditions with respect to that parcel, but not the permit itself.

(b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.

(5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall

inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.

(6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.

(7) If in the opinion of the department a person, including an authorized public agency, violates this part, the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section 9105, a municipality is not approved under section 9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the

charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2004, Act 565, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: NREPA

324.9113 Injunction; inspection and investigation.
Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this part.

(2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001 ;-- Am. 2005, Act 55, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA

324.9114 Additional rules.
Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 323.1701 et seq. of the Michigan Administrative Code.

324.9115 Logging, mining, or land plowing or tilling; permit exemption; "mining" defined.
Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

(a) Access roads to and from the site where active mining or logging is taking place.

(b) Ancillary activities associated with logging and mining.

(2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan that contains soil erosion and sedimentation control provisions and that is approved by the department under part 631.

(3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615, if the application for a permit to drill and operate under part 615 contains a soil erosion and sedimentation control plan that is approved by the department under part 615. However, those earth changes shall

conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

(4) As used in this section, “mining” does not include the removal of clay, gravel, sand, peat, or topsoil.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9115a Earth change activities not requiring permit; violations.
Sec. 9115a. (1) A residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.

(b) Gardening, if the natural elevation of the area is not raised.

(c) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.

(d) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

(e) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:

(i) Planting of trees, shrubs, or other similar plants.

(ii) Seeding or reseeding of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.

(iii) Seeding or reseeding of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.

(iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.

(v) Seawall maintenance that does not exceed 100 square feet.

(2) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

History: Add. 2005, Act 56, Imd. Eff. June 30, 2005
Popular Name: Act 451
Popular Name: NREPA

324.9116 Reduction of soil erosion or sedimentation by owner.

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.9117 Notice of determination.

Sec. 9117. If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9118 Compliance; time.

Sec. 9118. Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part, the rules promulgated under this part, or an applicable local ordinance.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.

Sec. 9119. Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil

erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend more than $10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than $10,000.00 may be made. If more than $10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9120 Reimbursement of county or municipal enforcing agency; lien for expenses; priority; collection and treatment of lien.
Sec. 9120. (1) All expenses incurred by a county enforcing agency or a municipal enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with this part and the rules promulgated under this part or an applicable local ordinance shall be reimbursed to the county enforcing agency or municipal enforcing agency by the person who owns the land.

(2) The county enforcing agency or municipal enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other

property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9121 Violations; penalties.

Sec. 9121. (1) A person who violates this part is responsible for either of the following:

(a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than $2,500.00.

(b) If the action is brought by the state or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $2,500.00.

(2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than $10,000.00 for each day of violation.

(3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than $2,500.00 or more than $25,000.00 for each day of violation.

(4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:

(a) If the state filed the action under this section, in the general fund of the state.

(b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.

(c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies. All fines going to the department shall be deposited into the general fund of the state.

(5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

(7) This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 173, Imd. Eff. Apr. 18, 1996 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

324.9122 Severability.
Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of

the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.9123 Training program; certificate; fees.

Sec. 9123. (1) Beginning 3 years after the effective date of the 2000 amendments to this section, each individual who is responsible for administering this part and the rules promulgated under this part or a local ordinance and who has decision-making authority for soil erosion and sedimentation control plan development or review, inspections, permit issuance, or enforcement shall be trained by the department. The department shall issue a certificate of training to individuals under this section if they do both of the following:

(a) Complete a soil erosion and sedimentation control training program sponsored by the department.

(b) Pass an examination on the subject matter covered in the training program under subdivision (a).

(2) A certificate of training under subsection (1) is valid for 5 years. For recertifications, the department may offer a refresher course or other update in lieu of the requirements of subsection (1)(a) and (b).

(3) The department may charge fees for administering the training program and the examination under this section that are not greater than the department's cost of administering the training program and the examination. All fees collected under this section shall be deposited into the soil erosion and sedimentation control training fund created in section 9123a.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001

Popular Name: Act 451
Popular Name: NREPA

324.9123a Soil erosion and sedimentation control training fund; creation; disposition of funds; lapse; expenditures.

Sec. 9123a. (1) The soil erosion and sedimentation control training fund is created within the state treasury.

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

(3) Money in the soil erosion and sedimentation control training fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only to administer the soil erosion and sedimentation control training program and examination under section 9123.

History: Add. 2000, Act 504, Imd. Eff. Jan. 11, 2001
Popular Name: Act 451
Popular Name: NREPA

Chapter 3
WASTE MANAGEMENT
Part 111

HAZARDOUS WASTE MANAGEMENT

324.11101 Meanings of words and phrases.

Sec. 11101. For the purposes of this part, the words and phrases defined in sections 11102 to 11104 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11102 Definitions; B to F.
Sec. 11102. (1) “Board” means a site review board created in section 11117.

(2) “Contaminant” means any of the following:

(a) Hazardous waste as defined in R 299.9203 of the Michigan administrative code.

(b) Any hazardous waste or hazardous constituent listed in appendix VIII of part 261 or appendix IX of part 264 of title 40 of the code of federal regulations.

(3) “Corrective action” means an action determined by the department to be necessary to protect the public health, safety, or welfare, or the environment, and includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under title II of the solid waste disposal act or regulations promulgated pursuant to that act.

(4) “Designated facility” means a hazardous waste treatment, storage, or disposal facility that has received a permit or has interim status under the solid waste disposal act or has a permit from a state authorized under section 3006 of subtitle C of the solid waste disposal act, 42 U.S.C. 6926, and which, if located in this state, has an operating license issued under this part, has a legally binding agreement with the department that

authorizes operation, or is subject to the requirements of section 11123(5) .

(5) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste into or on land or water in a manner that the hazardous waste or a constituent of the hazardous waste may enter the environment, be emitted into the air, or be discharged into water, including groundwater.

(6) “Disposal facility” means a facility or a part of a facility where managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.

(7) “Failure mode assessment” means an analysis of the potential major methods by which safe handling of hazardous wastes may fail at a treatment, storage, or disposal facility.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11103 Definitions; G to O.
Sec. 11103. (1) “Generation” means the act or process of producing hazardous waste.

(2) “Generator” means any person, by site, whose act or process produces hazardous waste as identified or listed pursuant to section 11128 or whose act first causes a hazardous waste to become subject to regulation under this part.

(3) “Hazardous waste” means waste or a combination of waste and other discarded material including solid, liquid, semisolid, or contained

gaseous material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous waste does not include material that is solid or dissolved material in domestic sewage discharge, solid or dissolved material in an irrigation return flow discharge, industrial discharge that is a point source subject to permits under section 402 of title IV of the federal water pollution control act, chapter 758, 86 Stat. 880, 33 U.S.C. 1342, or is a source, special nuclear, or by-product material as defined by the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(4) “Hazardous waste management” means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, recycling, and disposal of hazardous waste.

(5) “Landfill” means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, or an underground mine or cave.

(6) “Land treatment facility” means a treatment facility or part of a treatment facility at which hazardous waste is applied onto or incorporated into the soil surface. If waste will remain after closure, a facility described in this subsection is a disposal facility.

(7) “Limited storage facility” means a storage facility that meets all of the following conditions:

(a) Has a maximum storage capacity that does not exceed 25,000 gallons of hazardous waste.

(b) Storage occurs only in tanks or containers.

(c) Has not more than 200 containers on site that have a capacity of 55 gallons or less.

(d) Does not store hazardous waste on site for more than 90 days.

(e) Does not receive hazardous waste from a treatment, storage, or disposal facility.

(8) “Manifest” means a form approved by the department used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(9) “Manifest system” means the system used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(10) “Mechanism” means a letter of credit, a financial test that demonstrates the financial strength of the company owning a treatment, storage, or disposal facility or a parent company guaranteeing financial assurance for a subsidiary, or an insurance policy that will provide funds for closure or postclosure care of a treatment, storage, or disposal facility.

(11) “Municipal solid waste incinerator” means an incinerator that is owned or operated by any person, and that meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or burns this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under this part.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(12) “Municipal solid waste incinerator ash” means the substances remaining after combustion in a municipal solid waste incinerator.

(13) “Municipality” means a city, village, township, or Indian tribe.

(14) “On site” means on the same or geographically contiguous property that may be divided by a public or private right-of-way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right-of-way. On site property includes noncontiguous pieces of property owned by the same person but connected by a right-of-way that the owner controls and to which the public does not have access.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11104 Definitions; O to V.

Sec. 11104. (1) “Operator” means the person responsible for the overall operation of a disposal, treatment, or storage facility with approval of the department either by contract or license.

(2) “Site identification number” means a number that is assigned by the United States environmental protection agency or the United States environmental protection agency's designee to each generator, each transporter, and each treatment, storage, or disposal facility. If the generator or transporter or the treatment, storage, or disposal facility manages wastes that are hazardous under this part and the rules promulgated under this part but are not hazardous under the solid waste disposal act, site identification number means an equivalent number that is assigned by the department.

(3) “Solid waste” means that term as it is defined in part 115.

(4) “Storage” means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(5) “Storage facility” means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to storage. A generator who accumulates managed hazardous waste, as defined by rule, on site in containers or tanks for less than 91 days or a period of time prescribed by rule is not a storage facility.

(6) “Surface impoundment” or “impoundment” means a treatment, storage, or disposal facility or part of a treatment, storage, or disposal facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and that is not an injection well. Surface impoundments include, but are not limited to, holding, storage, settling, and aeration pits, ponds, and lagoons.

(7) “The solid waste disposal act” means title II of Public Law 89-272, 42 U.S.C. 6901, 6902 to 6907, 6911, 6912 to 6914a, 6915 to 6916, 6921 to 6939e, 6941, 6942 to 6949a, 6951 to 6956, 6961 to 6964, 6971 to 6979b, 6981 to 6987, 6991 to 6991i, and 6992 to 6992k.

(8) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(9) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste, to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable to recovery, amenable to storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(10) "Treatment facility" means a facility or part of a facility where managed hazardous waste, as defined by rule, is subject to treatment.

(11) "Updated plan" means the updated state hazardous waste management plan prepared under section 11110.

(12) "Vehicle" means a transport vehicle as defined in 49 C.F.R. 171.8.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998 ;-- Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11105 Generation, disposition, storage, treatment, or transportation of hazardous waste.

Sec. 11105. A person shall not generate, dispose, store, treat, or transport hazardous waste in this state without complying with the requirements of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and

responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

****** 324.11105a THIS SECTION IS REPEALED BY ACT 560 OF 2006 EFFECTIVE DECEMBER 29, 2008 ******

324.11105a Exceptions to rules; adoption by reference; promulgation of rule; repeal of section.

Sec. 11105a. (1) As exceptions to the requirements of rules promulgated under this part, 40 CFR 264.1050(h) and 40 CFR 265.1050(g) are adopted by reference.

(2) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, within 1 year after the effective date of the 2006 amendatory act that amended this section, the department of environmental quality shall promulgate a rule incorporating 40 CFR 264.1050(h) and 40 CFR 265.1050(g) by reference.

(3) This section is repealed effective 2 years after the effective date of the 2006 amendatory act that amended this section.

History: Add. 1995, Act 124, Imd. Eff. June 30, 1995 ;-- Am. 2006, Act 560, Imd. Eff. Dec. 29, 2006
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11106 Municipal solid waste incinerator ash; regulation.

Sec. 11106. The generation, transportation, treatment, storage, disposal, reuse, and recycling of municipal solid waste incinerator ash is regulated under part 115, and not under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11107 Methods of hazardous waste management; assistance.

Sec. 11107. The department and the board, in the conduct of their duties as prescribed under this part, shall assist in encouraging, developing, and implementing methods of hazardous waste management that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation, including source separation, recycling, and waste reduction, and that are consistent with the plan to be provided by the department of public health pursuant to section 12103(d) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12103 of the Michigan Compiled Laws. In addition, the director, the department, and the board, in the conduct of their duties as prescribed by this part, shall assist in implementing the policy of this state to minimize the placement of untreated hazardous waste in disposal facilities.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11108 Landfill or solidification facility; payment of fee by owner or operator; certain hazardous waste exempt from fees; certification; evaluating accuracy of generator fee exemption certifications; enforcement action; forwarding fee revenue and completed form; reduction in hazardous waste generated or disposed; refund; disposition of fees; waste reduction fund.

Sec. 11108. (1) Except as otherwise provided in this section, each owner or operator of a landfill shall pay to the department a fee assessed on hazardous waste disposed of in a landfill. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be $10.00 per ton, $10.00 per cubic yard, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the landfill determines that the hazardous waste quantity figure on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity figure on all manifest copies accompanying the shipment, note the reason for the changes in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity figure. Payment shall be made within 30 days after the close of each quarter. The landfill owner or operator shall assess off-site generators the fee. The fee for hazardous waste that is generated and disposed of on the site of a landfill owner or operator shall be paid by that owner or operator.

(2) Except as otherwise provided in this section, each owner or operator of a solidification facility licensed pursuant to section 11123 shall pay to the department a fee assessed on hazardous waste received at the solidification facility. The fee shall be based on the quantity of hazardous waste specified on the manifest or monthly operating report and shall be $10.00 per ton, $10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound depending on the unit of measure used by the owner or operator to calculate the fee. The fee for fractional quantities of hazardous waste shall be proportional. If the hazardous waste is required to be listed on a manifest and the owner or operator of the solidification facility determines that the hazardous waste quantity figure on the manifest is not accurate, the owner or operator shall correct the hazardous waste quantity figure on all manifest copies accompanying the shipment, note the reason for the change in the discrepancy indication space on the manifest, and assess the fee in accordance with the corrected hazardous waste quantity figure. Payment shall be made within 30 days after the close of each quarter. The solidification facility owner or operator shall

assess off-site generators the fee. The fee for hazardous waste that is generated and solidified on the site of a solidification owner or operator shall be paid by that owner or operator.

(3) The following hazardous waste is exempt from the fees provided for in this section:

(a) Ash that results from the incineration of hazardous waste or the incineration of solid waste as defined in part 115.

(b) Hazardous waste exempted by rule because of its character or the treatment it has received.

(c) Hazardous waste that is removed from a site of environmental contamination that is included in a list submitted to the legislature pursuant to section 20105, or hazardous waste that is removed as part of a site cleanup activity at the expense of the state or federal government.

(d) Solidified hazardous waste produced by a solidification facility licensed pursuant to section 11123 and destined for land disposal.

(e) Hazardous waste generated pursuant to a 1-time closure or site cleanup activity in this state if the closure or cleanup activity has been authorized in writing by the department. Hazardous waste resulting from the cleanup of inadvertent releases which occur after March 30, 1988 is not exempt from the fee.

(f) Primary and secondary wastewater treatment solids from a wastewater treatment plant that includes an aggressive biological treatment facility as defined in section 3005(j)(12)(B) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6925.

(g) Emission control dust or sludge from the primary production of steel in electric furnaces.

(4) An owner or operator of a landfill or solidification facility shall assess or pay the fee described in this section unless a written signed

certification is provided by the generator indicating that the hazardous waste is exempt from the fee. If the hazardous waste that is exempt from the fee is required to be listed on a manifest, the certification shall contain the manifest number of the shipment and the specific fee exemption for which the hazardous waste qualifies. If the hazardous waste that is exempt from the fee is not required to be listed on a manifest, the certification shall provide the volume of exempt hazardous waste, the waste code or waste codes of the exempt waste, the date of disposal or solidification, and the specific fee exemption for which the hazardous waste qualifies. The owner or operator of the landfill or solidification facility shall retain this certification for 4 years from the date of receipt.

(5) The department or a health department certified pursuant to section 11145 shall evaluate the accuracy of generator fee exemption certifications and shall take enforcement action against a generator who files a false certificate. In addition, the department shall take enforcement action to collect fees that are not paid as required by this section.

(6) The landfill owner or operator and the solidification facility owner or operator shall forward fee revenue due to the department with a completed form that is provided or approved by the department. The owner or operator shall certify that all information provided in the form is accurate. The form shall include the following information:

(a) The volume of hazardous waste subject to a fee.

(b) The name of each generator who was assessed a fee, the generator's identification number, manifest numbers, hazardous waste volumes, and the amount of the fee assessed.

(7) A generator who documents to the department, on a form provided by the department, a reduction in the amount of hazardous waste generated as a result of a process change, or documents a reduction in the amount of hazardous waste that is being disposed of in a landfill, either directly or following solidification at a solidification facility, as a result

of a process change or the generator's increased use of source separation, input substitution, process reformulation, recycling, treatment, or an exchange of hazardous waste that results in a utilization of that hazardous waste, is eligible for a refund from the state. The refund shall be in the amount of $10.00 per ton, $10.00 per cubic yard, 4 cents per gallon, or 1/2 cent per pound of hazardous waste reduced or managed through an alternative to landfill disposal. A generator is not eligible to receive a refund for that portion of a reduction in the amount of hazardous waste generated that is attributable to a decrease in the generator's level of production of the products that resulted in the generation of the hazardous waste.

(8) A generator seeking a refund shall calculate the refund due by comparing hazardous waste generation, treatment, and disposal activity in the calendar year immediately preceding the date of filing with hazardous waste generation, treatment, and disposal activity in the calendar year 2 years prior to the date of filing.

(9) To be eligible for a refund, a generator shall file a request with the department by June 30 of the year following the year for which the refund is being claimed.

(10) A refund shall not exceed the total fees paid by the generator to the landfill operator or owner and the solidification facility operator or owner.

(11) A form submitted by the generator as provided for in subsection (7) shall be certified by the generator or the generator's authorized agent.

(12) The department shall maintain information regarding the landfill disposal fees received and refunds provided under this section.

(13) The fees collected under this section shall be forwarded to the state treasurer and deposited in the waste reduction fund created in subsection (14).

(14) The waste reduction fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the waste reduction fund. The state treasurer shall direct the investment of the waste reduction fund. The state treasurer shall credit to the waste reduction fund interest and earnings from waste reduction fund investments. Money in the waste reduction fund at the close of the fiscal year shall remain in the waste reduction fund and shall not lapse to the general fund. Money from the waste reduction fund shall be expended, upon appropriation, only for 1 or more of the following purposes:

(a) To pay refunds to generators under this section.

(b) To fund programs created under part 143 and part 145.

(c) Not more than $500,000.00 to implement section 3103a.

(d) For state fiscal years 2002 and 2003, to fund programs created under part 111.

(e) Not more than $500,000.00 to implement section 5419.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11110 State hazardous waste management plan; preparation; contents; studies; incentives; criteria; notice; news release; public hearings; comments; amendments.
Sec. 11110. (1) Not later than January 1, 1990, the department shall prepare an updated state hazardous waste management plan.

(2) The updated plan shall:

(a) Update the state hazardous waste management plan adopted by the commission on January 15, 1982.

(b) Be based upon location of generators, health and safety, economics of transporting, type of waste, and existing treatment, storage, or disposal facilities.

(c) Include information generated by the department of commerce and the department on hazardous waste capacity needs in the state.

(d) Include information provided by the office of waste reduction created in part 143.

(e) Plan for the availability of hazardous waste treatment or disposal facilities that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state during the 20-year period after October 1, 1988, as is described in section 104(c)(9)(A) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9604.

(f) Plan for a reasonable geographic distribution of treatment, storage, and disposal facilities to meet existing and future needs, including proposing criteria for determining acceptable locations for these facilities. The criteria shall include a consideration of a location's geology, geography, demography, waste generation patterns, along with environmental factors, public health factors, and other relevant characteristics as determined by the department.

(g) Emphasize a shift away from the practice of landfilling hazardous waste and toward the in-plant reduction of hazardous waste and the recycling and treatment of hazardous waste.

(h) Include necessary legislative, administrative, and economic mechanisms, and a timetable to carry out the plan.

(3) The department shall instruct the office of waste reduction created in part 143 to complete studies as considered necessary for the completion of the updated plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types, quantities, and chemical and physical characteristics of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management, minimization, or reduction practices and costs, including treatment, disposal, on-site recycling, reclamation, and other forms of source reduction within this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations, and constraints. Projection of needs shall consider the types and sizes of treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for a state owned treatment, storage, or disposal facility.

(d) An investigation and analysis of methods, incentives, or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(e) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(f) An estimate of the public and private cost of treating, storing, or disposing of hazardous waste.

(g) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) If the department finds in preparing the updated plan that there is a need for additional treatment or disposal facilities in the state, then the department shall identify incentives the state could offer that would encourage the construction and operation of additional treatment or

disposal facilities in the state that are consistent with the updated plan. The department shall propose criteria which could be used in evaluating applicants for the incentives.

(5) Upon completion of the updated plan, the department shall publish a notice in a number of newspapers having major circulation within the state as determined by the department and shall issue a statewide news release announcing the availability of the updated plan for inspection or purchase at cost by interested persons. The announcement shall indicate where and how the updated plan may be obtained or reviewed and shall indicate that not less than 6 public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until 60 days have elapsed from the date of the notice announcing the availability of the updated plan. The remaining public hearings shall be held within 120 days after the first public hearing at approximately equal time intervals.

(6) After the public hearings, the department shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the updated plan, and determine whether the updated plan should be adopted.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 61, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11111 State hazardous waste management plan; adoption or rejection; reason for rejection; return of plan; changing and reconsidering plan.
Sec. 11111. (1) The department, with the advice of the director of public health, shall adopt or reject the updated plan within 60 days.

(2) If the department rejects the updated plan, it shall indicate its reason for rejection and return the updated plan for further work.

(3) The department shall make the necessary changes and reconsider the updated plan within 30 days after receipt of the rejection.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11112 State hazardous waste management plan; final decision; adoption.

Sec. 11112. The department shall make a final decision on the updated plan within 120 days after the department first receives the updated plan. If the department fails to formally adopt or reject the updated plan within 120 days, the updated plan is considered adopted.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11114 Proposed rules to implement plan.

Sec. 11114. Not more than 180 days after the final adoption of the updated plan, the department shall submit to the legislature proposed rules to implement the updated plan created in section 11110.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11115 Permits and licenses for treatment, storage, or disposal facility; determination; exception.

Sec. 11115. After the updated plan is adopted, the department shall not issue a permit or license under this part for a treatment, storage, or disposal facility until the department has made a determination that the action is consistent with the updated plan. This section does not apply to a treatment, storage, or disposal facility granted a construction permit or a license under this part before the final adoption of the updated plan. However, such a facility shall be consistent with the state hazardous

waste management plan adopted by the commission on January 15, 1982.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11115a Facility subject to corrective action requirements; release of contaminant from waste management unit or release of hazardous waste from facility; determination by department; consent order; license, permit, or order; contents.

Sec. 11115a. (1) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a contaminant from any waste management unit at the facility, regardless of when the contaminant may have been placed in or released from the waste management unit. This requirement applies to a facility for which the owner or operator, or both, is applying for or has been issued a license under this part.

(2) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a contaminant from any waste management unit at the facility, the department may order, or may enter a consent order with an owner or operator, or both, of a facility specified in subsection (1), requiring corrective action at the facility. A license, permit, or order issued or entered pursuant to this subsection shall contain all of the following:

(a) Schedules of compliance for corrective action if corrective action cannot be completed before the issuance of the license, permit, or order.

(b) Assurances of financial responsibility for completing the corrective action.

(c) Requirements that corrective action be taken beyond the facility boundary if the release of a contaminant has or may have migrated or otherwise has or may have been emitted beyond the facility boundary,

unless the owner or operator of the facility demonstrates to the satisfaction of the department that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake this corrective action.

(3) Beginning on June 4, 1992, the owner or operator, or both, of a facility specified in this subsection and not in subsection (1) is subject to the corrective action requirements specified in this part and the rules promulgated under this part for all releases of a hazardous waste from the facility, regardless of when the hazardous waste may have been placed in or released from the facility. This requirement applies to a facility for which the owner or operator, or both, is or was subject to the interim status requirements defined in the solid waste disposal act, except for those facilities that have received formal written approval of the withdrawal of their United States environmental protection agency part A hazardous waste permit application from the department or the United States environmental protection agency.

(4) Beginning on June 4, 1992, if the department, on the basis of any information, determines that there is or has been a release of a hazardous waste, the department may order, or may enter a consent order with, an owner or operator, or both, of a facility specified in subsection (3), requiring corrective action at the facility. An order issued or entered pursuant to this subsection shall contain both of the following:

(a) Schedules of compliance for corrective action.

(b) Assurances of financial responsibility for completing the corrective action.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 61, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11115b Corrective actions; satisfaction of remedial action obligations.
Sec. 11115b. Corrective actions conducted pursuant to this part satisfy a person's remedial action obligations under part 201 and remedial obligations under part 31 for that release or threat of release.

History: Add. 1995, Act 37, Imd. Eff. May 17, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11116 Expansion, enlargement, or alteration of treatment, storage, or disposal facility; review; construction permit; local ordinance, permit requirement, or other requirement not abridged or altered; new proposal.
Sec. 11116. (1) A treatment, storage, or disposal facility in existence on January 1, 1980, or a treatment, storage, or disposal facility in existence on November 19, 1980, for which approval of construction has been received under part 55, is not subject to a review of the board and does not require a construction permit under this part except for an expansion, enlargement, or alteration of the treatment, storage, or disposal facility beyond its original authorized design capacity or beyond the area specified in the operating license, original construction permit, or other authorization. This subsection does not abridge or alter the effect of a local ordinance, permit requirement, or other requirement on the construction of a treatment, storage, or disposal facility described in this subsection.

(2) The expansion, enlargement, or alteration of a treatment, storage, or disposal facility in existence on January 1, 1980, constitutes a new proposal for which a construction permit is required.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11117 Site review board; establishment; purpose; review of site applications concurrently; granting or denying final approval of site

applications individually; appointment, qualifications, and terms of board members; chairperson; vacancy; notice of construction permit application; quorum; legal action; meetings; staff assistance; duties of existing site review board.

Sec. 11117. (1) A site review board shall be established to review and recommend to the department whether the department should grant or deny final approval for each site construction permit application that is referred to the board by the department. If more than 1 construction permit application for interrelated facilities on a single site within the same municipality are submitted by the same applicant, reviewed concurrently by the department, and referred to the board by the department, a single board shall be established to review the site applications concurrently but shall recommend the granting or denial of final approval for each application individually. A board shall consist of 9 voting members and a nonvoting chairperson to be appointed as provided in subsection (2).

(2) The following 9 members and 1 nonvoting chairperson shall serve on every board established to review a site construction permit application:

(a) Seven members shall be members appointed by the governor, with the advice and consent of the senate. The 7 members on each board shall include a geologist, a chemical engineer, and a toxicologist, each of whom are on the faculty of an institution of higher education within the state, a representative from a manufacturing industry, 2 representatives of the public, and a representative of a municipality. Subject to the other requirements of this subdivision, the governor may appoint more than 1 geologist, chemical engineer, toxicologist, representative from a manufacturing industry, and representative of a municipality and more than 2 representatives of the public. However, only 1 geologist, chemical engineer, toxicologist, representative from a manufacturing industry, and representative of a municipality and only 2 representatives of the public, as randomly designated by the department, shall serve on a particular board. The member who represents municipalities shall be associated with a municipality or municipal association that is or represents the same type of municipality in which a facility is proposed to be located. A member representing a municipality or the public shall not serve on a site

review board that is evaluating an application for a facility located within a county or municipality that directly employs the member or in which the member resides. A vacancy shall be filled for the unexpired portion of the period in the same manner as the original appointments. All members appointed by the governor, including a chairperson appointed pursuant to subdivision (c), shall be appointed to serve on site review boards for a period of 3 years, and may be appointed for additional 3-year periods. In addition, a member may serve beyond the expiration of the member's 3-year period of service for so long a period of time as is necessary to complete action on construction permit applications pending at the expiration of the member's 3-year period of service.

(b) One member shall be appointed by the governing body of the municipality in which the treatment, storage, or disposal facility is primarily proposed to be located to serve on the board that is established to consider a particular construction permit application. One member shall be appointed by the county board of commissioners in which the treatment, storage, or disposal facility is proposed to be located and shall be a resident of the county where the facility is proposed to be located. The members serving pursuant to this subdivision shall serve until the particular construction permit application subject to their review is approved or until the application is rejected and is no longer subject to review.

(c) An attorney shall be appointed by the governor, with the advice and consent of the senate, to serve as a nonvoting chairperson on each board established to review a site construction permit. The chairperson shall have experience in conducting formal meetings where sworn testimony is received. Subject to the other requirements of this subdivision, the governor may appoint more than 1 chairperson. However, only 1 chairperson, designated by the department, shall serve on a particular board.

(3) The department shall notify the local governing body of the municipality and county government of a construction permit application filed with the department.

(4) Five of the 9 voting members of the board constitute a quorum for the transaction of business of the board and the concurrence of 5 voting members of the board constitutes a legal action of the board. All meetings of the board shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(5) The department shall make staff available to assist a board in carrying out its responsibilities.

(6) A site review board that is established before December 28, 1987 shall proceed and fulfill its duties pursuant to the applicable law in effect when the site review board was established.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 61, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11118 Construction permit required; application form; activities subject to construction permit requirements; contents of application; fee; disclosure statement; providing additional information; denial of application; placement on organized mailing list; charge; revolving fund; records; expenses; newspaper notice; calculation of construction permit application fee.
Sec. 11118. (1) Except as otherwise provided in section 11122, a person shall not establish a treatment, storage, or disposal facility without a construction permit from the department. A person proposing the establishment of a treatment, storage, or disposal facility subject to the construction permit requirement of this part, but not including a limited storage facility, shall make application for a construction permit to the department on a form provided by the department.

(2) If an amendment to this part or to the rules promulgated under this part subjects activities lawfully being conducted at a treatment, storage, or disposal facility at the time the amendment takes effect to the operating license requirements of this part solely because of the

amendment, the activities carried out at the facility prior to the effective date of the amendment are not subject to the construction permit requirements of this part, except for an expansion of the facility with respect to such activities beyond its original authorized design capacity or beyond the area specified in an original permit, license, or other authorization or an alteration of the method of hazardous waste treatment or disposal.

(3) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed treatment, storage, or disposal facility, and other information specified in this section, by rule, or by federal regulation issued under the solid waste disposal act. The application shall be accompanied by a construction permit application fee. The fee shall be calculated as provided in subsection (10) or may be based on the actual cost of the construction permit review according to procedures established by rule. Construction permit application fees shall be deposited in the general fund of the state. The application shall include a copy of the actual published notice as described in subsection (9) and a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated pursuant to this part, an environmental assessment, an engineering plan, and the procedures for closure and postclosure monitoring. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state, and also shall contain an environmental failure mode assessment.

(4) Except as otherwise provided in this subsection, the construction permit application shall include a disclosure statement that includes all of the following:

(a) The full name and business address of all of the following:

(i) The applicant.

(ii) The 5 persons holding the largest shares of the equity in or debt liability of the proposed facility. The department may waive all or any

portion of this requirement for an applicant that is a corporation with publicly traded stock.

(iii) The operator, if known.

(iv) If known, the 3 employees of the operator who will have the most responsibility for the day-to-day operation of the facility.

(v) Any other business entity included within the definition of person that any person required to be listed in subparagraphs (i) to (iv) has at any time had 25% or more of the equity in or debt liability of. The department may waive all or any portion of this requirement for an applicant that is a corporation with publicly traded stock.

(b) All convictions for criminal violations of any environmental statute enacted by a federal, state, Canadian, or Canadian provincial agency for each person required to be listed under this subsection. If debt liability is held by a chartered lending institution, information required in this subsection and subsection (4)(c) and (d) is not required from that institution.

(c) A listing of all environmental permits or licenses issued by a federal, state, Canadian, or Canadian provincial agency held by each person required to be listed under this subsection that were permanently revoked because of noncompliance.

(d) A listing of all activities at property owned or operated by each person required to be listed under this subsection that resulted in a threat or potential threat to the environment and for which public funds were used to finance an activity to mitigate the threat or potential threat to the environment, except if the public funds expended to facilitate the mitigation of environmental contamination were voluntarily and expeditiously recovered from the applicant or other listed person without litigation.

(5) If any information required to be included in the disclosure statement changes or is supplemented after the filing of the statement, the

applicant, permittee, or licensee shall provide that information to the department in writing within 30 days of the change or addition.

(6) Notwithstanding any other provision of law, the department may deny an application for a construction permit if there are any listings pursuant to subsection (4)(b), (c), or (d) as originally disclosed or as supplemented.

(7) A person may indicate an interest in being placed on a department organized mailing list to be kept informed of any rules, plans, construction permit applications, contested case hearings, public hearings, or other information or procedures relating to the administration of this part. A charge may be required by the department to cover the cost of the materials.

(8) There is created within the state treasury a revolving fund. When a site construction permit application is referred to a site review board by the department, the applicant shall pay a $25,000.00 fee to be placed in this fund. The $25,000.00 fee shall be in addition to the application fee required under subsection (3). This fund shall cover the expenses of the site review board members, the chairperson, a mediator, and any other expenses necessary to the deliberations of the board. The department shall administer the fund and authorize expenditures. The department shall maintain records to support any expenses charged to the fund. If expenses payable from the fund exceed the $25,000.00 fee paid by the applicant, the additional expenses shall be paid from money appropriated by the legislature to the revolving fund created in this subsection. Any unexpended portion of an applicant's $25,000.00 fee that is not expended to pay the expenses listed in this subsection shall be reimbursed to the applicant after the site review board process is concluded.

(9) An application for a site construction permit shall not be complete unless it includes a copy of a newspaper notice which the applicant published at least 30 days prior to submittal of the application in a newspaper having major circulation in the municipality and the immediate vicinity of the proposed treatment, storage, or disposal facility. The required published notice shall contain a map indicating the

location of the proposed treatment, storage, or disposal facility and information on the nature and size of the proposed facility. In addition, the notice shall contain all of the following information provided by the department:

(a) A description of the application review process.

(b) The location where the complete application package may be reviewed.

(c) An explanation of how copies of the complete application package may be obtained.

(10) An applicant for a construction permit for a treatment, storage, or disposal facility shall calculate the applicable construction permit application fee required under subsection (3) by totaling the following for each construction permit application:

(a) For a landfill, surface impoundment, land treatment, or waste pile facility.................................... $ 9,000.00
(b) For an incinerator or treatment facility other than a treatment facility in subdivision (a).................. $ 7,200.00
(c) For a storage facility, other than storage that is associated with treatment or disposal activities that may be regulated under a single permit........................ $ 500.00

(d) For the permitted site size of a landfill, surface impoundment, land treatment, or waste pile facility, except waste piles meeting the requirements of 40 C.F.R. 264.250(c), the following:

(i) Less than 5 acres........................ $ 100.00
(ii) 5 to 19 acres............................ $ 170.00
(iii) 20 to 79 acres........................... $ 240.00
(iv) 80 acres or more......................... $ 320.00

(e) For the permitted site size of a treatment or storage facility, other than a facility listed in subdivision (d), the following:

(i) Less than 5 acres........................ $ 50.00
(ii) 5 to 19 acres............................ $ 100.00
(iii) 20 to 79 acres........................... $ 100.00
(iv) 80 acres or more......................... $ 100.00

(f) For the projected waste volume per day for a landfill, surface impoundment, land treatment, or waste pile facility, except waste piles meeting the requirements of 40 C.F.R. 264.250(c), the following:

(i) Less than 50 cubic yards or 10,000 gallons................................. $ 60.00
(ii) 50 to 100 cubic yards or 10,000 to 20,000 gallons................................. $ 80.00
(iii) 101 to 700 cubic yards or 20,001 to 140,000 gallons................................. $ 100.00
(iv) More than 700 cubic yards or more than 140,000 gallons................................. $ 130.00

(g) For the projected waste volume per day for a treatment or storage facility, other than a facility listed in subdivision (f), the following:

(i) Less than 50 cubic yards or 10,000 gallons................................. $ 50.00
(ii) 50 to 100 cubic yards or 10,000 to 20,000 gallons................................. $ 100.00
(iii) 101 to 700 cubic yards or 20,001 to 140,000 gallons................................. $ 100.00
(iv) More than 700 cubic yards or more than 140,000 gallons................................. $ 150.00

(h) For the hydrogeological characteristics of a landfill, surface impoundment, land treatment, or waste pile facility, except waste piles meeting the requirements of 40 C.F.R. 264.250(c), the following:

(i) Natural clay............................ $ 40.00
(ii) Natural sand............................ $ 60.00
(iii) Compacted clay.......................... $ 70.00
(iv) Artificially lined (other materials)..... $ 100.00
(v) Any combination of the above............ $ 100.00

(i) For the hydrogeological characteristics of surface water in a treatment or storage facility, other than a facility listed in subdivision (h).................................... ... $ 75.00

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11118a Multisource commercial hazardous waste disposal well; definition; maintenance of treatment and storage facility; construction permit and operating license required.
Sec. 11118a. (1) As used in this section, “multisource commercial hazardous waste disposal well” has the meaning ascribed to that term in section 62506a.

(2) A multisource commercial hazardous waste disposal well shall maintain on site a treatment facility and a storage facility that have obtained a construction permit under section 11118 and an operating license under section 11123.

History: Add. 1996, Act 182, Imd. Eff. May 3, 1996
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11119 Duties of department upon receipt of construction permit application; referral of application to site review board; notice of intent to deny application; providing board with documents; submission of application to board; public participation process; review of comments; referral or denial of application; procedure.
Sec. 11119. (1) Upon receipt of a construction permit application that complies with the requirements of section 11118, the department shall:

(a) Immediately notify the permanent board members and the municipality and county in which the treatment, storage, or disposal facility is located or proposed to be located; a local soil erosion and sedimentation control agency appointed pursuant to part 91; each division within the department that has responsibility in land, air, or water management; a regional planning agency established by executive directive of the governor; and other appropriate agencies. The notice shall describe the procedure by which the permit may be approved or denied.

(b) Review the plans of the proposed treatment, storage, or disposal facility to determine if the proposed operation complies with this part and the rules promulgated under this part. The review shall be made within the department. The review shall include, but need not be limited to, a review of air quality, water quality, waste management, hydrogeology, and the applicant's disclosure statement. A written and signed review by each person within the department reviewing the permit and plans shall be received and recorded before a construction permit is referred to the site review board or is denied by the department. If the site review, plan review, and the application meet the requirements of this part and the rules promulgated under this part, the department shall refer the application to the site review board for review. An expansion of a treatment, storage, or disposal facility beyond the original authorized design capacity or beyond the area specified in the original permit, license, or other authorization or an alteration of the method of hazardous waste treatment or disposal constitutes a new proposal for which a new construction permit is required.

(c) Coordinate and review all permits that the applicant is required to obtain from the department in order to construct the proposed treatment, storage, or disposal facility.

(d) Hold a public hearing within 60 days after receipt of a complete construction permit application.

(2) The department shall refer an application to the site review board or shall notify the applicant of the intent to deny the construction permit application within 120 days after the department receives an application meeting the requirements of section 11118.

(3) If the department refers an application to the site review board, prior to the first board meeting the department shall provide each board member with a copy of the application, a staff report including a summary of public comments, a responsiveness summary, and a draft construction permit.

(4) If the department does not refer an application to the site review board or does not notify the applicant of the intent to deny the construction permit application within 120 days, the construction permit application shall be submitted to the board for action.

(5) If the department intends to deny the application, the department shall commence a public participation process that is equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all the comments made during that process and shall refer the application to the site review board or deny the application. If the department refers the construction permit application to the board, the department shall proceed as described in section 11120.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 61, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11120 Notification of member, county, and municipality; selection of members to serve on board; creation of board; timetable; duties of board; comment and input; listing issues; negotiation process; identification of affected parties; appointment of mediator; final best offer or negotiated settlement; hearings; impact; considerations; concerns and objections; modifications; integration of local ordinances, permits, or requirements; seeking advice; decision; approval or rejection of application; extension; preparation of draft construction permit; initiation of public participation process; duties of department; direction of board; duties of board upon rejection of application.

Sec. 11120. (1) The department shall notify those members appointed by the governor who will serve on the board within 75 days after receipt of a construction permit application, if the department has not notified the applicant of the intent to deny the application, or at the time the department refers an application to the board, or at the time an application is automatically referred to the board pursuant to section 11119(4), whichever is earlier. At that time the department also shall notify the county and the municipality in which the proposed treatment, storage, or disposal facility is to be located and request the appointment of the members of the board as provided in section 11117(2)(b). The notification shall include a notice of intent to issue all departmental permits required for the construction, pending recommendations of the board and approval by the department. Within 45 days after the notification, the county and the municipality shall select the members to serve on the board. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) Within 30 days after creation of a board, the board shall meet to review and establish a timetable for the consideration of an application for a proposed treatment, storage, or disposal facility.

(3) The board shall do all of the following:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall do both of the following:

(i) Contain a map indicating the location of the proposed treatment, storage, or disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Hold a public hearing within 45 days of the first board meeting.

(c) Publish the notice not less than 30 days before the date of the public hearing.

(4) Comment and input on the proposed treatment, storage, or disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(5) After the public hearing comment period has been closed, the board shall list the issues that are to be addressed through a negotiation process and list the issues to be evaluated by the board through its deliberations.

(6) A negotiation process shall take place between the applicant and the affected parties, who shall be identified by the board. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be considered an affected party. If requested by any affected party or the applicant, the board shall appoint a mediator to assist during negotiations. The negotiation process shall:

(a) Proceed concurrently with the board's hearings process.

(b) Address the list of issues referred by the board and any other issues unanimously agreed to be considered by the applicant and all affected parties.

(c) Be completed within 150 days after the first meeting of the board unless the applicant and 1 or more affected parties involved in the negotiation process jointly request an extension of not more than 60 days and the extension is approved by the board. The board shall not grant extensions in excess of 60 days. An extension granted under this subdivision may extend the time period in which the board either approves or rejects the construction permit application as specified in subsection (15).

(7) On each negotiation issue which has not reached a negotiated settlement, the board shall select between final best offers presented by affected parties. The final best offer or the negotiated settlement shall not be less stringent than the requirements of the law or pertinent decisions of the board, whichever is the most stringent.

(8) The board shall conduct formal or informal hearings to receive evidence on the disputed issues not subject to the negotiation process described in subsections (6) and (7).

(9) The formal hearings process shall be conducted by the board to receive information from technical experts on disputed issues. Any affected party may request permission by the board to participate in the board's formal hearings within 15 days after the board's public hearing. The board shall determine which affected parties shall participate in the board's formal hearing. If the board denies the request of an affected party to participate in the board's formal hearing, the board shall give the affected party notice of the board's decision and the reasons for the decision. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be automatically entitled to participate. During the board's formal hearings process, the board shall:

(a) Receive sworn testimony.

(b) Cross-examine witnesses.

(c) Allow representatives of affected parties to cross-examine witnesses.

(d) Request participation as needed.

(10) Comments made at informal hearings shall not be made under oath and no cross-examination shall occur.

(11) The board shall deliberate on the impact of the proposed treatment, storage, or disposal facility on the municipality in which it is to be located and make a final determination as to its recommendation to the department regarding the construction permit application.

(12) The board shall consider, at a minimum, all of the following:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed treatment, storage, or disposal facility.

(c) The risk of fires or explosions from improper treatment, storage, and disposal methods.

(d) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed treatment, storage, or disposal facility.

(e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality and wildlife.

(f) An evaluation of measures to mitigate adverse effects.

(g) The board shall consider the information contained in the construction permit application disclosure statement.

(13) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the treatment, storage, or disposal facility and operation at that site. Through deliberations, the board may modify the construction permit application in response to its findings. To the fullest extent practicable, the board also shall integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(14) The board may seek the advice of any person in order to render a decision to issue its recommendation to the department to approve or deny the construction permit application.

(15) Within 180 days after the first meeting of the board, the board shall make a decision on the negotiated agreement and the final best offer from each party on each issue and shall recommend to the department that the department either approve or reject the construction permit application. The 180-day time period may be extended as provided in subdivision (6)(c). However, an extension shall not exceed 60 days.

(16) If the board recommends to the department the approval of the construction permit application and the department follows the recommendation, the department shall prepare a draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all comments made during that process and shall issue or revise and issue the construction permit or reconvene the board to consider issues specified by the department that were raised during the public participation process.

Within 30 days after having been reconvened under this subsection, the board shall recommend to the department the rejection of the application or recommend the revision and issuance of the construction permit, or recommend that the department revise the draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act.

(17) If the board recommends the rejection of the construction permit application, the board shall do all of the following:

(a) State its reasons in writing and indicate the necessary changes to make the application acceptable if a new application is made.

(b) Recommend that the department deny the construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act, or regulations promulgated under that act.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 61, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11121 Effect of local ordinance, permit requirement, or other requirement.
Sec. 11121. A local ordinance, permit requirement, or other requirement does not prohibit the construction of a treatment, storage, or disposal facility, except as otherwise provided in section 11122.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11122 Limited storage facility; license; form and contents of application; fee; compatibility with local zoning ordinances; impact

on municipality; certification; approval or denial of operating license.
Sec. 11122. (1) A person may establish a limited storage facility without a construction permit from the department. However, a person shall not establish a limited storage facility or conduct, manage, maintain, or operate a limited storage facility within this state without an operating license from the department issued under this section, notwithstanding section 11123. A limited storage facility is subject to the rules pertaining to storage facilities.

(2) An applicant for a limited storage facility operating license shall apply for that license on a form provided by the department that shall include the name and residence of the applicant, the location of the proposed or existing facility, other information specified by rule or by federal regulation issued under the solid waste disposal act, and proof of financial responsibility. The application shall include a determination of existing hydrogeological characteristics specified in a hydrogeological report and monitoring program consistent with rules promulgated by the department, an environmental assessment, an engineering plan, procedures for closure, and a resolution or other formal determination of the governing body of the municipality in which the proposed limited storage facility would be located indicating that the limited storage facility is compatible with local zoning ordinances. However, in the absence of a resolution or other formal determination, the application shall include a copy of a registered letter sent to the municipality dated 60 days prior to the application submittal indicating the intent to construct a limited storage facility, requesting a formal determination on whether the proposed facility is compatible with local zoning ordinances in effect on the date the letter is received and indicating that failure to pass a resolution or make a formal determination within 60 days of receipt of the letter means that the proposed facility is to be considered compatible with applicable zoning ordinances. The environmental assessment shall include, at a minimum, an evaluation of the proposed facility's impact on the air, water, and other natural resources of the state and also shall contain an environmental failure mode assessment. The application shall be accompanied by a fee of $500.00, which shall be deposited in the general fund of the state.

(3) If a municipality does not make a formal determination concerning whether a proposed limited storage facility is compatible with local zoning ordinances within 60 days of receiving a registered letter as described in subsection (2), it shall mean that the limited storage facility is to be considered compatible with local zoning ordinances and incompatibility with local zoning shall not be a basis for denial of the license by the department. In determining whether the proposed limited storage facility is compatible with local zoning ordinances, the municipality shall assess the proposed facility's compatibility with ordinances in effect at the date of receipt of the registered letter.

(4) Prior to issuing an operating license for a limited storage facility, the department shall deliberate on the impact that the proposed limited storage facility would have on the municipality in which it is to be located and shall consider, at a minimum, all of the following:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed limited storage facility.

(c) The risk of fires or explosions from improper storage methods.

(d) The impact on the municipality where the proposed limited storage facility is to be located in terms of the health, safety, cost, and consistency with local planning and existing development. The department also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed limited storage facility.

(e) The nature of the probable environmental impact, including the specific predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality and wildlife.

(f) An evaluation of measures to mitigate adverse effects.

(5) The department shall consider the concerns and objections submitted by the public. The department shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the limited storage facility and operation at that site. The department shall not issue an operating license under this section unless the proposed limited storage facility is compatible with the zoning ordinances of the municipality in which the limited storage facility would be located.

(6) The applicant also shall submit to the department a certification under the seal of a licensed professional engineer verifying that the construction of the limited storage facility has proceeded according to the plans approved by the department. The department shall require additional certification periodically during the operation or in order to verify proper closure of the site.

(7) The department shall either approve or deny the application for an operating license. If the department denies the operating license, the department shall state the reasons for the denial in writing.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11123 Operating license required; contents of application; demonstration of financial responsibility; amount and disposition of fee; certifications; schedule for submitting operating license application; time period for submitting complete operating license application; conditions for operating storage facility until application approved or denied.

Sec. 11123. (1) Unless a person is complying with subsection (5) or a rule promulgated under section 11127(4), a person shall not conduct, manage, maintain, or operate a treatment, storage, or disposal facility within this state without an operating license from the department.

(2) The application for an operating license shall contain the name and residence of the applicant, the location of the proposed or existing treatment, storage, or disposal facility, and other information considered necessary by the department including proof of financial responsibility. In addition, the application for the initial operating license after issuance of a construction permit shall contain all of the disclosure information called for in section 11118(4) that was not provided as part of the construction permit application and any changes in or additions to the previously submitted disclosure information. In addition, the owner and operator shall certify that the disclosure listings previously submitted continue to be correct. An applicant for an operating license for a treatment, storage, or disposal facility that is a surface impoundment, landfill, or land treatment facility shall demonstrate financial responsibility for claims arising from nonsudden and accidental occurrences relating to the operation of the facility that cause injury to persons or property. The application shall be accompanied by a fee of $500.00. The license fees shall be deposited in the general fund of the state.

(3) The applicant also shall submit to the department a certification under the seal of a registered professional engineer verifying that the construction of the treatment, storage, or disposal facility has proceeded according to the plans approved by the department and, if applicable, the approved construction permit. The department shall require additional certification periodically during the operation or in order to verify proper closure of the site. The department shall require from those treatment, storage, or disposal facilities that are permitted to operate pursuant to section 11116, certification of the treatment, storage, or disposal facilities' capability of treating, storing, or disposing of hazardous waste in compliance with this part.

(4) The department shall establish a schedule for requiring each person subject to subsection (5) to submit an operating license application. The department may adjust this schedule as necessary. Each person subject to subsection (5) shall submit a complete operating license application within 180 days of the date requested to do so by the department.

(5) A person who owns or operates a treatment, storage, or disposal facility that is in existence on the effective date of an amendment of this part or of a rule promulgated under this part that renders all or portions of the facility subject to the operating license requirements of this section may continue to operate the facility or portions of the facility that are subject to the operating license until an operating license application is approved or denied if all of the following conditions have been met:

(a) A complete operating license application is submitted within 180 days of the date requested by the department under subsection (4).

(b) The person is in compliance with all rules promulgated under this part and with all other state laws.

(c) The person qualifies for interim status as defined in the solid waste disposal act, is in compliance with interim status standards established by federal regulation under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, and has not had interim status terminated.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11124 Inspection of site; determination of compliance; filing and review of inspection report.

Sec. 11124. Upon receipt of an operating license application meeting the requirements of section 11123, the department shall inspect the site and determine if the proposed treatment, storage, or disposal facility complies with this part, the rules promulgated under this part, and the

stipulations included in the approved treatment, storage, or disposal facility construction permit. An inspection report shall be filed in writing by the department before issuing an operating license and shall be made available for public review.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11125 Final decision on operating license application; public hearing; notice; time; extension of deadline; stipulations; operation not prohibited by local ordinance, permit, or other requirement; changes or additions to disclosure statement; listings not identified or disclosed as grounds for denial of application.
Sec. 11125. (1) The department shall provide notice and an opportunity for a public hearing before making a final decision on an operating license application. The department shall make a final decision on an operating license application within 140 days after the department receives a complete application. However, if the state's hazardous waste management program is authorized by the United States environmental protection agency under sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929, the department may extend the deadline beyond the limitation provided in this section in order to fulfill the public participation requirements of the solid waste disposal act. The operating license may contain stipulations specifically applicable to site and operation. A local ordinance, permit, or other requirement shall not prohibit the operation of a licensed treatment, storage, or disposal facility.

(2) If any information required to be included in the disclosure statement required under section 11118 changes or is supplemented after the filing of the statement, the applicant, permittee, or licensee shall provide that information to the department in writing within 30 days of the change or addition.

(3) The department may deny an operating license application submitted pursuant to section 11123 if there are any listings pursuant to section

11118(4)(b) to (d) that were not identified during the site review board process or were not disclosed as required in section 11123(2) or this section.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11126 Coordinating and integrating provisions of act; extent.
Sec. 11126. The department shall coordinate and integrate the provisions of this part for purposes of administration and enforcement with appropriate state and federal law including the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q; the federal water pollution control act, chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387; title XIV of the public health service act, chapter 373, 88 Stat. 1660; the toxic substances control act, Public Law 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692; the resource conservation and recovery act of 1976, 42 U.S.C. 6901 to 6987; parts 31, 55, 115, and 121; the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023; the fire prevention code, 1941 PA 207, MCL 29.1 to 29.34; and the hazardous materials transportation act. The coordination and integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11126a Fee schedule; report.
Sec. 11126a. By September 1, 1998, the department shall submit a report to the legislature that recommends a fee schedule to implement this part.

History: Add. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11127 Rules generally; exemption; effect of amendment to part or rules, or changes in definitions.
Sec. 11127. (1) The department shall submit to the legislature, after consultation with the department of public health, rules necessary to implement and administer this part. The rules required to be submitted by this subsection shall include, but not be limited to, requirements for generators, transporters, and treatment, storage, and disposal facilities.

(2) The department may promulgate rules that exempt certain hazardous wastes and certain treatment, storage, or disposal facilities from all or portions of the requirements of this part as necessary to obtain or maintain authorization from the United States environmental protection agency under the solid waste disposal act, or upon a determination by the department that a hazardous waste or a treatment, storage, or disposal facility is adequately regulated under other state or federal law and that scientific data supports a conclusion that an exemption will not result in an impairment of the department's ability to protect the public health and the environment. However, an exemption granted pursuant to this subsection shall not result in a level of regulation less stringent than that required under the solid waste disposal act.

(3) If an amendment to this part or the rules promulgated under this part subjects a person to a new or different licensing requirement of this part, the department shall promulgate rules to facilitate orderly and reasonable compliance by that person.

(4) Changes in the definition of hazardous waste contained in section 11103 and the definition of treatment contained in section 11104 effected by the 1982 amendatory act that amended former Act No. 64 of the

Public Acts of 1979 do not eliminate any exemption provided to any hazardous waste or to any treatment, storage, or disposal facility under administrative rules promulgated under former Act No. 64 of the Public Acts of 1979 before March 30, 1983. However, these exemptions may be modified or eliminated by administrative rules promulgated after March 30, 1983 under former Act No. 64 of the Public Acts of 1979 or under this part in order that the state may obtain authorization from the United States environmental protection agency under the solid waste disposal act, or to provide adequate protection to the public health or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11128 Rules listing hazardous waste and other criteria; revision; removing certain materials from list; public hearings; construction of part, rules, and list.

Sec. 11128. (1) The department shall submit to the legislature proposed rules listing hazardous waste and other criteria as required by this part. The rules shall state the criteria for identifying the characteristics of hazardous waste and for listing the types of hazardous waste, taking into account toxicity, persistence, degradability in nature, potential for accumulation in tissue, and other related factors including flammability, corrosiveness, and other hazardous characteristics. The department shall revise by rule the criteria and listing as necessary. A rule promulgated for the purpose of removing from the list those materials removed from the federal list of regulated materials or removing from management as a hazardous waste those wastes that have been exempted from management under the solid waste disposal act are not required to meet the requirements of sections 41, 42, and 45(2) of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.241, 24.242, and 24.245 of the Michigan Compiled Laws.

(2) Before the department establishes the list, the department shall hold not less than 3 public hearings in different municipalities in the state. To

ensure consistency between federal and state requirements, this part, the rules promulgated by the department, and the list shall be construed to conform as closely as possible to requirements established under the solid waste disposal act.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11129 Information as public record; confidential information; notice of request for information; demonstration by person regulated; granting or denying request; certain data not confidential; release of confidential information.
Sec. 11129. (1) Except as provided in subsections (2) and (3), information obtained by the department under this part is a public record as provided in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) A person regulated under this part may designate a record, permit application, other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents as being only for the confidential use of the department and the board. The department shall notify the regulated person of a request for public records under section 5 of Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, whose scope includes information designated as confidential. The person regulated under this part has 30 days after the receipt of the notice to demonstrate to the department that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part makes a satisfactory demonstration to the

department that the information should not be disclosed. If there is a dispute between the owner or operator of a treatment, storage, or disposal facility and the person requesting information under Act No. 442 of the Public Acts of 1976, the commission shall make the decision to grant or deny the request. When the department makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after the decision is made.

(3) Data on the quantity or composition of hazardous waste generated, transported, treated, stored, or disposed of; air and water emission factors, rates and characterizations; emissions during malfunctions of equipment required under this part on treatment, storage, or disposal facilities; or the efficiency of air and water pollution control devices is not rendered as confidential information by this section.

(4) The department may release any information obtained under this part, including a record, permit application, or other information considered confidential pursuant to subsection (2), to the United States environmental protection agency, the United States agency for toxic substance disease registry, or other agency authorized to receive information, including confidential information, under the solid waste disposal act.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11130 Environmental pollution prevention fund; creation; receipt and disposition of assets; hazardous waste and liquid industrial waste users account.
Sec. 11130. (1) The environmental pollution prevention fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the environmental pollution prevention fund or into an account within the environmental pollution prevention fund. The state treasurer shall direct the investment of the environmental pollution

prevention fund. The state treasurer shall credit to each account within the environmental pollution prevention fund interest and earnings from account investments.

(3) Money remaining in the environmental pollution prevention fund and in any account within the environmental pollution prevention fund at the close of the fiscal year shall not lapse to the general fund.

(4) The hazardous waste transporter account is created within the environmental pollution prevention fund. The department shall expend money from the hazardous waste transporter account, upon appropriation, for the implementation of this part. In addition, funds not expended for the implementation of this part may be utilized for emergency response and cleanup activities related to hazardous waste that are initiated by the department.

(5) The hazardous waste and liquid industrial waste users account is created within the environmental pollution prevention fund. The department shall expend money from the hazardous waste and liquid industrial waste users account, upon appropriation, to implement the state's hazardous waste management program in accordance with this part and the rules promulgated under this part. The target revenue projection for the hazardous waste and liquid industrial waste users account is $1,600,000.00.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998 ;-- Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11132 Repealed. 1998, Act 139, Eff. Sept. 1, 1998.

Compiler's Notes: The repealed section pertained to requirements for hazardous waste transporter business license.
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11132a Transporter; duties; inspection; establishment of standards and requirements by rule.
Sec. 11132a. (1) A transporter shall do all of the following:

(a) Obtain and utilize an environmental protection agency identification number in accordance with the rules promulgated under this part.

(b) If transporting by highway, register and be permitted in accordance with the hazardous materials transportation act and carry a copy of the registration and permit on the vehicle for inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(c) Comply with the transfer facility operating and financial responsibility requirements as required by the rules promulgated under this part.

(d) Comply with the consolidation and commingling requirements as required by the rules promulgated under this part.

(e) Comply with the vehicle requirements as required by the rules promulgated under this part.

(f) Utilize, complete, and retain a manifest for each shipment of hazardous waste as required by this part and the rules promulgated under this part.

(g) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(h) Retain all records as required by the rules promulgated under this part for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(i) Comply with the reporting requirements as required by the rules promulgated under this part.

(j) Comply with the import and export requirements as required by the rules promulgated under this part.

(k) Comply with the requirements regarding hazardous waste discharges as required by the rules promulgated under this part.

(l) Comply with the land disposal restriction requirements as required by the rules promulgated under this part.

(m) Comply with the universal waste requirements as required by the rules promulgated under this part.

(n) Keep the outside of all vehicles and accessory equipment free of hazardous waste or hazardous waste constituents.

(2) The department may conduct an inspection to verify that the equipment, location, and methods of a transporter are adequate to effectuate service under this part and the rules promulgated under this part. The department shall establish, by rule, the inspection standards and requirements.

History: Add. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11133 Hazardous waste transporter business license; revocation.
Sec. 11133. A hazardous waste transporter business license issued under this part shall be revoked if the holder of the license selected a treatment, storage, or disposal facility which is operated contrary to this part or the rules promulgated under this part or uses a vehicle to store, treat, transport, or dispose of hazardous waste contrary to this part or the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11134 Municipality or county; prohibited conduct.

Sec. 11134. A municipality or county shall not prohibit the transportation of hazardous waste through the municipality or county or prevent the ingress and egress into a licensed treatment, storage, or disposal facility.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11135 Manifest; user charge; violations; contents; copy; certification; specified destination; determining status of specified waste; exception report; retention period for copy of manifest; extension.

Sec. 11135. (1) A hazardous waste generator shall provide a separate manifest to the transporter for each load of hazardous waste transported to property that is not on the site where it was generated. Until October 1, 2011, a person required to prepare a manifest shall submit to the department a manifest processing user charge of $6.00 per manifest and his or her tax identification number. Each calendar year, the department may adjust the manifest processing user charge as necessary to ensure that the total cumulative amount of the user charges assessed pursuant to this section and sections 11153, 12103, 12109, and 12112 are consistent with the target revenue projection for the hazardous waste and liquid industrial waste users account as provided for in section 11130(5). However, the manifest processing user charge shall not exceed $8.00 per manifest. Money collected under this subsection shall be forwarded to the state treasurer for deposit into the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(2) Payment of the manifest processing user charges under subsection (1) shall be made using a form provided by the department. The department shall send a form to each person subject to the manifest processing user

charge by February 28 of each year. The form shall specify the number of manifests prepared by that person and processed by the department during the previous fiscal year. A person subject to the manifest processing user charge shall return the completed form and the appropriate payment to the department by April 30 of each year.

(3) A person who fails to provide timely and accurate information, a complete form, or the appropriate manifest processing user charge as provided for in this section is in violation of this part and is subject to both of the following:

(a) Payment of the manifest processing user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the 15th of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the manifest user charge is due, but not paid, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(4) Any amounts collected under subsection (3) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(5) The department shall maintain information regarding the manifest processing user charges received under this section as necessary to satisfy the reporting requirements of subsection (6).

(6) The department shall evaluate the effectiveness and adequacy of the manifest processing user charges collected under this section relative to the overall revenue needs of the state's hazardous waste management program administered under this part. Not later than April 1 of each

even-numbered year, the department shall summarize its findings under this subsection in a report and shall provide that report to the legislature.

(7) A generator shall include on the manifest details as specified by the department and shall at least include sufficient qualitative and quantitative analysis and physical description to evaluate toxicity and methods of transportation, storage, and disposal. The manifest also shall include safety precautions as necessary for each load of hazardous waste. The generator shall submit to the department a copy of the manifest within a period of 10 days after the end of the month for each load of hazardous waste transported within that month.

(8) The generator shall certify that the information contained on the manifest is factual.

(9) The specified destination of each load of hazardous waste identified on the manifest shall be a designated facility.

(10) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the hazardous waste was accepted by the initial transporter shall contact the transporter to determine the status of the hazardous waste. If the generator is unable to determine the status of the hazardous waste upon contacting the transporter, the generator shall contact the owner or operator of the designated facility to which the hazardous waste was to be transported to determine the status of the hazardous waste.

(11) A generator shall submit an exception report to the department if the generator has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the hazardous waste was accepted by the initial transporter. The exception report shall include the following:

(a) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(b) A cover letter signed by the generator or the generator's authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(12) A generator shall keep a copy of each manifest signed and dated by the initial transporter for 3 years or until the generator receives a signed and dated copy from the owner or operator of the designated facility that received the hazardous waste. The generator shall keep the copy of the manifest signed and dated by the owner or operator of the designated facility for 3 years. The retention periods required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2001, Act 165, Imd. Eff. Nov. 7, 2001 ;-- Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11136 Certifying acceptance of waste for transportation; delivery of hazardous waste and manifest; period for keeping copy of manifest; review and inspection of manifest; extension of retention period.

Sec. 11136. (1) The hazardous waste transporter shall certify acceptance of waste for transportation and shall deliver the hazardous waste and accompanying manifest only to the destination specified by the generator on the manifest.

(2) The hazardous waste transporter shall keep a copy of the manifest for a period of 3 years and shall make it readily available for review and inspection by the department, the director of public health, an authorized representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subsection shall be automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11137 Accepting delivery of hazardous waste; condition; duties of owner or operator.

Sec. 11137. The treatment, storage, or disposal facility owner or operator shall accept delivery of hazardous waste only if delivery is accompanied by a manifest properly certified by both the generator and the transporter and the treatment, storage, or disposal facility is the destination indicated on the manifest. The treatment, storage, or disposal facility owner or operator also shall do all of the following:

(a) Certify on the manifest receipt of the hazardous waste and return a signed copy of the manifest to the department within a period of 10 days after the end of the month for all hazardous waste received within that month.

(b) Return a signed copy of the manifest to the generator.

(c) Keep permanent records pursuant to the rules promulgated by the department.

(d) Compile a periodic report of hazardous waste treated, stored, or disposed of as required by the department under rules promulgated by the department.

(e) Retain a copy of each manifest and report described in this section for a period of 3 years and make each copy readily available for review and inspection by the department, the director of public health or a designated representative of the director of public health, a peace officer, or a representative of the United States environmental protection agency. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11138 Generator of hazardous waste; duties; records; report.
Sec. 11138. (1) A generator of hazardous waste shall do the following:

(a) Compile and maintain information and records regarding the quantities of hazardous waste generated, characteristics and composition of the hazardous waste, and the disposition of hazardous waste generated.

(b) Utilize proper labeling and containerization of hazardous waste as required by the department.

(c) Provide for the transport of hazardous waste only by a transporter permitted under the hazardous materials transportation act.

(d) Utilize and retain a manifest for each shipment of hazardous waste transported to property that is not on site as required by section 11135 and assure that the treatment, storage, or disposal facility to which the waste is transported is a designated facility.

(e) Provide the information on the manifest as required under section 11135(1) to each person transporting, treating, storing, or disposing of hazardous waste.

(f) Keep all records readily available for review and inspection by the department, the department of state police, a peace officer, or a representative of the United States environmental protection agency.

(g) Retain all records for a period of 3 years. The retention period required by this subdivision is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as required by the department.

(h) Compile and submit a periodic report of hazardous waste generated, stored, transferred, treated, disposed of, or transported for treatment, storage, or disposal as required by the department.

(2) A generator who also operates a treatment, storage, or disposal facility shall keep records of all hazardous waste produced and treated, stored, or disposed. The generator shall submit a report to the department within a period of 10 days after the end of each month for all waste produced and treated, stored, or disposed.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11139 Condition of obtaining operating license for disposal facility; condition of obtaining operating license for landfill.
Sec. 11139. (1) As a condition of obtaining an operating license for a disposal facility pursuant to section 11123, the applicant shall demonstrate to the department that the owner of the property has recorded on the deed to the property or some other document that is normally examined during a title search a notice that will notify in perpetuity any potential purchaser of the following:

(a) That the property has been used to manage hazardous wastes.

(b) That the use of the land should not disturb the final cover, liners, components of any containment system, or the function of the monitoring systems on or in the property.

(c) That the survey plat and records of type, location, and quantity of hazardous waste on or in the property have been filed with the local zoning or land use authority as required by the rules promulgated under this part.

(2) As a condition of obtaining an operating license for a landfill pursuant to section 11123, the applicant shall demonstrate to the department that an instrument imposing a restrictive covenant upon the

land involved has been executed by all of the owners of the tract of land upon which the landfill is to be located. The instrument imposing the restrictive covenant shall be filed for record by the department in the office of the register of deeds in the county in which the disposal facility is located. The covenant shall state that the land has been or may be used as a landfill for disposal of hazardous waste and that neither the property owners, agents, or employees, nor any of their heirs, successors, lessees, or assignees shall engage in filling, grading, excavating, building, drilling, or mining on the property following completion of the landfill without authorization of the department. In giving authorization, the department shall consider, at a minimum, the original design, type of operation, hazardous waste deposited, and the state of decomposition of the fill. Before authorizing any activity that would disturb the integrity of the final cover of a landfill, the department must find either that the disturbance of the final cover is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment or that disturbance of the final cover is necessary to reduce a threat to human health or the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11140 Closure and postclosure monitoring and maintenance plan; submission; contents; rules.
Sec. 11140. (1) The owner or operator of a treatment, storage, or disposal facility shall submit a closure plan to the department as part of the application for a construction permit under section 11118. In addition, the owner or operator of a disposal facility shall submit a postclosure monitoring and maintenance plan to the department as part of the application. At a minimum, the closure plan shall include a description of how the facility shall be closed, possible uses of the land after closure, anticipated time until closure, estimated time for closure, and each anticipated partial closure. Those facilities described in section 11116 shall submit a closure and, if required by rule, a postclosure plan with their operating license application.

(2) The department shall promulgate rules regarding notification before closure, length of time permitted for closure of the treatment, storage, or disposal facility, removal and decontamination of equipment, security, groundwater and leachate monitoring system, sampling analysis and reporting requirements, and any other pertinent requirements.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11141 Cost of closing and postclosure monitoring and maintenance of facility; methods of assurance; amount; periodic adjustment; violation.

Sec. 11141. An owner or operator of a treatment, storage, or disposal facility shall file, as a part of the application for a license to operate, a surety bond or other suitable instrument or mechanism or establish a secured trust fund, as approved by the department, to cover the cost of closing the treatment, storage, or disposal facility after its capacity is reached or operations have otherwise terminated. In addition, the owner or operator of a disposal facility shall also file a surety bond or other suitable instrument or mechanism or establish a secured trust fund, approved by the department, to cover the cost of postclosure monitoring and maintenance of the facility. An owner or operator may use a combination of bonds, instruments, mechanisms, or funds, as approved by the department, to satisfy the requirements of this section. The bond, instrument, mechanism, or fund, or combination of these methods of assurance, shall be in an amount equal to a reasonable estimate of the cost required to adequately close the facility, based on the level of operations proposed in the operating license application, and, with respect to a disposal facility, to monitor and maintain the site for a period of at least 30 years. The bond, instrument, mechanism, or fund, or the combination of these methods of assurance, shall be adjusted periodically as determined by rule to account for inflation or changes in the permitted level of operations. Failure to maintain the bond, instrument, mechanism, or fund, or combination of these methods of assurance, constitutes a violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11143 Hazardous waste service fund; creation; financing; uses of fund; administration; expenditures; expenses; rules.
Sec. 11143. (1) There is created within the state treasury a hazardous waste service fund of not less than $1,000,000.00 to be financed by appropriations for the following uses:

(a) For hazardous waste emergencies as defined by rule.

(b) For use in ensuring the closure and post closure monitoring and maintenance of treatment, storage, or disposal facilities.

(2) The department shall administer the fund and authorize expenditures upon a finding of actual or potential environmental damage caused by hazardous waste or when the owner or operator of the treatment, storage, or disposal facility is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of the site and the surety bond, instrument, mechanism, or secured trust fund maintained by the owner or operator of a treatment, storage, or disposal facility as required by section 11141 is inadequate or is no longer in effect.

(3) After an expenditure from the fund, the department immediately shall request the attorney general to begin proceedings to recover any expenditure from the fund from the person responsible for the hazardous waste emergency or the owner or operator of a treatment, storage, or disposal facility who is not fulfilling his or her obligation in regard to closure or postclosure monitoring and maintenance of a facility. If the owner of the property refuses to pay expenses incurred, the expenses shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the laws of the state.

(4) The department shall promulgate rules to define a hazardous waste emergency and to establish the method of payment from the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11144 Inspection; filing report for licensed facility; complaint or allegation; record; investigation; report; notice of violation or emergency situation.

Sec. 11144. (1) The department shall inspect and file a written report not less than 4 times per year for each licensed treatment, storage, and disposal facility.

(2) A person may register with the department a complaint or allegation of improper action or violation of this part, a rule, or a condition of the license to operate a treatment, storage, or disposal facility.

(3) Upon receipt of a complaint or allegation from a municipality, the department shall make a record of the complaint and shall order an inspection of the treatment, storage, or disposal facility, or other location of alleged violation to investigate the complaint or allegation within not more than 5 business days after receipt of the complaint or allegation. If a complaint or allegation is of a highly serious nature, as determined by the department, the facility or the location of the alleged violation shall be inspected as quickly as possible.

(4) Following an investigation of a complaint or allegation under subsection (3), the department shall make a written report to the municipality within 15 days.

(5) A person who has knowledge that hazardous waste is being treated, disposed of, or stored in violation of this part shall notify the department. A person who has knowledge that an emergency situation exists shall notify the department and the department of community health.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11145 Administration and enforcement of part by certified health department; certification procedues; rescission of certification; annual grant; costs; rules.

Sec. 11145. (1) The department may certify a city, county, or district health department to administer and enforce portions of this part but only to an extent consistent with obtaining and maintaining authorization of the state's hazardous waste management program pursuant to sections 3006 to 3009 of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6926 to 6929. Certification procedures shall be established by the department by rule. The department may rescind certification upon the request of the certified city, county, or district health department, or after reasonable notice and hearing, if the department finds that a certified health department is not administering and enforcing this part as required.

(2) In order for a certified health department to carry out the responsibilities authorized under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to each certified health department. A certified health department shall be eligible to receive 100% of its reasonable costs as determined by the department based on criteria established by rule. The department shall promulgate rules for distribution of the appropriated funds.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA
Admin Rule: R 299.9101 et seq. of the Michigan Administrative Code.

324.11146 Request for information and records; purpose; court authorization; inspection; samples; probable cause as to violation; search and seizure; forfeiture.

Sec. 11146. (1) Any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste shall furnish information relating to the hazardous wastes or permit access to and copying of all records relating to the hazardous wastes, or both, if the information and records are required to be kept under this part or the

rules promulgated under this part, upon a request of the department, made for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part. This subsection does not limit the department's authority to pursue appropriate court authorization in order to obtain information pertaining to enforcement actions under this part.

(2) The department may enter at reasonable times any treatment, storage, or disposal facility or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from and may inspect the facility or other place and obtain from any person samples of the hazardous wastes and samples of the containers or labeling of the wastes for the purpose of developing a rule or enforcing or administering this part or a rule promulgated under this part.

(3) If the department or a law enforcement official has probable cause to believe that a person is violating this part or a rule promulgated under this part, the department or law enforcement official may search without a warrant a vehicle or equipment that is possessed, used, or operated by that person. The department or a law enforcement official may seize a vehicle, equipment, or other property used or operated in a manner or for a purpose contrary to this part or a rule promulgated under this part. A vehicle, equipment, or other property used in violation of this part or a rule promulgated under this part is subject to seizure and forfeiture as provided in chapter 47 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11147 Violation as misdemeanor; penalty; appearance ticket.
Sec. 11147. A person who violates section 11132a(1)(b) or (n) or who violates rules promulgated under section 11132a(1)(b) or (n) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both, for each violation. A law enforcement officer or a conservation officer may issue an appearance

ticket to a person who is in violation of section 11132a(1)(b) or (n) or the rules promulgated under section 11132a(1)(b) or (n).

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11148 Imminent and substantial hazard to health; endangering or causing damage to public health or environment; actions by director; determination.

Sec. 11148. (1) Subject to subsection (2), upon receipt of information that the storage, transportation, treatment, or disposal of hazardous waste may present an imminent and substantial hazard to the health of persons or to the natural resources, or is endangering or causing damage to public health or the environment, the department, after consultation with the director of public health or a designated representative of the director of public health, shall take 1 or more of the following actions:

(a) Issue an order directing the owner or operator of the treatment, storage, or disposal facility, the generator, the transporter, or the custodian of the hazardous waste that constitutes the hazard, to take the steps necessary to prevent the act or eliminate the practice that constitutes the hazard. The order may include permanent or temporary cessation of the operation of a treatment, storage, or disposal facility, generator, or transporter. An order issued under this subdivision may be issued without prior notice or hearing and shall be complied with immediately. An order issued under this subdivision shall not remain in effect more than 7 days without affording the owner or operator or custodian an opportunity for a hearing. In issuing an order calling for corrective action, the department shall specify the precise nature of the corrective action necessary and the specific time limits for performing the corrective action. If corrective action is not completed within the time limit specified and pursuant to the department's requirements, the department shall issue a cease and desist order against the owner or operator of the treatment, storage, or disposal facility, generator, or transporter and initiate action to revoke the operating license and take appropriate action.

(b) Request that the attorney general commence an action to enjoin the act or practice and obtain injunctive relief upon a showing by the department that a person has engaged in the prohibited act or practice.

(c) Revoke a permit, license, or construction permit after reasonable notice and hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, if the department finds that a treatment, storage, or disposal facility is not, or has not been, constructed or operated pursuant to the approved plans or this part and the rules promulgated under this part, or the conditions of a license or construction permit.

(2) A determination of an instance of imminent and substantial hazard to the health of persons shall be made by the director of community health.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 139, Eff. Sept. 1, 1998
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11149 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.

Sec. 11149. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous waste or marking the boundaries of a hazardous waste treatment, storage, or disposal facility is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11150 Order of noncompliance; order suspending or restricting license of facility.

Sec. 11150. (1) Upon receipt and verification of information that a licensed storage, treatment, or disposal facility does not have or has not maintained a suitable instrument or mechanism required under section

11141, or that the hazardous waste at the licensed facility exceeds the maximum quantities allowed under the storage, treatment, or disposal facility's license issued under this part, the department may issue an order of noncompliance directing the owner or operator of the storage, treatment, or disposal facility to take steps to eliminate the act or practice that results in a violation listed in this section. An order issued pursuant to this section shall specify the corrective action necessary and may order a licensed facility that has exceeded the maximum quantities of hazardous waste allowed under the terms of the facility's license to cease receiving hazardous waste. The order shall specify the time limit in which corrective action must be completed. If a licensed storage, treatment, or disposal facility comes into compliance with this part following the issuance of an order of noncompliance, the department shall send written verification of compliance to the owner or operator of the facility.

(2) An order of noncompliance issued pursuant to subsection (1) that requires a licensed facility to reduce the quantity of hazardous waste on site and to cease receiving hazardous waste shall not remain in effect for more than 7 days without affording the owner or operator an opportunity for a hearing. If the order remains in effect following the hearing, or if the owner or operator of the facility waives his or her right to a hearing, the owner or operator shall cooperate with the department in developing and implementing a compliance plan to reduce the amount of hazardous waste at the facility. If the department determines that the owner or operator has failed to make reasonable and continuous efforts to comply with the order of noncompliance and the resulting compliance plan, the department may issue an order suspending or restricting the facility's license pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(3) If the owner or operator of a storage, treatment, or disposal facility receives an order of noncompliance issued pursuant to subsection (1) for failing to maintain a suitable instrument or mechanism required under section 11141 and does not make reasonable efforts to comply with the order of noncompliance, the department may issue an order suspending or restricting the facility's license pursuant to Act No. 306 of the Public Acts of 1969. An order provided for in this subsection that suspends or restricts a license following the licensed facility's failure to comply with an order of noncompliance provided for in this section shall not remain in effect for more than 7 days without affording the owner or operator of the facility an opportunity for a hearing to contest the suspension or restriction.

(4) Upon receipt and verification that a storage, treatment, or disposal facility has not maintained a suitable instrument or mechanism required under section 11141 or that hazardous waste at a licensed facility exceeds the maximum quantities allowed under the facility's license and the owner or operator of the facility has previously been issued an order of noncompliance under this section, the department may do either of the following:

(a) Issue a second or subsequent order of noncompliance and proceed in the manner provided for in subsection (2) or (3).

(b) Initiate an action to suspend or restrict the facility's license or permit pursuant to Act No. 306 of the Public Acts of 1969, without first issuing an order of noncompliance.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11151 Violation of permit, license, rule, or part; order requiring compliance; civil action; jurisdiction; imposition, collection, and disposition of fine; conduct constituting misdemeanor; penalty; state of mind and knowledge; affirmative defense; preponderance of evidence; definition; action for damages and costs; disposition and

use of damages and costs collected; awarding costs of litigation; intervention.

Sec. 11151. (1) If the department finds that a person is in violation of a permit, license, rule promulgated under this part, or requirement of this part including a corrective action requirement of this part, the department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this part including a corrective action requirement of this part. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 11145 for appropriate relief, including injunctive relief for a violation of this part including a corrective action requirement of this part, or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be deposited in the general fund of the state.

(2) A person who transports, treats, stores, disposes, or generates hazardous waste in violation of this part, or contrary to a permit, license, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit, license, or order or in a notice or report required by the terms and conditions of an issued permit, license, or order, or a person who violates section 11144(5), is guilty of a misdemeanor punishable by a fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor punishable by a fine of not more than $50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both. Additionally, a person who is convicted

of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, upon conviction, is subject to a fine of not more than $250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life, upon conviction, is subject to a fine of not more than $250,000.00 or imprisonment for not more than 5 years, or both. A defendant that is not an individual and not a governmental entity, upon conviction, is subject to a fine of not more than $1,000,000.00. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.

(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to:

(a) His or her conduct, if he or she is aware of the nature of his or her conduct.

(b) An existing circumstance, if he or she is aware or believes that the circumstance exists.

(c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.

(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply:

(a) The person is responsible only for actual awareness or actual belief that he or she possessed.

(b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

(a) An occupation, a business, or a profession.

(b) Medical treatment or professionally approved methods and the other person had been made aware of the risks involved prior to giving consent.

(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.

(8) For purposes of subsection (3), “serious bodily injury” means each of the following:

(a) Bodily injury that involves a substantial risk of death.

(b) Unconsciousness.

(c) Extreme physical pain.

(d) Protracted and obvious disfigurement.

(e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be deposited in the general fund if the damages or costs result from impairment or destruction of the fish, wildlife, or other natural resources of the state and shall be used to restore, rehabilitate, or mitigate the damage to those resources in the affected area, and for the specific resource to which the damages occurred.

(10) The court, in issuing a final order in an action brought under this part, may award costs of litigation, including reasonable attorney and expert witness fees to a party, if the court determines that the award is appropriate.

(11) A person who has an interest that is or may be affected by a civil or administrative action commenced under this part has a right to intervene in that action.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 439, Eff. Mar. 23, 1999
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11152 Interstate and international cooperation; purpose.
Sec. 11152. The department shall encourage interstate and international cooperation for the improved management of hazardous waste; for improved, and so far as is practicable, uniform state laws relating to the management of hazardous waste; and compacts between this and other states for the improved management of hazardous waste.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

324.11153 Site identification number; user charges; violations; suspension; definitions.

Sec. 11153. (1) A generator, transporter, or treatment, storage, or disposal facility shall obtain and utilize a site identification number assigned by the United States environmental protection agency or the department. Until October 1, 2011, the department shall assess a site identification number user charge of $50.00 for each site identification number it issues. The department shall not issue a site identification number under this subsection unless the site identification number user charge and the tax identification number for the person applying for the site identification number have been received by the department.

(2) Until October 1, 2011, except as provided in subsection (9), the department shall annually assess hazardous waste management program user charges as follows:

(a) A generator shall pay a handler user charge that is the highest of the following applicable fees:

(i) A generator who generates more than 100 kilograms but less than 1,000 kilograms of hazardous waste in any month during a calendar year shall pay to the department an annual handler user charge of $100.00.

(ii) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates less than 900,000 kilograms during the calendar year shall pay to the department an annual handler user charge of $400.00.

(iii) A generator who generates 1,000 kilograms or more of hazardous waste in any month during the calendar year and who generates 900,000 kilograms or more of hazardous waste during the calendar year shall pay to the department an annual handler user charge of $1,000.00.

(b) An owner or operator of a treatment, storage, or disposal facility for which an operating license is required under section 11123 or for which an operating license has been issued under section 11122 or 11125 shall pay to the department an annual handler user charge of $2,000.00.

(c) A used oil processor or rerefiner, a used oil burner, or a used oil fuel marketer as defined in the rules promulgated under this part shall pay to the department an annual handler user charge of $100.00.

(3) The handler user charges shall be based on each of the activities engaged in by the handler during the previous calendar year. A handler shall pay the handler user charge specified in subsection (2)(a) to (c) for each of the activities conducted during the previous calendar year.

(4) Payment of the handler user charges shall be made using a form provided by the department. The handler shall certify that the information on the form is accurate. The department shall send forms to the handlers by February 28 of each year unless the handler user charges have been suspended as provided for in subsection (9). A handler shall return the completed forms and the appropriate payment to the department by April 30 of each year unless the handler user charges have been suspended as provided for in subsection (9).

(5) A handler who fails to provide timely and accurate information, a complete form, or the appropriate handler user charge is in violation of this part and is subject to both of the following:

(a) Payment of the handler user charge and an administrative fine of 5% of the amount owed for each month that the payment is delinquent. Any payments received after the 15th of the month after the due date shall be considered delinquent for that month. However, the administrative fine shall not exceed 25% of the total amount owed.

(b) Beginning 5 months after the date payment of the handler user charge is due, but not paid, at the request of the department, an action by the attorney general for the collection of the amount owed under subdivision (a) and the actual cost to the department in attempting to collect the amount owed under subdivision (a).

(6) The department shall maintain information regarding the site identification number user charges under subsection (1) and the handler

user charges received under this section as necessary to satisfy the reporting requirements of subsection (8).

(7) The site identification number user charges and the handler user charges collected under this section and any amounts collected under subsection (5) for a violation of this section shall be forwarded to the state treasurer and deposited in the environmental pollution prevention fund created in section 11130 and credited to the hazardous waste and liquid industrial waste users account created in section 11130(5).

(8) The department shall evaluate the effectiveness and adequacy of the site identification number user charges and the handler user charges collected under this section relative to the overall revenue needs of the state's hazardous waste management program administered under this part. Not later than April 1 of each even-numbered year, the department shall summarize its findings under this subsection in a report and shall provide that report to the legislature.

(9) Notwithstanding any other provision in this section, if the balance of the hazardous waste and liquid industrial waste users account created in section 11130(5), as of December 31 of any year, exceeds $3,200,000.00, the department shall suspend the handler user charges until October of the following year.

(10) As used in this section:

(a) "Handler" means the person required to pay the handler user charge.

(b) "Handler user charge" means the annual hazardous waste management program user charge provided for in subsection (2).

History: Add. 2001, Act 165, Imd. Eff. Nov. 7, 2001 ;-- Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007
Popular Name: Act 451
Popular Name: Hazardous Waste Act
Popular Name: NREPA

Part 115

SOLID WASTE MANAGEMENT

324.11501 Meanings of words and phrases.

Sec. 11501. For purposes of this part, the words and phrases defined in sections 11502 to 11506 have the meanings ascribed to them in those sections.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11502 Definitions; A to C.

Sec. 11502. (1) "Applicant" includes any person.

(2) "Ashes" means the residue from the burning of wood, coal, coke, refuse, wastewater sludge, or other combustible materials.

(3) "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of any of the following:

(a) A soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink.

(b) A beer, ale, or other malt drink of whatever alcoholic content.

(c) A mixed wine drink or a mixed spirit drink.

(4) "Bond" means a financial instrument executed on a form approved by the department, including a surety bond from a surety company

authorized to transact business in this state, a certificate of deposit, a cash bond, an irrevocable letter of credit, insurance, a trust fund, an escrow account, or a combination of any of these instruments in favor of the department. The owner or operator of a disposal area who is required to establish a bond under other state or federal statute may petition the department to allow such a bond to meet the requirements of this part. The department shall approve a bond established under other state or federal statute if the bond provides equivalent funds and access by the department as other financial instruments allowed by this subsection.

(5) "Certificate of deposit" means a negotiable certificate of deposit held by a bank or other financial institution regulated and examined by a state or federal agency, the value of which is fully insured by an agency of the United States government. A certificate of deposit used to fulfill the requirements of this part shall be in the sole name of the department with a maturity date of not less than 1 year and shall be renewed not less than 60 days before the maturity date. An applicant who uses a certificate of deposit as a bond shall receive any accrued interest on that certificate of deposit upon release of the bond by the department.

(6) "Certified health department" means a city, county, or district department of health that is specifically delegated authority by the department to perform designated activities as prescribed by this part.

(7) "Coal or wood ash" means either or both of the following:

(a) The residue remaining after the ignition of coal or wood, or both, and may include noncombustible materials, otherwise referred to as bottom ash.

(b) The airborne residues from burning coal or wood, or both, that are finely divided particles entrained in flue gases arising from a combustion chamber, otherwise referred to as fly ash.

(8) "Collection center" means a tract of land, building, unit, or appurtenance or combination thereof that is used to collect junk motor vehicles and farm implements under section 11530.

(9) "Composting facility" means a facility where composting of yard clippings or other organic materials occurs using mechanical handling techniques such as physical turning, windrowing, or aeration or using other management techniques approved by the director.

(10) "Consistency review" means evaluation of the administrative and technical components of an application for a permit or license or evaluation of operating conditions in the course of inspection, for the purpose of determining consistency with the requirements of this part, rules promulgated under this part, and approved plans and specifications.

(11) "Corrective action" means the investigation, assessment, cleanup, removal, containment, isolation, treatment, or monitoring of constituents, as defined in a facility's approved hydrogeological monitoring plan, released into the environment from a disposal area, or the taking of other actions related to the release as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, the environment, or natural resources that is consistent with 42 USC 6941 to 6949a and regulations promulgated thereunder.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 359, Imd. Eff. July 1, 1996 ;-- Am. 2004, Act 35, Imd. Eff. Mar. 19, 2004 ;-- Am. 2007, Act 212, Eff. Mar. 26, 2008
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11503 Definitions; D to W.
Sec. 11503. (1) "De minimis" refers to a small amount of material or number of items, as applicable, commingled and incidentally disposed of with other solid waste.

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

(3) "Director" means the director of the department.

(4) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or disposing of a substance into the environment which is or may become injurious to the public health, safety, or welfare, or to the environment.

(5) "Disposal area" means 1 or more of the following at a location as defined by the boundary identified in its construction permit or engineering plans approved by the department:

(a) A solid waste transfer facility.

(b) Incinerator.

(c) Sanitary landfill.

(d) Processing plant.

(e) Other solid waste handling or disposal facility utilized in the disposal of solid waste.

(6) "Enforceable mechanism" means a legal method whereby the state, a county, a municipality, or another person is authorized to take action to guarantee compliance with an approved county solid waste management plan. Enforceable mechanisms include contracts, intergovernmental agreements, laws, ordinances, rules, and regulations.

(7) "Escrow account" means an account managed by a bank or other financial institution whose account operations are regulated and examined by a federal or state agency and which complies with section 11523b.

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

(9) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(10) "Financial assurance" means the mechanisms used to demonstrate that the funds necessary to meet the cost of closure, postclosure maintenance and monitoring, and corrective action will be available whenever they are needed.

(11) "Financial test" means a corporate or local government financial test or guarantee approved for type II landfills under 42 USC 6941 to 6949a. An owner or operator may use a single financial test for more than 1 facility. Information submitted to the department to document compliance with the test shall include a list showing the name and address of each facility and the amount of funds assured by the test for each facility. For purposes of the financial test, the owner or operator shall aggregate the sum of the closure, postclosure, and corrective action costs it seeks to assure with any other environmental obligations assured by a financial test under state or federal law.

(12) "Food processing residuals" means any of the following:

(a) Residuals of fruits, vegetables, aquatic plants, or field crops.

(b) Otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing thereof.

(c) Otherwise unusable food products which do not meet size, quality, or other product specifications and which were intended for human or animal consumption.

(13) "Garbage" means rejected food wastes including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that results from the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetable matter.

(14) "Scrap wood" means wood or wood product that is 1 or more of the following:

(a) Plywood, pressed board, oriented strand board, or any other wood or wood product mixed with glue or filler.

(b) Wood or wood product treated with creosote or pentachlorophenol.

(c) Any other wood or wood product designated as scrap wood in rules promulgated by the department.

(15) "Treated wood" means wood or wood product that has been treated with 1 or more of the following:

(a) Chromated copper arsenate (CCA).

(b) Ammoniacal copper quat (ACQ).

(c) Ammoniacal copper zinc arsenate (ACZA).

(d) Any other chemical designated in rules promulgated by the department.

(16) "Wood" means trees, branches, bark, lumber, pallets, wood chips, sawdust, or other wood or wood product but does not include scrap wood, treated wood, painted wood or painted wood product, or any wood or wood product that has been contaminated during manufacture or use.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 359, Imd. Eff. July 1, 1996 ;-- Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999 ;-- Am. 2007, Act 212, Eff. Mar. 26, 2008
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11504 Definitions; H to T.

Sec. 11504. (1) “Health officer” means a full-time administrative officer of a certified city, county, or district department of health.

(2) “Inert material” means a substance that will not decompose, dissolve, or in any other way form a contaminated leachate upon contact with water, or other liquids determined by the department as likely to be found at the disposal area, percolating through the substance.

(3) “Insurance” means insurance that conforms to the requirements of 40 C.F.R. 258.74(d) provided by an insurer who has a certificate of authority from the Michigan commissioner of insurance to sell this line of coverage. An applicant for an operating license shall submit evidence of the required coverage by submitting both of the following to the department:

(a) A certificate of insurance that uses wording approved by the department.

(b) A certified true and complete copy of the insurance policy.

(4) “Landfill” means a disposal area that is a sanitary landfill.

(5) “Letter of credit” means an irrevocable letter of credit that complies with 40 C.F.R. 258.74(c).

(6) “Medical waste” means that term as it is defined in part 138 of the public health code, Act No. 378 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(7) “Municipal solid waste incinerator” means an incinerator that is owned or operated by any person, and meets all of the following requirements:

(a) The incinerator receives solid waste from off site and burns only household waste from single and multiple dwellings, hotels, motels, and other residential sources, or this household waste together with solid waste from commercial, institutional, municipal, county, or industrial sources that, if disposed of, would not be required to be placed in a disposal facility licensed under part 111.

(b) The incinerator has established contractual requirements or other notification or inspection procedures sufficient to assure that the incinerator receives and burns only waste referred to in subdivision (a).

(c) The incinerator meets the requirements of this part and the rules promulgated under this part.

(d) The incinerator is not an industrial furnace as defined in 40 C.F.R. 260.10.

(e) The incinerator is not an incinerator that receives and burns only medical waste or only waste produced at 1 or more hospitals.

(8) “Municipal solid waste incinerator ash” means the substances remaining after combustion in a municipal solid waste incinerator.

(9) “Perpetual care fund” means a perpetual care fund provided for in section 11525.

(10) “Trust fund” means a trust fund held by a trustee which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A trust fund shall comply with section 11523b.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 359, Imd. Eff. July 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11505 Definitions; R, S.
Sec. 11505. (1) "Recyclable materials" means source separated materials, site separated materials, high grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper, yard clippings, and other materials that may be recycled or composted.

(2) "Regional solid waste management planning agency" means the regional solid waste planning agency designated by the governor pursuant to 42 USC 6946.

(3) "Resource recovery facility" means machinery, equipment, structures, or any parts or accessories of machinery, equipment, or

structures, installed or acquired for the primary purpose of recovering materials or energy from the waste stream.

(4) "Response activity" means an activity that is necessary to protect the public health, safety, welfare, or the environment, and includes, but is not limited to, evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.

(5) "Rubbish" means nonputrescible solid waste, excluding ashes, consisting of both combustible and noncombustible waste, including paper, cardboard, metal containers, yard clippings, wood, glass, bedding, crockery, demolished building materials, or litter of any kind that may be a detriment to the public health and safety.

(6) "Salvaging" means the lawful and controlled removal of reusable materials from solid waste.

(7) "Site separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated from solid waste for the purpose of conversion into raw materials or new products. Site separated material does not include the residue remaining after glass, metal, wood, paper products, plastics, rubber, textiles, or any other material approved by the department is separated from solid waste.

(8) "Slag" means the nonmetallic product resulting from melting or smelting operations for iron or steel.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2007, Act 212, Eff. Mar. 26, 2008
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11506 Definitions; S to Y.

Sec. 11506. (1) "Solid waste" means garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, municipal and industrial sludges, solid commercial and solid industrial waste, and animal waste

other than organic waste generated in the production of livestock and poultry. However, solid waste does not include the following:

(a) Human body waste.

(b) Medical waste as it is defined in part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831, and regulated under that part and part 55.

(c) Organic waste generated in the production of livestock and poultry.

(d) Liquid waste.

(e) Ferrous or nonferrous scrap directed to a scrap metal processor or to a reuser of ferrous or nonferrous products.

(f) Slag or slag products directed to a slag processor or to a reuser of slag or slag products.

(g) Sludges and ashes managed as recycled or nondetrimental materials appropriate for agricultural or silvicultural use pursuant to a plan approved by the department. Food processing residuals; wood ashes resulting solely from a source that burns only wood that is untreated and inert; lime from kraft pulping processes generated prior to bleaching; or aquatic plants may be applied on, or composted and applied on, farmland or forestland for an agricultural or silvicultural purpose, or used as animal feed, as appropriate, and such an application or use does not require a plan described in this subdivision or a permit or license under this part. In addition, source separated materials approved by the department for land application for agricultural and silvicultural purposes and compost produced from those materials may be applied to the land for agricultural and silvicultural purposes and such an application does not require a plan described in this subdivision or permit or license under this part. Land application authorized under this subdivision for an agricultural or silvicultural purpose, or use as animal feed, as provided for in this subdivision shall be performed in a manner that prevents losses from runoff and leaching. Land application under this subdivision

shall be at an agronomic rate consistent with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(h) Materials approved for emergency disposal by the department.

(i) Source separated materials.

(j) Site separated material.

(k) Fly ash or any other ash produced from the combustion of coal, when used in the following instances:

(i) With a maximum of 6% of unburned carbon as a component of concrete, grout, mortar, or casting molds.

(ii) With a maximum of 12% unburned carbon passing M.D.O.T. test method MTM 101 when used as a raw material in asphalt for road construction.

(iii) As aggregate, road, or building material that in ultimate use will be stabilized or bonded by cement, limes, or asphalt.

(iv) As a road base or construction fill that is covered with asphalt, concrete, or other material approved by the department and that is placed at least 4 feet above the seasonal groundwater table.

(v) As the sole material in a depository designed to reclaim, develop, or otherwise enhance land, subject to the approval of the department. In evaluating the site, the department shall consider the physical and chemical properties of the ash including leachability, and the engineering of the depository, including, but not limited to, the compaction, control of surface water and groundwater that may threaten to infiltrate the site, and evidence that the depository is designed to prevent water percolation through the material.

(l) Other wastes regulated by statute.

(2) "Solid waste hauler" means a person who owns or operates a solid waste transporting unit.

(3) "Solid waste processing plant" means a tract of land, building, unit, or appurtenance of a building or unit or a combination of land, buildings, and units that is used or intended for use for the processing of solid waste or the separation of material for salvage or disposal, or both, but does not include a plant engaged primarily in the acquisition, processing, and shipment of ferrous or nonferrous metal scrap, or a plant engaged primarily in the acquisition, processing, and shipment of slag or slag products.

(4) "Solid waste transporting unit" means a container that may be an integral part of a truck or other piece of equipment used for the transportation of solid waste.

(5) "Solid waste transfer facility" means a tract of land, a building and any appurtenances, or a container, or any combination of land, buildings, or containers that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but is not located at the site of generation or the site of disposal of the solid waste.

(6) "Source separated material" means glass, metal, wood, paper products, plastics, rubber, textiles, garbage, or any other material approved by the department that is separated at the source of generation for the purpose of conversion into raw materials or new products including, but not limited to, compost.

(7) "Type I public water supply", "type IIa public water supply", "type IIb public water supply", and "type III public water supply" mean those terms, respectively, as described in R 325.10502 of the Michigan administrative code.

(8) "Yard clippings" means leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush or tree trimmings, less than 4 feet in length and 2 inches in diameter, that can be converted to compost humus.

Yard clippings do not include stumps, agricultural wastes, animal waste, roots, sewage sludge, or garbage.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1995, Act 65, Imd. Eff. May 31, 1995 ;-- Am. 1996, Act 392, Imd. Eff. Oct. 3, 1996 ;-- Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999 ;-- Am. 2007, Act 212, Eff. Mar. 26, 2008
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11507 Development of methods for disposal of solid waste; construction and administration of part; exemption of inert material from regulation.
Sec. 11507. (1) The department and a health officer shall assist in developing and encouraging methods for the disposal of solid waste that are environmentally sound, that maximize the utilization of valuable resources, and that encourage resource conservation including source reduction and source separation.

(2) This part shall be construed and administered to encourage and facilitate the effort of all persons to engage in source separation and site separation of material from solid waste, and other environmentally sound measures to prevent materials from entering the waste stream or which encourage the removal of materials from the waste stream.

(3) The department may exempt from regulation under this part solid waste that is determined by the department to be inert material for uses and in a manner approved by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11507a Report on amount of solid waste received by landfill and amount of remaining disposal capacity.
Sec. 11507a. (1) The owner or operator of a landfill shall annually submit a report to the state and the county and municipality in which the landfill is located that contains information on the amount of solid waste

received by the landfill during the year itemized, to the extent possible, by county, state, or country of origin and the amount of remaining disposal capacity at the landfill. Remaining disposal capacity shall be calculated as the permitted capacity less waste in place for any area that has been constructed and is not yet closed plus the permitted capacity for each area that has a permit for construction under this part but has not yet been constructed. The report shall be submitted on a form provided by the department within 45 days following the end of each state fiscal year.

(2) By January 31 of each year, the department shall submit to the legislature a report summarizing the information obtained under subsection (1).

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996 ;-- Am. 2003, Act 153, Eff. Oct. 1, 2003 ;-- Am. 2004, Act 39, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11508 Solid waste management program; certification.
Sec. 11508. A city, county, or district health department may be certified by the department to perform a solid waste management program. Certification procedures shall be established by the department by rule. The department may rescind certification upon request of the certified health department or after reasonable notice and hearing if the department finds that a certified health department is not performing the program as required.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11509 Construction permit for establishment of disposal area; application; engineering plan; construction permit application fee for landfill; construction permit for solid waste transfer facility, solid waste processing plant, or other disposal area; fees; fee refund; permit denial; resubmission of application with additional

information; modification or renewal of permit; multiple permits; disposition of fees.

Sec. 11509. (1) Except as otherwise provided in section 11529, a person shall not establish a disposal area except as authorized by a construction permit issued by the department pursuant to part 13. In addition, a person shall not establish a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued pursuant to this part. A person proposing the establishment of a disposal area shall apply for a construction permit to the department through the health officer. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department.

(2) The application for a construction permit shall contain the name and residence of the applicant, the location of the proposed disposal area, the design capacity of the disposal area, and other information specified by rule. A person may apply to construct more than 1 type of disposal area at the same facility under a single permit. The application shall be accompanied by an engineering plan and a construction permit application fee. A construction permit application for a landfill shall be accompanied by a fee in an amount that is the sum of all of the following fees, as applicable:

(a) For a new sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, $1,500.00.

(ii) For an industrial waste landfill, $1,000.00.

(iii) For a type III landfill limited to low hazard industrial waste, $750.00.

(b) For a lateral expansion of a sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, $1,000.00.

(ii) For an industrial waste landfill, $750.00.

(iii) For a type III landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, $500.00.

(c) For a vertical expansion of an existing sanitary landfill, a fee equal to the following amount:

(i) For a municipal solid waste landfill, $750.00.

(ii) For an industrial waste landfill, $500.00.

(iii) For an industrial waste landfill limited to low hazard industrial waste, construction and demolition waste, or other nonindustrial waste, $250.00.

(3) The application for a construction permit for a solid waste transfer facility, a solid waste processing plant, other disposal area, or a combination of these, shall be accompanied by a fee in the following amount:

(a) For a new facility for municipal solid waste, or a combination of municipal solid waste and waste listed in subdivision (b), $1,000.00.

(b) For a new facility for industrial waste, or construction and demolition waste, $500.00.

(c) For the expansion of an existing facility for any type of waste, $250.00.

(4) If an application is returned to the applicant as administratively incomplete, the department shall refund the entire fee. If a permit is denied or an application is withdrawn, the department shall refund 1/2 the amount specified in subsection (3) to the applicant. An applicant for a construction permit, within 12 months after a permit denial or withdrawal, may resubmit the application and the refunded portion of the

fee, together with the additional information as needed to address the reasons for denial, without being required to pay an additional application fee.

(5) An application for a modification to a construction permit or for renewal of a construction permit which has expired shall be accompanied by a fee of $250.00. Increases in final elevations that do not result in an increase in design capacity or a change in the solid waste boundary shall be considered a modification and not a vertical expansion.

(6) A person who applies to permit more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable fees listed in this section.

(7) The department shall deposit permit application fees collected under this section in the solid waste staff account of the solid waste management fund established in section 11550.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11510 Advisory analysis of proposed disposal area; duties of department upon receipt of construction permit application.
Sec. 11510. (1) Before the submission of a construction permit application for a new disposal area, the applicant shall request a health officer or the department to provide an advisory analysis of the proposed disposal area. However, the applicant, not less than 15 days after the request, and notwithstanding an analysis result, may file an application for a construction permit.

(2) Upon receipt of a construction permit application, the department shall do all of the following:

(a) Immediately notify the clerk of the municipality in which the disposal area is located or proposed to be located, the local soil erosion and

sedimentation control agency, each division within the department and the department of natural resources that has responsibilities in land, air, or water management, and the designated regional solid waste management planning agency.

(b) Publish a notice in a newspaper having major circulation in the vicinity of the proposed disposal area. The required published notice shall contain a map indicating the location of the proposed disposal area and shall contain a description of the proposed disposal area and the location where the complete application package may be reviewed and where copies may be obtained.

(c) Indicate in the public, departmental, and municipality notice that the department shall hold a public hearing in the area of the proposed disposal area if a written request is submitted by the applicant or a municipality within 30 days after the date of publication of the notice, or by a petition submitted to the department containing a number of signatures equal to not less than 10% of the number of registered voters of the municipality where the proposed disposal area is to be located who voted in the last gubernatorial election. The petition shall be validated by the clerk of the municipality. The public hearing shall be held after the department makes a preliminary review of the application and all pertinent data and before a construction permit is issued or denied.

(d) Conduct a consistency review of the plans of the proposed disposal area to determine if it complies with this part and the rules promulgated under this part. The review shall be made by persons qualified in hydrogeology and sanitary landfill engineering. A written acknowledgment that the application package is in compliance with the requirements of this part and rules promulgated under this part by the persons qualified in hydrogeology and sanitary landfill engineering shall be received before a construction permit is issued. If the consistency review of the site and the plans and the application meet the requirements of this part and the rules promulgated under this part, the department shall issue a construction permit that may contain a stipulation specifically applicable to the site and operation. Except as otherwise provided in section 11542, an expansion of the area of a

disposal area, an enlargement in capacity of a disposal area, or an alteration of a disposal area to a different type of disposal area than had been specified in the previous construction permit application constitutes a new proposal for which a new construction permit is required. The upgrading of a disposal area type required by the department to comply with this part or the rules promulgated under this part or to comply with a consent order does not require a new construction permit.

(e) Notify the Michigan aeronautics commission if the disposal area is a sanitary landfill that is a new site or a lateral extension or vertical expansion of an existing unit proposed to be located within 5 miles of a runway or a proposed runway extension contained in a plan approved by the Michigan aeronautics commission of an airport licensed and regulated by the Michigan aeronautics commission. The department shall make a copy of the application available to the Michigan aeronautics commission. If, after a period of time for review and comment not to exceed 60 days, the Michigan aeronautics commission informs the department that it finds that operation of the proposed disposal area would present a potential hazard to air navigation and presents the basis for its findings, the department may either recommend appropriate changes in the location, construction, or operation of the proposed disposal area or deny the application for a construction permit. The department shall give an applicant an opportunity to rebut a finding of the Michigan aeronautics commission that the operation of a proposed disposal area would present a potential hazard to air navigation. The Michigan aeronautics commission shall notify the department and the owner or operator of a landfill if the Michigan aeronautics commission is considering approving a plan that would provide for a runway or the extension of a runway within 5 miles of a landfill.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 1998, Act 397, Imd. Eff. Dec. 17, 1998
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11511 Construction permit; approval or denial of issuance; expiration; renewal; fee; additional information; conditions to issuance of construction permit for disposal area.
Sec. 11511. (1) The department shall notify the clerk of the municipality in which the disposal area is proposed to be located and the applicant of its approval or denial of an application for a construction permit within 10 days after the final decision is made.

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

(3) Except as otherwise provided in this subsection, the department shall not issue a construction permit for a disposal area within a planning area unless a solid waste management plan for that planning area has been approved pursuant to sections 11536 and 11537 and unless the disposal area complies with and is consistent with the approved solid waste management plan. The department may issue a construction permit for a disposal area designed to receive ashes produced in connection with the combustion of fossil fuels for electrical power generation in the absence of an approved county solid waste management plan, upon receipt of a letter of approval from whichever county or counties, group of municipalities, or regional planning agency has prepared or is preparing the county solid waste management plan for that planning area under section 11533 and from the municipality in which the disposal area is to be located.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11511a Repealed. 2004, Act 38, Eff. Jan. 1, 2006.

Compiler's Notes: The repealed section pertained to permit to construct, modify, or expand landfill.

Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11511b RDDP.

Sec. 11511b. (1) A person may submit to the department a project abstract for an RDDP. If, based on the project abstract, the director determines that the RDDP will provide beneficial data on alternative landfill design, construction, or operating methods, the person may apply for a construction permit under section 11509, including the renewal or modification of a construction permit, authorizing the person to establish the RDDP.

(2) An RDDP is subject to the same requirements, including, but not limited to, permitting, construction, licensing, operation, closure, postclosure, financial assurance, fees, and sanctions as apply to other type II landfills or landfill units under this part and the rules promulgated under this part, except as provided in this section.

(3) An extension of the processing period for the permit is not subject to the 20% limitation under section 1307.

(4) An application for an RDDP construction permit shall include, in addition to the applicable information required in other type II landfill construction permit applications, all of the following:

(a) A description of the RDDP goals.

(b) Details of the design, construction, and operation of the RDDP as necessary to ensure protection of human health and the environment. The design shall be at least as protective of human health and the environment as other designs that are required under this part and rules promulgated under this part.

(c) A list and discussion of the types of waste being disposed of, excluded, or added, including the types and amount of liquids being added and how their addition will benefit the RDDP.

(d) A list and discussion of the types of compliance monitoring and operational monitoring that will be performed.

(e) Specific means to address potential nuisance conditions, including, but not limited to, odors and health concerns as a result of human contact.

(5) The department may authorize the addition of liquids, including, but not limited to, septage waste or other liquid waste, to solid waste in an RDDP if the applicant has demonstrated that the addition is necessary to accelerate or enhance the biostabilization of the solid waste and is not merely a means of disposal of the liquid. The department may require that the septage waste, or any other liquid waste, added to an RDDP originate within the county where the RDDP is located or any county contiguous to the county where the RDDP is located. If an RDDP is intended to accelerate or enhance biostabilization of solid waste, the construction permit application shall include, in addition to the requirements of subsection (4), all of the following:

(a) An evaluation of the potential for a decreased slope stability of the waste caused by any of the following:

(i) Increased presence of liquids.

(ii) Accelerated degradation of the waste.

(iii) Increased gas pressure buildup.

(iv) Other relevant factors.

(b) An operations management plan that incorporates all of the following:

(i) A description of and the proportion and expected quantity of all components that are needed to accelerate or enhance biostabilization of the solid waste.

(ii) A description of any solid or liquid waste that may be detrimental to the biostabilization of the solid waste intended to be disposed of or to the RDDP goals.

(iii) An explanation of how the detrimental waste described in subparagraph (ii) will be prevented from being disposed of in cells approved for the RDDP.

(c) Parameters, such as moisture content, stability, gas production, and settlement, that will be used by the department to determine when it will authorize postclosure of the RDDP under subsection (10).

(d) Information to ensure that the requirements of subsection (6) will be met.

(6) An RDDP shall meet all of the following requirements:

(a) Ensure that added liquids are evenly distributed and that side slope breakout of liquids is prevented.

(b) Ensure that daily cover practices or disposal of low permeability solid wastes does not adversely affect the free movement of liquids and gases within the waste mass.

(c) Include all of the following:

(i) A means to monitor the moisture content and temperature of the waste.

(ii) A secondary liner and leachate collection system to monitor the effectiveness of the primary liner.

(iii) A leachate collection system of adequate size for the anticipated increased liquid production rates. The design factor of safety shall take into account the anticipated increased operational temperatures and other factors as appropriate.

(iv) A means to monitor the depth of leachate on the liner.

(v) An integrated active gas collection system. The system shall be of adequate size for the anticipated methane production rates and to control odors. The system shall be operational before the addition of any material to accelerate or enhance biostabilization of the solid waste.

(7) The owner or operator of an RDDP for which a construction permit has been issued shall submit a report to the director at least once every 12 months on the progress of the RDDP in achieving its goals. The report shall include a summary of all monitoring and testing results, as well as any other operating information specified by the director in the permit or in a subsequent permit modification or operating condition.

(8) A permit for an RDDP shall specify its term, which shall not exceed 3 years. However, the owner or operator of an RDDP may apply for and the department may grant an extension of the term of the permit, subject to all of the following requirements:

(a) The application to extend the term of the permit must be received by the department at least 90 days before the expiration of the permit.

(b) The application shall include a detailed assessment of the RDDP showing the progress of the RDDP in achieving its goals, a list of problems with the RDDP and progress toward resolving those problems, and other information that the director determines is necessary to accomplish the purposes of this part.

(c) If the department fails to make a final decision within 90 days of receipt of an administratively complete application for an extension of the term of a permit, the term of the permit is considered extended for 3 years.

(d) An individual extension shall not exceed 3 years, and the total term of the permit with all extensions shall not exceed 12 years.

(9) At any time the director determines that the overall goals of an RDDP, including, but not limited to, protection of human health or the environment, are not being achieved, the director may order immediate termination of all or part of the operations of the RDDP or may order other corrective measures.

(10) The postclosure period for a facility authorized as an RDDP begins when the department determines that the unit or portion of the unit where the RDDP was authorized has reached a condition similar to that which landfills that were not authorized as RDDPs would reach prior to postclosure. The parameters, such as moisture content, stability, gas production, and settlement, to attain this condition shall be specified in the permit. The perpetual care fund required under section 11525 shall be maintained for the period after final closure of the landfill as specified under section 11525.

(11) The director may authorize the conversion of an RDDP to a full-scale operation if the owner or operator of the RDDP demonstrates to the satisfaction of the director that the goals of the RDDP have been met and the authorization does not constitute a less stringent permitting requirement than is required under subtitle D of the solid waste disposal act, 42 USC 6941 to 6949a.

(12) As used in this section, "RDDP" means a research, development, and demonstration project for a new or existing type II landfill unit or for a lateral expansion of a type II landfill unit.

History: Add. 2005, Act 236, Imd. Eff. Nov. 22, 2005
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11512 Disposal of solid waste at licensed disposal area; license required to conduct, manage, maintain, or operate disposal area; application; contents; fee; certification; resubmitting application; additional information or corrections; operation of incinerator without operating license; additional fees.

Sec. 11512. (1) A person shall dispose of solid waste at a disposal area licensed under this part unless a person is permitted by state law or rules promulgated by the department to dispose of the solid waste at the site of generation.

(2) Except as otherwise provided in this section or in section 11529, a person shall not conduct, manage, maintain, or operate a disposal area within this state except as authorized by an operating license issued by the department pursuant to part 13. In addition, a person shall not conduct, manage, maintain, or operate a disposal area contrary to an approved solid waste management plan, or contrary to a permit, license, or final order issued under this part. A person who intends to conduct, manage, maintain, or operate a disposal area shall submit a license application to the department through a certified health department. If the disposal area is located in a county or city that does not have a certified health department, the application shall be made directly to the department. A person authorized by this part to operate more than 1 type of disposal area at the same facility may apply for a single license.

(3) The application for a license shall contain the name and residence of the applicant, the location of the proposed or existing disposal area, the type or types of disposal area proposed, evidence of bonding, and other information required by rule. In addition, an applicant for a type II landfill shall submit evidence of financial assurance adequate to meet the requirements of section 11523a, the maximum waste slope in the active portion, an estimate of remaining permitted capacity, and documentation on the amount of waste received at the disposal area during the previous license period or expected to be received, whichever is greater. The application shall be accompanied by a fee as specified in subsections (7), (9), and (10).

(4) At the time of application for a license for a disposal area, the applicant shall submit to a health officer or the department a certification under the seal of a licensed professional engineer verifying that the construction of the disposal area has proceeded according to the approved plans. If construction of the disposal area or a portion of the disposal area is not complete, the department shall require additional

construction certification of that portion of the disposal area during intermediate progression of the operation, as specified in section 11516(5).

(5) An applicant for an operating license, within 6 months after a license denial, may resubmit the application, together with additional information or corrections as are necessary to address the reason for denial, without being required to pay an additional application fee.

(6) In order to conduct tests and assess operational capabilities, the owner or operator of a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit may operate the incinerator without an operating license, upon notice to the department, for a period not to exceed 60 days.

(7) The application for a type II landfill operating license shall be accompanied by the following fee for the 5-year term of the operating license, calculated in accordance with subsection (8):

(a) Landfills receiving less than 100 tons per day, $250.00.

(b) Landfills receiving 100 tons per day or more, but less than 250 tons per day, $1,000.00.

(c) Landfills receiving 250 tons per day or more, but less than 500 tons per day, $2,500.00.

(d) Landfills receiving 500 tons per day or more, but less than 1,000 tons per day, $5,000.00.

(e) Landfills receiving 1,000 tons per day or more, but less than 1,500 tons per day, $10,000.00.

(f) Landfills receiving 1,500 tons per day or more, but less than 3,000 tons per day, $20,000.00.

(g) Landfills receiving greater than 3,000 tons per day, $30,000.00.

(8) Type II landfill application fees shall be based on the average amount of waste projected to be received daily during the license period. Application fees for license renewals shall be based on the average amount of waste received in the previous calendar year. Application fees shall be adjusted in the following circumstances:

(a) If a landfill accepts more waste than projected, a supplemental fee equal to the difference shall be submitted with the next license application.

(b) If a landfill accepts less waste than projected, the department shall credit the applicant an amount equal to the difference with the next license application.

(c) A type II landfill that measures waste by volume rather than weight shall pay a fee based on 3 cubic yards per ton.

(d) A landfill used exclusively for municipal solid waste incinerator ash that measures waste by volume rather than weight shall pay a fee based on 1 cubic yard per ton.

(e) If an application is submitted to renew a license more than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/2 the application fee.

(f) If an application is submitted to renew a license more than 6 months but less than 1 year prior to license expiration, the department shall credit the applicant an amount equal to 1/4 the application fee.

(9) The operating license application for a type III landfill shall be accompanied by a fee equal to $2,500.00.

(10) The operating license application for a solid waste processing plant, solid waste transfer facility, other disposal area, or combination of these entities shall be accompanied by a fee equal to $500.00.

(11) The department shall deposit operating license application fees collected under this section in the perpetual care account of the solid waste management fund established in section 11550.

(12) A person who applies for an operating license for more than 1 type of disposal area at the same facility shall pay a fee equal to the sum of the applicable application fees listed in this section.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 2003, Act 153, Eff. Oct. 1, 2003 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11513 Acceptance of solid waste or municipal solid waste incinerator ash for disposal; enforcement.
Sec. 11513. A person shall not accept for disposal solid waste or municipal solid waste incinerator ash that is not generated in the county in which the disposal area is located unless the acceptance of solid waste or municipal solid waste incinerator ash that is not generated in the county is explicitly authorized in the approved county solid waste management plan. The department shall take action to enforce this section within 30 days of obtaining knowledge of a violation of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11514 Promotion of recycling and reuse of materials; materials prohibited from disposal in landfill; disposal of yard clippings; report.
Sec. 11514. (1) Optimizing recycling opportunities and the reuse of materials shall be a principal objective of the state's solid waste management plan. Recycling and reuse of materials are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of

materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i).

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R 299.4104 of the Michigan administrative code.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(i) Household waste other than septage waste.

(ii) Leachate or gas condensate that is approved for recirculation.

(iii) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(4) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly permit disposal in the incinerator of, more than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i). The department shall post, and a solid waste hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of this subsection in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (2) or (4), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 34, Imd. Eff. Mar. 29, 2004 ;-- Am. 2005, Act 243, Imd. Eff. Nov. 22, 2005 ;-- Am. 2007, Act 212, Eff. Mar. 26, 2008
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11515 Inspection of site; compliance; hydrogeologic monitoring program as condition to licensing landfill facility; determining course of action; revocation of license; issuance of timetable or schedule.
Sec. 11515. (1) Upon receipt of a license application, the department or a health officer or an authorized representative of a health officer shall inspect the site and determine if the proposed operation complies with this part and the rules promulgated under this part.

(2) The department shall not license a landfill facility operating without an approved hydrogeologic monitoring program until the department receives a hydrogeologic monitoring program and the results of the program. The department shall use this information in conjunction with other information required by this part or the rules promulgated under this part to determine a course of action regarding licensing of the facility consistent with section 4005 of subtitle D of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6945, and with this part and the rules promulgated pursuant to this part. In deciding a course of action, the department shall consider, at a minimum, the health hazards, environmental degradation, and other public or private alternatives. The department may revoke a license or issue a timetable or schedule to provide for compliance for the facility or operation, specifying a schedule of remedial measures, including a sequence of actions or operations, which leads to compliance with this part within a reasonable time period but not later than December 2, 1987.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11516 Final decision on license application; time; effect of failure to make final decision; expiration and renewal of operating license; fee; entry on private or public property; inspection or investigation; conditions to issuance of operating license for new disposal area; issuance of license as authority to accept waste for disposal.
Sec. 11516. (1) The department shall conduct a consistency review before making a final decision on a license application. The department

shall notify the clerk of the municipality in which the disposal area is located and the applicant of its approval or denial of a license application within 10 days after the final decision is made.

(2) An operating license shall expire 5 years after the date of issuance. An operating license may be renewed before expiration upon payment of a renewal application fee specified in section 11512(8) if the licensee is in compliance with this part and the rules promulgated under this part.

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

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

(5) Issuance of an operating license by the department authorizes the licensee to accept waste for disposal in certified portions of the disposal area for which a bond was established under section 11523 and, for type II landfills, for which financial assurance was demonstrated under section 11523a. If the construction of a portion of a landfill licensed under this section is not complete at the time of license application, the

owner or operator of the landfill shall submit a certification under the seal of a licensed professional engineer verifying that the construction of that portion of the landfill has proceeded according to the approved plans at least 60 days prior to the anticipated date of waste disposal in that portion of the landfill. If the department does not deny the certification within 60 days of receipt, the owner or operator may accept waste for disposal in the certified portion. In the case of a denial, the department shall issue a written statement stating the reasons why the construction or certification is not consistent with this part or rules promulgated under this part or the approved plans.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 2003, Act 153, Eff. Oct. 1, 2003 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11517 Plan for program reducing incineration of noncombustible materials and dangerous combustible materials and other hazardous by-products; approval or disapproval; considerations; modifications; revised plan; implementation; operation without approved plan.

Sec. 11517. (1) Within 9 months after the completion of construction of a municipal solid waste incinerator, the owner or operator of a municipal solid waste incinerator shall submit a plan to the department for a program that, to the extent practicable, reduces the incineration of noncombustible materials and dangerous combustible materials and their hazardous by-products at the incinerator. The department shall approve or disapprove the plan submitted under this subsection within 30 days after receiving it. In reviewing the plan, the department shall consider the current county solid waste management plan, available markets for separated materials, disposal alternatives for the separated materials, and collection practices for handling such separated materials. If the department disapproves a plan, the department shall notify the owner or operator submitting the plan of this fact, and shall provide modifications that, if included, would result in the plan's approval. If the department disapproves a plan, the owner or operator of a municipal solid waste incinerator shall within 30 days after receipt of the department's

disapproval submit a revised plan that addresses all of the modifications provided by the department. The department shall approve or disapprove the revised plan within 30 days after receiving it, and approval of the revised plan shall not be unreasonably withheld.

(2) Not later than 6 months after the approval of the plan by the department under subsection (1), the owner or operator shall implement the plan in accordance with the implementation schedule set forth in the plan. The operation of a municipal solid waste incinerator without an approved plan under this section shall subject the owner or operator, or both, to all of the sanctions provided by this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11518 Sanitary landfill; instrument imposing restrictive covenant on land; filing; contents of covenant; authorization; special exemption; construction of part.

Sec. 11518. (1) At the time a disposal area that is a sanitary landfill is licensed, an instrument that imposes a restrictive covenant upon the land involved shall be executed by all of the owners of the tract of land upon which the landfill is to be located and the department. If the land involved is state owned, the state administrative board shall execute the covenant on behalf of the state. The instrument imposing the restrictive covenant shall be filed for record by the department or a health officer in the office of the register of deeds of the county, or counties, in which the facility is located. The covenant shall state that the land described in the covenant has been or will be used as a landfill and that neither the property owners, their servants, agents, or employees, nor any of their heirs, successors, lessees, or assigns shall engage in filling, grading, excavating, drilling, or mining on the property during the first 50 years following completion of the landfill without authorization of the department. In giving authorization, the department shall consider the original design, type of operation, material deposited, and the stage of decomposition of the fill. Special exemption from this section may be granted by the department if the lands involved are federal lands or if

contracts existing between the landowner and the licensee on January 11, 1979 are not renegotiable.

(2) This part does not prohibit the department from conveying, leasing, or permitting the use of state land for a solid waste disposal area or a resource recovery facility as provided by applicable state law.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11519 Specifying reasons for denial of construction permit or operating license; cease and desist order; grounds for order revoking, suspending, or restricting permit or license; contested case hearing; judicial review; inspection; report; copies; violation of part or rules; summary suspension of permit or license.
Sec. 11519. (1) The department shall specify, in writing, the reasons for denial of a construction permit or an operating license, further specifying those particular sections of this part or rules promulgated under this part that may be violated by granting the application and the manner in which the violation may occur.

(2) The health officer or department may issue a cease and desist order specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part or may establish a consent agreement specifying a schedule of closure or remedial action in accordance with this part and rules promulgated under this part to a person who establishes, constructs, conducts, manages, maintains, or operates a disposal area without a permit or license or to a person who holds a permit or license but establishes, constructs, conducts, manages, maintains, or operates a disposal area contrary to an approved solid waste management plan or contrary to the permit or license issued under this part.

(3) The department may issue a final order revoking, suspending, or restricting a permit or license after a contested case hearing as provided in the administrative procedures act of 1969, Act No. 306 of the Public

Acts of 1969 , being sections 24.201 to 24.328 of the Michigan Compiled Laws, if the department finds that the disposal area is not being constructed or operated in accordance with the approved plans, the conditions of a permit or license, this part, or the rules promulgated under this part. A final order issued pursuant to this section is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969. The department or a health officer shall inspect and file a written report not less than 4 times per year for each licensed disposal area. The department or the health officer shall provide the municipality in which the licensed disposal area is located with a copy of each written inspection report if the municipality arranges with the department or the health officer to bear the expense of duplicating and mailing the reports.

(4) The department may issue an order summarily suspending a permit or license if the department determines that a violation of this part or rules promulgated under this part has occurred which, in the department's opinion, constitutes an emergency or poses an imminent risk of injury to the public health or the environment. A determination that a violation poses an imminent risk of injury to the public health shall be made by the department. Summary suspension may be ordered effective on the date specified in the order or upon service of a certified copy of the order on the licensee, whichever is later, and shall remain effective during the proceedings. The proceedings shall be commenced within 7 days of the issuance of the order and shall be promptly determined.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11520 Disposition of fees; special fund; disposition of solid waste on private property.

Sec. 11520. (1) Fees collected by a health officer under this part shall be deposited with the city or county treasurer, who shall keep the deposits in a special fund designated for use in implementing this part. If there is an ordinance or charter provision that prohibits a health officer from maintaining a special fund, the fees shall be deposited and used in accordance with the ordinance or charter provision. Fees collected by the

department under this part shall be credited to the general fund of the state.

(2) This part does not prohibit an individual from disposing of solid waste from the individual's own household upon the individual's own land as long as the disposal does not create a nuisance or hazard to health. Solid waste accumulated as a part of an improvement or the planting of privately owned farmland may be disposed of on the property if the method used is not injurious to human life or property and does not unreasonably interfere with the enjoyment of life or property.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11521 Yard clippings; management; means; temporary accumulation; requirements; composting on farm; qualification as registered composting facility; site at which yard clippings are managed.
Sec. 11521. (1) Yard clippings shall be managed by 1 of the following means:

(a) Composted on the property where the yard clippings are generated.

(b) Temporarily accumulated under subsection (2).

(c) Composted at a composting facility containing not more than 200 cubic yards of yard clippings if decomposition occurs without creating a nuisance.

(d) Composted on a farm as described by subsection (3).

(e) Composted at site that qualifies as a registered composting facility under subsection (4).

(f) Decomposed in a controlled manner using a closed container to create and maintain anaerobic conditions if in compliance with part 55 and otherwise approved by the director under this part.

(g) Composted and used as part of normal operations by a municipal solid waste landfill if the composting and use meet all of the following requirements:

(i) Take place on property described in the landfill construction permit.

(ii) Are described in and consistent with the landfill operation plans.

(iii) Are otherwise in compliance with this act.

(h) Processed at a processing plant in accordance with this part and the rules promulgated under this part.

(i) Disposed of in a landfill or an incinerator, but only if the yard clippings are diseased or infested or are composed of invasive plants, such as garlic mustard, purple loosestrife, or spotted knapweed, that were collected through an eradication or control program, include no more than a de minimis amount of other yard clippings, and are inappropriate to compost.

(2) A person may temporarily accumulate yard clippings at a site not designed for composting if all of the following requirements are met:

(a) The accumulation does not create a nuisance or otherwise result in a violation of this act.

(b) The yard clippings are not mixed with other compostable materials.

(c) No more than 1,000 cubic yards are placed on site unless a greater volume is approved by the department.

(d) Yard clippings placed on site on or after April 1 but before December 1 are moved to another location and managed as provided in subsection

(1) within 30 days after being placed on site. The director may approve a longer time period based on a demonstration that additional time is necessary.

(e) Yard clippings placed on site on or after December 1 but before the next April 1 are moved to another location and managed as provided in subsection (1) by the next April 10 after the yard clippings are placed on site.

(f) The owner or operator of the site maintains and makes available to the department records necessary to demonstrate that the requirements of this subsection are met.

(3) A person may compost yard clippings on a farm if composting does not otherwise result in a violation of this act and is done in accordance with generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474, and if 1 or more of the following apply:

(a) Only yard clippings generated on the farm are composted.

(b) There are not more than 5,000 cubic yards of yard clippings on the farm.

(c) If there are more than 5,000 cubic yards of yard clippings on the farm at any time, all of the following requirements are met:

(i) The farm operation accepts yard clippings generated at a location other than the farm only to assist in management of waste material generated by the farm operation.

(ii) The farm operation does not accept yard clippings generated at a location other than the farm for monetary or other valuable consideration.

(iii) The owner or operator of the farm registers with the department of agriculture on a form provided by the department of agriculture and

certifies that the farm operation meets and will continue to meet the requirements of subparagraphs (i) and (ii).

(4) A site qualifies as a registered composting facility if all of the following requirements are met:

(a) The owner or operator of the site registers as a composting facility with the department and reports to the department within 30 days after the end of each state fiscal year the amount of yard clippings and other compostable material composted in the previous state fiscal year. The registration and reporting shall be done on forms provided by the department. The registration shall be accompanied by a fee of $600.00. The registration is for a term of 3 years. Registration fees collected under this subdivision shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(b) The site is operated in compliance with the following location restrictions:

(i) If the site is in operation on December 1, 2007, the management or storage of yard clippings, compost, and residuals does not expand from its location on that date to an area that is within the following distances from any of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(ii) If the site begins operation after December 1, 2007, the management or storage of yard clippings, compost, and residuals occurs in an area that is not in the 100-year floodplain and is at least the following distances from each of the following features:

(A) 50 feet from a property line.

(B) 200 feet from a residence.

(C) 100 feet from a body of surface water, including a lake, stream, or wetland.

(D) 2,000 feet from a type I or type IIA water supply well.

(E) 800 feet from a type IIB or type III water supply well.

(F) 500 feet from a church or other house of worship, hospital, nursing home, licensed day care center, or school, other than a home school.

(G) 4 feet above groundwater.

(c) Composting and management of the site occurs in a manner that meets all of the following requirements:

(i) Does not violate this act or create a facility as defined in section 20101.

(ii) Unless approved by the department, does not result in more than 5,000 cubic yards of yard clippings and other compostable material, compost, and residuals present on any acre of property at the site.

(iii) Does not result in an accumulation of yard clippings for a period of over 3 years unless the site has the capacity to compost the yard clippings and the owner or operator of the site can demonstrate, beginning in the third year of operation and each year thereafter, unless a longer time is approved by the director, that the amount of yard clippings and compost that is transferred off-site in a calendar year is not less than 75% by weight or volume, accounting for natural volume reduction, of the amount of yard clippings and compost that was on-site at the beginning of the calendar year.

(iv) Results in finished compost with not more than 1%, by weight, of foreign matter that will remain on a 4 millimeter screen.

(v) If yard clippings are collected in bags other than paper bags, debags the yard clippings by the end of each business day.

(vi) Prevents the pooling of water by maintaining proper slopes and grades.

(vii) Properly manages storm water runoff.

(viii) Does not attract or harbor rodents or other vectors.

(d) The owner or operator maintains, and makes available to the department, all of the following records:

(i) Records identifying the volume of yard clippings and other compostable material accepted by the facility and the volume of yard clippings and other compostable material and of compost transferred off-site each month.

(ii) Records demonstrating that the composting operation is being performed in a manner that prevents nuisances and minimizes anaerobic conditions. Unless other records are approved by the department, these records shall include records of carbon-to-nitrogen ratios, the amount of leaves and the amount of grass in tons or cubic yards, temperature readings, moisture content readings, and lab analysis of finished products.

(5) A site at which yard clippings are managed in accordance with this section, other than a site described in subsection (1)(g), (h) or (i), is not a disposal area, notwithstanding section 11503(5).

(6) Except with respect to subsection (1)(h) and (i), management of yard clippings in accordance with this section is not considered disposal for purposes of section 11538(6).

History: Add. 2007, Act 212, Eff. Mar. 26, 2008
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11522 Open burning of grass clippings or leaves.
Sec. 11522. (1) Beginning on March 28, 1995, the open burning of grass clippings or leaves, or both, is prohibited in any municipality having a population of 7,500 or more, unless specifically authorized by local ordinance, which ordinance shall be reported to the department of natural resources within 30 days of enactment.

(2) This section does not allow a county or municipality to permit open burning of grass clippings or leaves, or both, by an ordinance that would otherwise be prohibited under part 55 or rules promulgated under that part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

324.11523 Financial assurance; cash bond; payments; interest; reduction in bond; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; perpetual care fund.
Sec. 11523. (1) The department shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, evidence of the following financial assurance:

(a) Financial assurance established for a type III landfill or a preexisting unit at a type II landfill and until April 9, 1997, existing and new type II landfills shall be in the form of a bond in an amount equal to $20,000.00 per acre of licensed landfill within the solid waste boundary. However, the amount of the bond shall not be less than $20,000.00 or more than $1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any

approved portion is completed. In addition to this bond, a perpetual care fund shall be maintained under section 11525.

(b) Financial assurance for a type II landfill which is an existing unit or a new unit shall be in an amount equal to the cost, in current dollars, of hiring a third party, to conduct closure, postclosure maintenance and monitoring, and if necessary, corrective action. An application for a type II landfill which is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a.

(c) Financial assurance established for a solid waste transfer facility, incinerator, processing plant, other solid waste handling or disposal facility, or a combination of these utilized in the disposal of solid waste shall be in the form of a bond in an amount equal to 1/4 of 1% of the construction cost of the facility, but shall not be less than $4,000.00, and shall be continued in effect for a period of 2 years after the disposal area is closed.

(2) The owner or operator of a landfill may post a cash bond with the department instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of this section. A minimum amount equal to the remaining financial assurance requirement divided by the term of the operating license shall be paid to the department prior to licensure. Subsequent payments to the department shall be made annually in an amount equal to the remaining financial assurance requirement divided by the number of years remaining until the operating license expires, until the required amount is attained. An owner or operator of a disposal area who elects to post cash as bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days of such request provided all waste and waste residues have been removed from the disposal area and that closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations following issuance of a notice of violation or other order by the department which alleges violation of this part and rules promulgated under this part and provides 7 days' notice and opportunity for hearing.

(5) Under the terms of a surety bond, letter of credit, or insurance policy, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice by the issuing institution, the department may draw on the bond.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 U.S.C. 101 to 1330, or any other predecessor or successor statute.

(7) A person required under this section to provide financial assurance in the form of a bond for a landfill may request a reduction in the bond based upon the value of the perpetual care fund established under section 11525. A person requesting a bond reduction shall do so on a form consistent with this part as prepared by the department. The department

shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills which are preexisting units, the amount of money in the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).

(8) The department shall release the bond required by this section if the amount in the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).

(9) Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of bonding required to be provided if necessary to meet the requirement of this section.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 359, Imd. Eff. July 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11523a Operation of type II landfill.
Sec. 11523a. (1) Effective April 9, 1997, the department shall not issue a license to operate a type II landfill unless the applicant demonstrates that for any new unit or existing unit at the facility, the combination of the perpetual care fund established under section 11525, bonds, and the financial capability of the applicant as evidenced by a financial test, provides financial assurance in an amount not less than that required by this section. An applicant may utilize a financial test for an amount up to, but not exceeding 70% of the closure, postclosure, and corrective action cost estimate.

(2) An applicant may demonstrate compliance with this section by submitting evidence with a form consistent with this part, as prepared by

the department, that the applicant has financial assurance for any existing unit or new unit in an amount equal to or greater than the sum of the following standardized costs:

(a) A standard closure cost estimate. The standard closure cost estimate shall be based upon the sum of the following costs in 1996 dollars, adjusted for inflation and partial closures, if any, as specified in subsections (4) and (5):

(i) A base cost of $20,000.00 per acre to construct a compacted soil final cover using on-site material.

(ii) A supplemental cost of $20,000.00 per acre, to install a synthetic cover liner, if required by rules under this part.

(iii) A supplemental cost of $5,000.00 per acre, if low permeability soil must be transported from off-site to construct the final cover or if a bentonite geocomposite liner is used in lieu of low permeability soil in a composite cover.

(iv) A supplemental cost of $5,000.00 per acre, to construct a passive gas collection system in the final cover, unless an active gas collection system has been installed at the facility.

(b) A standard postclosure cost estimate. The standard postclosure cost estimate shall be based upon the sum of the following costs, adjusted for inflation as specified in section 11525(2):

(i) A final cover maintenance cost of $200.00 per acre per year.

(ii) A leachate disposal cost of $100.00 per acre per year.

(iii) A leachate transportation cost of $1,000.00 per acre per year, if leachate is required to be transported off-site for treatment.

(iv) A groundwater monitoring cost of $1,000.00 per monitoring well per year.

(v) A gas monitoring cost of $100.00 per monitoring point per year, for monitoring points used to detect landfill gas at or beyond the facility property boundary.

(c) The corrective action cost estimate, if any. The corrective action cost estimate shall be a detailed written estimate, in current dollars, of the cost of hiring a third party to perform corrective action in accordance with this part.

(3) In lieu of using some or all of the standardized costs specified in subsection (2) of this section, an applicant may estimate the site specific costs of closure or postclosure maintenance and monitoring. A site specific cost estimate shall be a written estimate, in current dollars, of the cost of hiring a third party to perform the activity. A third party is a party who is neither a parent corporation or a subsidiary of the owner or operator. Site specific cost estimates shall be based on the following:

(a) For closure, the cost to close the largest area of the landfill ever requiring a final cover at any time during the active life, when the extent and manner of its operation would make closure the most expensive, in accordance with the approved closure plan. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of structures, land, equipment, or other assets associated with the facility at the time of final closure.

(b) For postclosure, the cost to conduct postclosure maintenance and monitoring in accordance with the approved postclosure plan for the entire postclosure period.

(4) The owner or operator of a landfill subject to this section shall, during the active life of the landfill and during the postclosure care period, annually adjust the financial assurance cost estimates and corresponding amount of financial assurance for inflation. Cost estimates shall be adjusted for inflation by multiplying the cost estimate by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index that is more representative of the costs of closure and

postclosure monitoring and maintenance as determined appropriate by the department. The owner or operator shall document the adjustment on a form consistent with this part as prepared by the department and shall place such documentation in the operating record of the facility.

(5) The owner or operator of a landfill subject to this section may request that the department authorize a reduction in the approved cost estimates and corresponding financial assurance for the landfill by submitting a form consistent with this part as prepared by the department certifying completion of any of the following activities:

(a) Partial closure of the landfill. The current closure cost estimate for partially closed portions of a landfill unit may be reduced by 80%, if the maximum waste slope on the unclosed portions of the unit does not exceed 25%. The percentage of the cost estimate reduction approved by the department for the partially closed portion shall be reduced 1% for every 1% increase in the slope of waste over 25% in the active portion. An owner or operator requesting a reduction in financial assurance for partial closure shall enclose with the request a certification under the seal of a licensed professional engineer that certifies both of the following:

(i) A portion of the licensed landfill unit has reached final grades and has had a final cover installed in compliance with the approved closure plan and rules promulgated under this part.

(ii) The maximum slope of waste in the active portion of the landfill unit at the time of partial closure.

(b) Final closure of the landfill. An owner or operator requesting a cost estimate reduction for final closure shall submit a certification under the seal of a licensed professional engineer that closure of that landfill unit has been fully completed in accordance with the approved closure plan for the landfill. Within 60 days of receiving a certification under this subsection, the department shall perform a consistency review of the submitted certification. If that review is approved, the department shall notify the owner or operator that he or she may reduce the closure estimate by 100%. The department shall provide within 60 days the

owner or operator with a detailed written statement of the reasons why the department has determined that closure certification has not been conducted in accordance with this part, the rules promulgated under this part, or an approved closure plan.

(c) Postclosure maintenance and monitoring. The owner or operator of a landfill unit who has completed final closure of the unit may request a reduction in the postclosure cost estimate and corresponding financial assurance for 1 year or more of postclosure maintenance and monitoring if the landfill has been monitored and maintained in accordance with the approved postclosure plan. The department shall, within 60 days of receiving a cost estimate reduction request grant written approval or issue a written denial stating the reason for denial. The department shall grant the request and the owner or operator may reduce the postclosure cost estimate to reflect the number of years remaining in the postclosure period unless the department provided in writing that the owner or operator has not performed the specific tasks consistent with this part, rules promulgated under this part, and an approved plan.

(6) The owner or operator of a landfill subject to this section may request a reduction in the amount of one or more of the financial assurance mechanisms in place. If the combined value of the remaining financial assurance mechanisms equals the required amount under section 11523a, the department shall approve the request.

(7) An owner or operator requesting that the department approve a financial assurance reduction for performance of the activities specified in subsection (5) or due to excess financial assurance specified in subsection (6) shall do so on a form consistent with this part as prepared by the department. The department shall grant written approval or, within 60 days of receiving a financial assurance reduction request, issue a written denial stating the reason for the denial.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11523b Trust fund or escrow account.
Sec. 11523b. (1) The owner or operator of a landfill may establish a trust fund or escrow account to fulfill the requirements of sections 11523 and 11523a. The trust fund or escrow account shall be executed on a form provided by the department.

(2) Payments into a trust fund or escrow account shall be made annually over the term of the first operating license issued after the effective date of this section. The first payment into a trust fund or escrow account shall be made prior to licensure and shall be at least equal to the portion of the financial assurance requirement to be covered by the trust fund or escrow account divided by the term of the operating license. Subsequent payments shall be equal to the remaining financial assurance requirement divided by the number of years remaining until the license expires.

(3) If the owner or operator of a landfill establishes a trust fund or escrow account after having used one or more alternate forms of financial assurance, the initial payment into the trust fund or escrow account shall be at least the amount the fund would contain if the fund were established initially and annual payments made according to subsection (2).

(4) All earnings and interest from a trust fund or escrow account shall be credited to the fund or account. However, the custodian may be compensated for reasonable fees and costs for his or her responsibilities as custodian. The custodian shall ensure the filing of all required tax returns for which the trust fund or escrow account is liable and shall disburse funds from earnings to pay lawfully due taxes owed by the trust fund or escrow account, without permission of the department.

(5) The custodian shall annually, 30 days preceding the anniversary date of establishment of the fund, furnish to the owner or operator and to the department a statement confirming the value of the fund or account as of the end of that month.

(6) The owner or operator may request that the department authorize the release of funds from a trust fund or escrow account. The department

shall grant the request if the owner or operator demonstrates that the value of the fund or account exceeds the owner's or operator's financial assurance obligation. A payment or disbursement from the fund or account shall not be made without the prior written approval of the department.

(7) The owner or operator shall receive all interest or earnings from a trust fund or escrow account upon its termination.

(8) For purposes of this section, the term “custodian” means the trustee of a trust fund or escrow agent of an escrow account.

History: Add. 1996, Act 359, Imd. Eff. July 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11524 Reduction or increase in financial assurance.
Sec. 11524. A person required under section 11523 to provide financial assurance in the form of a bond or a letter of credit for a landfill may request a reduction in the total amount of financial assurance required upon reapplication for an operating license pursuant to section 11516(2). The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the financial assurance within 60 days after the request is made. If the department grants a request for reduced financial assurance, the department shall require financial assurance in an amount such that the amount of money in the perpetual care fund plus the amount of the reduced financial assurance equals the amount of the financial assurance required in section 11523 plus an additional 20% of that amount. The department shall release the financial assurance required by section 11523 if the amount in the perpetual care fund exceeds the amount of the financial assurance required under section 11523. Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of financial assurance required to be provided.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11525 Perpetual care fund.

Sec. 11525. (1) The owner or operator of a landfill shall establish and maintain a perpetual care fund for a period of 30 years after final closure of the landfill as specified in this section. A perpetual care fund may be established as a trust or an escrow account and may be used to demonstrate financial assurance for type II landfills under section 11523 and section 11523a.

(2) Except as otherwise provided in this section, the owner or operator of a landfill shall deposit into his or her perpetual care fund 75 cents for each ton or portion of a ton or 25 cents for each cubic yard or portion of a cubic yard of solid waste that is disposed of in the landfill after June 17, 1990. The deposits shall be made not less than semiannually until the fund reaches the maximum required fund amount. As of July 1, 1996, the maximum required fund amount is $1,156,000.00. This amount shall be annually adjusted for inflation and rounded to the nearest thousand. The department shall adjust the maximum required fund amount for inflation annually by multiplying the amount by an inflation factor derived from the most recent bureau of reclamation composite index published by the United States department of commerce or another index more representative of the costs of closure and postclosure monitoring and maintenance as determined appropriate by the department.

(3) The owner or operator of a landfill that is used for the disposal of the following materials shall deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of the following materials that are disposed of in the landfill after June 17, 1990:

(a) Coal ash, wood ash, or cement kiln dust that is disposed of in a landfill that is used only for the disposal of coal ash, wood ash, or cement kiln dust, or a combination of these materials, or that is permanently segregated in a landfill.

(b) Wastewater treatment sludge or sediments from wood pulp or paper producing industries that is disposed of in a landfill that is used only for the disposal of wastewater treatment sludge and sediments from wood pulp or paper producing industries, or that is permanently segregated in a landfill.

(c) Foundry sand or other material that is approved by the department for use as daily cover at an operating landfill, that is disposed of in a landfill that is used only for the disposal of foundry sand, or that is permanently segregated in a landfill.

(4) The owner or operator of a landfill that is used only for the disposal of a mixture of 2 or more of the materials described in subsection (3)(a) to (c) or in which a mixture of 2 or more of these materials are permanently segregated shall deposit into the perpetual care fund 7.5 cents for each ton or cubic yard or portion of a ton or cubic yard of these materials that are disposed of in the landfill after July 1, 1996.

(5) Money is not required to be deposited into a perpetual care fund for materials that are regulated under part 631.

(6) The owner or operator of a landfill may contribute additional amounts into the perpetual care fund at his or her discretion.

(7) The custodian of a perpetual care fund shall be a bank or other financial institution that has the authority to act as a custodian and whose account operations are regulated and examined by a federal or state agency. Until the perpetual care fund reaches the maximum required fund amount, the custodian of a perpetual care fund shall credit interest and earnings of the perpetual care fund to the perpetual care fund. However, upon the direction of the owner or operator, the custodian may utilize the interest and earnings of the perpetual care fund to pay the solid waste management program administration fee or the surcharge required by section 11525a for the landfill for which the perpetual care fund was established. After the perpetual care fund reaches the maximum required fund amount, interest and earnings shall be distributed as directed by the owner or operator. The agreement

governing the operation of the perpetual care fund shall be executed on a form consistent with this part as prepared by the department. The custodian may be compensated from the fund for reasonable fees and costs incurred for his or her responsibilities as custodian. The custodian of a perpetual care fund shall annually make an accounting to the department within 30 days following the close of the state fiscal year.

(8) The custodian of a perpetual care fund shall not disburse any funds to the owner or operator of a landfill for the purposes of the perpetual care fund except upon the prior written approval of the department. However, the custodian shall ensure the filing of all required tax returns for which the perpetual care fund is liable and shall disburse funds to pay lawfully due taxes owed by the perpetual care fund without permission of the department, and may disburse interest and earnings of the perpetual care fund to pay the solid waste management program administration fee or the surcharge required by section 11525a as provided in subsection (7). The owner or operator of the landfill shall provide notice of requests for disbursement and denials and approvals to the custodian of the perpetual care fund. Requests for disbursement from a perpetual care fund shall be submitted not more frequently than semiannually. The owner or operator of a landfill may request disbursement of funds from a perpetual care fund whenever the amount of money in the fund exceeds the maximum required fund amount. The department shall approve the disbursement provided the total amount of financial assurance maintained meets the requirements of sections 11523 and 11523a. As used in this subsection, “maximum required fund amount” means:

(a) For those landfills containing only those materials specified in subsection (3), an amount equal to 1/2 of the maximum required fund amount specified in subsection (2).

(b) For all other landfills, an amount equal to the maximum required fund amount specified in subsection (2).

(9) If the owner or operator of a landfill refuses or fails to conduct closure, postclosure monitoring and maintenance, or corrective action as necessary to protect the public health, safety, or welfare, or the

environment or fails to request the disbursement of money from a perpetual care fund when necessary to protect the public health, safety, or welfare, or the environment, or fails to pay the solid waste management program administration fee or the surcharge required under section 11525a, then the department may require the disbursement of money from the perpetual care fund and may expend the money for closure, postclosure monitoring and maintenance, and corrective action, as necessary. The department may assess a perpetual care fund for administrative costs associated with actions taken under this subsection.

(10) Upon approval by the department of a request to terminate financial assurance for a landfill under section 11525b, any money in the perpetual care fund for that landfill shall be disbursed by the custodian to the owner of the landfill unless a contract between the owner and the operator of the landfill provides otherwise.

(11) The owner of a landfill shall provide notice to the custodian of the perpetual care fund for that landfill if there is a change of ownership of the landfill. The custodian shall maintain records of ownership of a landfill during the time in which a perpetual care fund is established.

(12) This section does not relieve an owner or operator of a landfill of any liability that he or she may have under this part or as otherwise provided by law.

(13) This section does not create a cause of action at law or in equity against a custodian of a perpetual care fund other than for errors or omissions related to investments, accountings, disbursements, filings of required tax returns, and maintenance of records required by this section or the applicable perpetual care fund.

(14) As used in this section, “custodian” means the trustee or escrow agent of a perpetual care fund.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 359, Imd. Eff. July 1, 1996 ;-- Am. 1996, Act 506, Imd. Eff. Jan. 9, 1997 ;-- Am. 2003, Act 153, Eff. Oct. 1, 2003
Popular Name: Act 451

Popular Name: NREPA
Popular Name: Solid Waste Act

324.11525a Owner or operator of landfill or municipal solid waste incinerator; surcharge; payment; deposit; "captive facility" defined.
Sec. 11525a. (1) Until October 1, 2011, the owner or operator of a landfill shall pay a surcharge as follows:

(a) Except as provided in subdivision (b), 7 cents for each cubic yard or portion of a cubic yard of solid waste or municipal solid waste incinerator ash that is disposed of in the landfill during the previous quarter of the state fiscal year.

(b) For type III landfills that are captive facilities, the following annual amounts:

(i) For a captive facility that receives 100,000 or more cubic yards of waste, $3,000.00.

(ii) For a captive facility that receives 75,000 or more but less than 100,000 cubic yards of waste, $2,500.00.

(iii) For a captive facility that receives 50,000 or more but less than 75,000 cubic yards of waste, $2,000.00.

(iv) For a captive facility that receives 25,000 or more but less than 50,000 cubic yards of waste, $1,000.00.

(v) For a captive facility that receives less than 25,000 cubic yards of waste, $500.00.

(2) The owner or operator of a landfill or municipal solid waste incinerator shall pay the surcharge under subsection (1)(a) within 30 days after the end of each quarter of the state fiscal year. The owner or operator of a type III landfill that is a captive facility shall pay the surcharge under subsection (1)(b) by January 31 of each year.

(3) The owner or operator of a landfill or municipal solid waste incinerator who is required to pay the surcharge under subsection (1) may pass through and collect the surcharge from any person who generated the solid waste or who arranged for its delivery to the solid waste hauler or transfer facility notwithstanding the provisions of any contract or agreement to the contrary or the absence of any contract or agreement.

(4) Surcharges collected under this section shall be forwarded to the state treasurer for deposit in the solid waste staff account of the solid waste management fund established in section 11550.

(5) As used in this section, "captive facility" means a landfill that accepts for disposal only nonhazardous industrial waste generated only by the owner of the landfill or a nonhazardous industrial waste landfill that is specified in section 11525(3).

History: Add. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 2003, Act 153, Eff. Oct. 1, 2003 ;-- Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11525b Continuous financial assurance coverage required; request for termination of requirements.
Sec. 11525b. (1) The owner or operator of a disposal area shall provide continuous financial assurance coverage until released from these requirements by the department under the provisions of this part.

(2) The owner or operator of a landfill who has completed postclosure maintenance and monitoring of the landfill in accordance with this part, rules promulgated under this part, and approved postclosure plan may request that financial assurance required by sections 11523 and 11523a be terminated. A person requesting termination of bonding and financial assurance shall submit to the department a statement that the landfill has been monitored and maintained in accordance with this part, rules promulgated under this part, and approved postclosure plan for the postclosure period specified in section 11523 and shall certify that the

landfill is not subject to corrective action under section 11515. Within 60 days of receiving a statement under this subsection, the department shall perform a consistency review of the submitted statement, and if approved, shall notify the owner or operator that he or she is no longer required to maintain financial assurance, shall return or release all financial assurance mechanisms, and shall notify the custodian of the perpetual care fund that money from the fund shall be disbursed as provided in section 11525(10). The department shall provide within 60 days the owner or operator with a detailed written statement of the reasons why the department has determined that postclosure maintenance and monitoring and corrective action, if any, have not been conducted in accordance with this part, the rules promulgated under this part, or an approved postclosure plan.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11526 Inspection of solid waste transporting unit; determination; administration; inspections.
Sec. 11526. (1) The department, a health officer, or a law enforcement officer of competent jurisdiction may inspect a solid waste transporting unit that is being used to transport solid waste along a public road to determine if the solid waste transporting unit is designed, maintained, and operated in a manner to prevent littering or to determine if the owner or operator of the solid waste transporting unit is performing in compliance with this part and the rules promulgated under this part.

(2) In order to protect the public health, safety, and welfare and the environment of this state from items and substances being illegally disposed of in landfills in this state, the department, in conjunction with the department of state police, shall administer this part so as to do all of the following:

(a) Ensure that all disposal areas are in full compliance with this part and the rules promulgated under this part.

(b) Provide for the inspection of each solid waste disposal area for compliance with this part and the rules promulgated under this part at least 4 times per year.

(c) Ensure that all persons disposing of solid waste are doing so in compliance with this part and the rules promulgated under this part.

(3) The department and the department of state police may conduct regular, random inspections of waste being transported for disposal at disposal areas in this state. Inspections under this subsection may be conducted at disposal areas at the end original destination.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 43, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11526a Solid waste generated out of state; acceptance by owner or operator of landfill prohibited; exceptions; disposal capacity.
Sec. 11526a. (1) Beginning October 1, 2004, in order to protect the public health, safety, and welfare and the environment of this state from the improper disposal of waste that is prohibited from disposal in a landfill, and in recognition that the nature of solid waste collection and transport limits the ability of the state to conduct cost effective inspections to ensure compliance with state law, the owner or operator of a landfill shall not accept for disposal in this state solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of this state unless 1 or more of the following are met:

(a) The solid waste is composed of a uniform type of item, material, or substance, other than municipal solid waste incinerator ash, that meets the requirements for disposal in a landfill under this part and the rules promulgated under this part.

(b) The solid waste was received through a material recovery facility, a transfer station, or other facility that has documented that it has removed

from the solid waste being delivered to the landfill those items that are prohibited from disposal in a landfill.

(c) The country, state, province, or local jurisdiction in which the solid waste was generated is approved by the department for inclusion on the list compiled by the department under section 11526b.

(2) Notwithstanding section 11538 or any other provision of this part, if there is sufficient disposal capacity for a county's disposal needs in or within 150 miles of the county, all of the following apply:

(a) The county is not required to identify a site for a new landfill in its solid waste management plan.

(b) An interim siting mechanism shall not become operative in the county unless the county board of commissioners determines otherwise.

(c) The department is not required to issue a construction permit for a new landfill in the county.

History: Add. 2004, Act 40, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11526b Compliance with MCL 324.11526b required; notice requirements; compilation of list; documentation.
Sec. 11526b. (1) Not later than October 1, 2004, the department shall do all of the following:

(a) Notify each state, the country of Canada, and each province in Canada that landfills in this state will not accept for disposal solid waste that does not comply with section 11526a.

(b) Compile a list of countries, states, provinces, and local jurisdictions that prohibit from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that prevent from disposal in a landfill the items prohibited from disposal in a landfill located in this

state through enforceable solid waste disposal requirements that are comparable to this part.

(c) Prepare and provide to each landfill in the state a copy of a list of the countries, states, provinces, and local jurisdictions compiled under subdivision (b).

(2) The department shall include a country, state, province, or local jurisdiction on the list described in subsection (1) if the country, state, province, or local jurisdiction, or another person, provides the department with documentation that the country, state, province, or local jurisdiction prohibits from disposal in a landfill the items prohibited from disposal in a landfill located in this state or that it prevents from disposal in a landfill the items prohibited from disposal in a landfill located in this state through enforceable solid waste disposal requirements that are comparable to this part. Such documentation shall include all pertinent statutes, administrative regulations, and ordinances.

History: Add. 2004, Act 37, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11526c Order restricting or prohibiting solid waste transportation or disposal in this state.
Sec. 11526c. (1) The director may issue an order restricting or prohibiting the transportation or disposal in this state of solid waste originating within or outside of this state if both of the following apply:

(a) The director, after consultation with appropriate officials, has determined that the transportation or disposal of the solid waste poses a substantial threat to the public health or safety or to the environment.

(b) The director determines that the restriction or prohibition on the transportation or disposal of the solid waste is necessary to minimize or eliminate the substantial threat to public health or safety or to the environment.

(2) At least 30 days before the director issues an order under subsection (1), the department shall post the proposed order and its effective date on its website with information on how a member of the public can comment on the proposed order and shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment. Before issuing the order, the director shall consider comments received on the proposed order. The department shall post the final order on its website beginning not later than the final order's effective date. This subsection does not apply in an emergency situation described in subsection (3).

(3) In an emergency situation posing an imminent and substantial threat to public health or safety or to the environment, the director, before issuing an order under subsection (1), shall provide a copy of the proposed order to the members of the standing committees of the senate and house of representatives that consider legislation pertaining to public health or the environment and publicize the proposed order in any manner appropriate to help ensure that interested parties are provided notice of the proposed order and its effective date. The department shall post the final order on its website as soon as practicable.

(4) An order issued pursuant to this section shall expire 60 days after it takes effect, unless the order provides for an earlier expiration date.

(5) Subsections (2) and (3) do not apply to the reissuance of an order if the reissued order takes effect upon the expiration of the identical order it replaces. However, the department shall post the reissued order on its website beginning not later than the reissued order's effective date.

(6) A person may seek judicial review of an order issued under this section as provided in section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

(7) The director shall rescind an order issued under this section when the director determines that the threat upon which the order was based no longer exists.

History: Add. 2004, Act 36, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11526e Disposal of municipal solid waste generated outside of United States; applicability of subsections (1) and (2).

Sec. 11526e. (1) Subject to subsection (3), a person shall not deliver for disposal, in a landfill or incinerator in this state, municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(2) Subject to subsection (3), the owner or operator of a landfill or incinerator in this state shall not accept for disposal municipal solid waste, including, but not limited to, municipal solid waste incinerator ash, that was generated outside of the United States.

(3) Subsections (1) and (2) apply notwithstanding any other provision of this part. However, subsections (1) and (2) do not apply unless congress enacts legislation under clause 3 of section 8 of article I of the constitution of the United States authorizing such prohibitions. Subsections (1) and (2) do not apply until 90 days after the effective date of such federal legislation or 90 days after the effective date of the amendatory act that added this section, whichever is later.

History: Add. 2006, Act 57, Imd. Eff. Mar. 13, 2006
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11527 Delivery of waste to licensed disposal area or solid waste transfer facility; vehicle or container; violation; penalty.

Sec. 11527. (1) A solid waste hauler transporting solid waste over a public road in this state shall deliver all waste to a disposal area or solid waste transfer facility licensed under this part and shall use only a vehicle or container that does not contribute to littering and that conforms to the rules promulgated by the department.

(2) A solid waste hauler who violates this part or a rule promulgated under this part, or who is responsible for a vehicle that has in part contributed to a violation of this part or a rule promulgated under this part, is subject to a penalty as provided in section 11549.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11527a Website listing materials prohibited from disposal; notice to customers.
Sec. 11527a. (1) The department shall post on its website a list of materials prohibited from disposal in a landfill under section 11514 and appropriate disposal options for those materials.

(2) A solid waste hauler that disposes of solid waste in a landfill shall annually notify each of its customers of each of the following:

(a) The materials that are prohibited from disposal in a landfill under section 11514.

(b) The appropriate disposal options for those materials as described on the department's website.

(c) The department's website address where the disposal options are described.

History: Add. 2004, Act 42, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11528 Solid waste transporting unit; watertight; construction, maintenance, and operation; violation; penalties; ordering unit out of service.
Sec. 11528. (1) A solid waste transporting unit used for garbage, industrial or domestic sludges, or other moisture laden materials not

specifically covered by part 121 shall be watertight and constructed, maintained, and operated to prevent littering. Solid waste transporting units used for hauling other solid waste shall be designed and operated to prevent littering or any other nuisance.

(2) A solid waste hauler who violates this part or the rules promulgated under this part is subject to the penalties provided in this part.

(3) The department, a health officer, or a law enforcement officer may order a solid waste transporting unit out of service if the unit does not satisfy the requirements of this part or the rules promulgated under this part. Continued use of a solid waste transporting unit ordered out of service is a violation of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11529 Exemptions.
Sec. 11529. (1) A disposal area that is a solid waste transfer facility is not subject to the construction permit and operating license requirements of this part if either of the following circumstances exists:

(a) The solid waste transfer facility is not designed to accept wastes from vehicles with mechanical compaction devices.

(b) The solid waste transfer facility accepts less than 200 uncompacted cubic yards per day.

(2) A solid waste transfer facility that is exempt from the construction permit and operating license requirements of this part under subsection (1) shall comply with the operating requirements of this part and the rules promulgated under this part.

(3) Except as provided in subsection (5), a disposal area that is an incinerator may, but is not required to, comply with the construction

permit and operating license requirements of this part if both of the following conditions are met:

(a) The operation of the incinerator does not result in the exposure of any solid waste to the atmosphere and the elements.

(b) The incinerator has a permit issued under part 55.

(4) A disposal area that is an incinerator that does not comply with the construction permit and operating license requirements of this part as permitted in subsection (3) is subject to the planning provisions of this part and must be included in the county solid waste management plan for the county in which the incinerator is located.

(5) A disposal area that is a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit is not subject to the construction permit requirements of this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11530 Collection center for junk motor vehicles and farm implements; competitive bidding; bonds; "collect" defined.
Sec. 11530. (1) A municipality or county may establish and operate a collection center for junk motor vehicles and farm implements.

(2) A municipality or county may collect junk motor vehicles and farm implements and dispose of them through its collection center through the process of competitive bidding.

(3) A municipality or county may issue bonds as necessary pursuant to Act No. 342 of the Public Acts of 1969, being sections 141.151 to 141.153 of the Michigan Compiled Laws, to finance the cost of constructing or operating facilities to collect junk motor vehicles or farm implements. The bonds shall be general obligation bonds and shall be backed by the full faith and credit of the municipality or county.

(4) As used in this section, "collect" means to obtain a vehicle pursuant to section 252 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.252 of the Michigan Compiled Laws, or to obtain a vehicle or farm implement and its title pursuant to a transfer from the owner.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11531 Solid waste removal; frequency; disposal; ordinance.
Sec. 11531. (1) A municipality or county shall assure that all solid waste is removed from the site of generation frequently enough to protect the public health, and is delivered to licensed disposal areas, except waste that is permitted by state law or rules promulgated by the department to be disposed of at the site of generation.

(2) An ordinance enacted before February 8, 1988 by a county or municipality incidental to the financing of a publicly owned disposal area or areas under construction that directs that all or part of the solid waste generated in that county or municipality be directed to the disposal area or areas is an acceptable means of compliance with subsection (1), notwithstanding that the ordinance, in the case of a county, has not been approved by the governor. This subsection applies only to ordinances adopted by the governing body of a county or municipality before February 8, 1988, and does not validate or invalidate an ordinance adopted after February 8, 1988 as an acceptable means of compliance with subsection (1).

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11532 Impact fees; agreement; collection, payment, and disposition; reduction; use of revenue; trust fund; board of trustees; membership and terms; expenditures from trust fund.

Sec. 11532. (1) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on solid waste that is disposed of in a landfill located within the municipality that is utilized by the public and utilized to dispose of solid waste collected from 2 or more persons. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village. The impact fee shall be assessed uniformly on all wastes accepted for disposal.

(2) Except as provided in subsection (3), a municipality may impose an impact fee of not more than 10 cents per cubic yard on municipal solid waste incinerator ash that is disposed of in a landfill located within the municipality that is utilized to dispose of municipal solid waste incinerator ash. However, if the landfill is located within a village, the impact fee provided for in this subsection shall be imposed by the township in agreement with the village.

(3) A municipality may enter into an agreement with the owner or operator of a landfill to establish a higher impact fee than those provided for in subsections (1) and (2).

(4) The impact fees imposed under this section shall be collected by the owner or operator of a landfill and shall be paid to the municipality quarterly by the thirtieth day after the end of each calendar quarter. However, the impact fees allowed to be assessed to each landfill under this section shall be reduced by any amount of revenue paid to or available to the municipality from the landfill under the terms of any preexisting agreements, including, but not limited to, contracts, special use permit conditions, court settlement agreement conditions, and trusts.

(5) Unless a trust fund is established by a municipality pursuant to subsection (6), the revenue collected by a municipality under subsections (1) and (2) shall be deposited in its general fund to be used for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee

pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

(6) The municipality may establish a trust fund to receive revenue collected pursuant to this section. The trust fund shall be administered by a board of trustees. The board of trustees shall consist of the following members:

(a) The chief elected official of the municipality creating the trust fund.

(b) An individual from the municipality appointed by the governing board of the municipality.

(c) An individual approved by the owners or operators of the landfills within the municipality and appointed by the governing board of the municipality.

(7) Individuals appointed to serve on the board of trustees under subsection (6)(b) and (c) shall serve for terms of 2 years.

(8) Money in the trust fund may be expended, pursuant to a majority vote of the board of trustees, for any purpose that promotes the public health, safety, or welfare of the citizens of the municipality. However, revenue collected pursuant to this section shall not be used to bring or support a lawsuit or other legal action against an owner or operator of a landfill who is collecting an impact fee pursuant to subsection (4) unless the owner or operator of the landfill has instituted a lawsuit or other legal action against the municipality.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11533 Initial solid waste management plan; contents; submission; review and update; amendment; scope of plan; minimum compliance; consultation with regional planning agency; filing, form, and contents of notice of intent; effect of failure to file

notice of intent; vote; preparation of plan by regional solid waste management planning agency or by department; progress report.
Sec. 11533. (1) Each solid waste management plan shall include an enforceable program and process to assure that the nonhazardous solid waste generated or to be generated in the planning area for a period of 10 years or more is collected and recovered, processed, or disposed of at disposal areas that comply with state law and rules promulgated by the department governing location, design, and operation of the disposal areas. Each solid waste management plan may include an enforceable program and process to assure that only items authorized for disposal in a disposal area under this part and the rules promulgated under this part are disposed of in the disposal area.

(2) An initial solid waste management plan shall be prepared and approved under this section and shall be submitted to the director not later than January 5, 1984. Following submittal of the initial plan, the solid waste management plan shall be reviewed and updated every 5 years. An updated solid waste management plan and an amendment to a solid waste management plan shall be prepared and approved as provided in this section and sections 11534, 11535, 11536, 11537, and 11537a. The solid waste management plan shall encompass all municipalities within the county. The solid waste management plan shall at a minimum comply with the requirements of sections 11537a and 11538. The solid waste management plan shall take into consideration solid waste management plans in contiguous counties and existing local approved solid waste management plans as they relate to the county's needs. At a minimum, a county preparing a solid waste management plan shall consult with the regional planning agency from the beginning to the completion of the plan.

(3) Not later than July 1, 1981, each county shall file with the department and with each municipality within the county on a form provided by the department, a notice of intent, indicating the county's intent to prepare a solid waste management plan or to upgrade an existing solid waste management plan. The notice shall identify the designated agency which shall be responsible for preparing the solid waste management plan.

(4) If the county fails to file a notice of intent with the department within the prescribed time, the department immediately shall notify each municipality within the county and shall request those municipalities to prepare a solid waste management plan for the county and shall convene a meeting to discuss the plan preparation. Within 4 months following notification by the department, the municipalities shall decide by a majority vote of the municipalities in the county whether or not to file a notice of intent to prepare the solid waste management plan. Each municipality in the county shall have 1 vote. If a majority does not agree, then a notice of intent shall not be filed. The notice shall identify the designated agency which is responsible for preparing the solid waste management plan.

(5) If the municipalities fail to file a notice of intent to prepare a solid waste management plan with the department within the prescribed time, the department shall request the appropriate regional solid waste management planning agency to prepare the solid waste management plan. The regional solid waste management planning agency shall respond within 90 days after the date of the request.

(6) If the regional solid waste management planning agency declines to prepare a solid waste management plan, the department shall prepare a solid waste management plan for the county and that plan shall be final.

(7) A solid waste management planning agency, upon request of the department, shall submit a progress report in preparing its solid waste management plan.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11534 Planning committee; purpose; appointment, qualifications, and terms of members; approval of appointment; reappointment; vacancy; removal; chairperson; procedures.

Sec. 11534. (1) The county executive of a charter county that elects a county executive and that chooses to prepare a solid waste management plan under section 11533 or the county board of commissioners in all other counties choosing to prepare an initial solid waste management plan under section 11533, or the municipalities preparing an initial solid waste management plan under section 11533(4), shall appoint a planning committee to assist the agency designated to prepare the plan under section 11533. If the county charter provides procedures for approval by the county board of commissioners of appointments by the county executive, an appointment under this subsection shall be subject to that approval. A planning committee appointed pursuant to this subsection shall be appointed for terms of 2 years. A planning committee appointed pursuant to this subsection may be reappointed for the purpose of completing the preparation of the initial solid waste management plan or overseeing the implementation of the initial plan. Reappointed members of a planning committee shall serve for terms not to exceed 2 years as determined by the appointing authority. An initial solid waste management plan shall only be approved by a majority of the members appointed and serving.

(2) A planning committee appointed pursuant to this section shall consist of 14 members. Of the members appointed, 4 shall represent the solid waste management industry, 2 shall represent environmental interest groups, 1 shall represent county government, 1 shall represent city government, 1 shall represent township government, 1 shall represent the regional solid waste planning agency, 1 shall represent industrial waste generators, and 3 shall represent the general public. A member appointed to represent a county, city, or township government shall be an elected official of that government or the designee of that elected official. Vacancies shall be filled in the same manner as the original appointments. A member may be removed for nonperformance of duty.

(3) A planning committee appointed pursuant to this section shall annually elect a chairperson and shall establish procedures for conducting the committee's activities and for reviewing the matters to be considered by the committee.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11535 County or regional solid waste management planning agency; duties.

Sec. 11535. A county or regional solid waste management planning agency preparing a solid waste management plan shall do all of the following:

(a) Solicit the advice of and consult periodically during the preparation of the plan with the municipalities, appropriate organizations, and the private sector in the county under section 11538(1) and solicit the advice of and consult with the appropriate county or regional solid waste management planning agency and adjacent counties and municipalities in adjacent counties which may be significantly affected by the solid waste management plan for a county.

(b) If a planning committee has been appointed under section 11534, prepare the plan with the advice, consultation, and assistance of the planning committee.

(c) Notify by letter the chief elected official of each municipality within the county and any other person within the county so requesting, not less than 10 days before each public meeting of the planning agency designated by the county, if that planning agency plans to discuss the county plan. The letter shall indicate as precisely as possible the subject matter being discussed.

(d) Submit for review a copy of the proposed county or regional solid waste management plan to the department, to each municipality within the affected county, and to adjacent counties and municipalities that may be affected by the plan or that have requested the opportunity to review the plan. The county plan shall be submitted for review to the designated regional solid waste management planning agency for that county. Reviewing agencies shall be allowed an opportunity of not less than 3 months to review and comment on the plan before adoption of the plan

by the county or a designated regional solid waste management planning agency. The comments of a reviewing agency shall be submitted with the plan to the county board of commissioners or to the regional solid waste management planning agency.

(e) Publish a notice, at the time the plan is submitted for review under subdivision (d), of the availability of the plan for inspection or copying, at cost, by an interested person.

(f) Conduct a public hearing on the proposed county solid waste management plan before formal adoption. A notice shall be published not less than 30 days before a hearing in a newspaper having a major circulation within the county. The notice shall indicate a location where copies of the plan are available for public inspection and shall indicate the time and place of the public hearing.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11536 Request by municipality to be included in plan of adjacent county; approval by resolution; appeal; final decision; formal action on plan; return of plan with statement of objections; review and recommendations; approval by governing bodies; preparation of final plan by department.
Sec. 11536. (1) A municipality located in 2 counties or adjacent to a municipality located in another county may request to be included in the adjacent county's plan. Before the municipality may be included, the request shall be approved by a resolution of the county boards of commissioners of the counties involved. A municipality may appeal to the department a decision to exclude it from an adjacent county's plan. If there is an appeal, the department shall issue a decision within 45 days. The decision of the department is final.

(2) Except as provided in subsection (3), the county board of commissioners shall formally act on the plan following the public hearing required by section 11535(f).

(3) If a planning committee has been appointed by the county board of commissioners under section 11534(1), the county board of commissioners, or if a plan is prepared under section 11533(4), the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, shall take formal action on the plan after the completion of public hearings and only after the plan has been approved by a majority of the planning committee as provided in section 11534(1). If the county board of commissioners, or, if a plan is prepared under section 11533(4), a majority of the municipalities in the county who voted in favor of filing a notice of intent to prepare a county solid waste management plan, does or do not approve the plan as submitted, the plan shall be returned to the planning committee along with a statement of objections to the plan. Within 30 days after receipt, the planning committee shall review the objections and shall return the plan with its recommendations.

(4) Following approval the county plan shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(5) A county plan prepared by a regional solid waste management planning agency shall be approved by the governing bodies of not less than 67% of the municipalities within each respective county before the plan may take effect.

(6) If, after the plan has been adopted, the governing bodies of not less than 67% of the municipalities have not approved the plan, the department shall prepare a plan for the county, including those municipalities that did not approve the county plan. A plan prepared by the department shall be final.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11537 Approval or disapproval of plan by department; time; minimum requirements; periodic review; revisions or corrections; withdrawal of approval; timetable or schedule for compliance.
Sec. 11537. (1) The department shall, within 6 months after a plan has been submitted for approval, approve or disapprove the plan. An approved plan shall at a minimum meet the requirements set forth in section 11538(1).

(2) The department shall review an approved plan periodically and determine if revisions or corrections are necessary to bring the plan into compliance with this part. The department, after notice and opportunity for a public hearing held pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, may withdraw approval of the plan. If the department withdraws approval of a county plan, the department shall establish a timetable or schedule for compliance with this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11537a Use of siting mechanisms to site capacity.
Sec. 11537a. Beginning on June 9, 1994 a county that has a solid waste management plan that provides for siting of disposal areas to fulfill a 20-year capacity need through use of a siting mechanism, is only required to use its siting mechanisms to site capacity to meet a 10-year capacity need. If any county is able to demonstrate to the department that it has at least 66 months of available capacity, that county may refuse to utilize its siting mechanism until the county is no longer able to demonstrate 66 months of capacity or until the county amends its plan in accordance with this part to provide for the annual certification process described in section 11538.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11538 Rules for development, form, and submission of initial solid waste management plans; requirements; identification of specific sites; calculation of disposal need requirements; interim siting mechanism; annual certification process; new certification; disposal area serving disposal needs of another county, state, or country; compliance as condition to disposing of, storing, or transporting solid waste; provisions or practices in conflict with part.

Sec. 11538. (1) Not later than September 11, 1979, the director shall promulgate rules for the development, form, and submission of initial solid waste management plans. The rules shall require all of the following:

(a) The establishment of goals and objectives for prevention of adverse effects on the public health and on the environment resulting from improper solid waste collection, processing, or disposal including protection of surface and groundwater quality, air quality, and the land.

(b) An evaluation of waste problems by type and volume, including residential and commercial solid waste, hazardous waste, industrial sludges, pretreatment residues, municipal sewage sludge, air pollution control residue, and other wastes from industrial or municipal sources.

(c) An evaluation and selection of technically and economically feasible solid waste management options, which may include sanitary landfill, resource recovery systems, resource conservation, or a combination of options.

(d) An inventory and description of all existing facilities where solid waste is being treated, processed, or disposed of, including a summary of the deficiencies, if any, of the facilities in meeting current solid waste management needs.

(e) The encouragement and documentation as part of the solid waste management plan, of all opportunities for participation and involvement of the public, all affected agencies and parties, and the private sector.

(f) That the solid waste management plan contain enforceable mechanisms for implementing the plan, including identification of the municipalities within the county responsible for the enforcement and may contain a mechanism for the county and those municipalities to assist the department and the state police in implementing and conducting the inspection program established in section 11526(2) and (3). This subdivision does not preclude the private sector's participation in providing solid waste management services consistent with the solid waste management plan for the county.

(g) Current and projected population densities of each county and identification of population centers and centers of solid waste generation, including industrial wastes.

(h) That the solid waste management plan area has, and will have during the plan period, access to a sufficient amount of available and suitable land, accessible to transportation media, to accommodate the development and operation of solid waste disposal areas, or resource recovery facilities provided for in the plan.

(i) That the solid waste disposal areas or resource recovery facilities provided for in the solid waste management plan are capable of being developed and operated in compliance with state law and rules of the department pertaining to protection of the public health and the environment, considering the available land in the plan area, and the technical feasibility of, and economic costs associated with, the facilities.

(j) A timetable or schedule for implementing the solid waste management plan.

(2) Each solid waste management plan shall identify specific sites for solid waste disposal areas for a 5-year period after approval of a plan or plan update. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to

be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed by the planning entity. In addition, if the solid waste management plan does not also identify specific sites for solid waste disposal areas for the remaining portion of the entire planning period required by this part after approval of a plan or plan update, the solid waste management plan shall include an interim siting mechanism and an annual certification process as described in subsections (3) and (4). In calculating the capacity of identified disposal areas to determine if disposal needs are met for the entire required planning period, full achievement of the solid waste management plan's volume reduction goals may be assumed by the planning entity if the plan identifies a detailed programmatic approach to achieving these goals. If a siting mechanism is not included, and disposal capacity falls to less than 5 years of capacity, a county shall amend the solid waste management plan for that county to resolve the shortfall.

(3) An interim siting mechanism shall include both a process and a set of minimum siting criteria, both of which are not subject to interpretation or discretionary acts by the planning entity, and which if met by an applicant submitting a disposal area proposal, will guarantee a finding of consistency with the plan. The interim siting mechanism shall be operative upon the call of the board of commissioners or shall automatically be operative whenever the annual certification process shows that available disposal capacity will provide for less than 66 months of disposal needs. In the latter event, applications for a finding of consistency from the proposers of disposal area capacity will be received by the planning agency commencing on January 1 following completion of the annual certification process. Once operative, an interim siting mechanism will remain operative for at least 90 days or until more than 66 months of disposal capacity is once again available, either by the approval of a request for consistency or by the adoption of a new annual certification process which concludes that more than 66 months of disposal capacity is available.

(4) An annual certification process shall be concluded by June 30 of each year, commencing on the first June 30 which is more than 12 months after the department's approval of the solid waste management plan or

plan update. The certification process will examine the remaining disposal area capacity available for solid wastes generated within the planning area. In calculating disposal need requirements to measure compliance with this section, only those existing waste stream volume reduction levels achieved through source reduction, reuse, composting, recycling, or incineration, or any combination of these reduction devices, that can currently be demonstrated or that can be reasonably expected to be achieved through currently active implementation efforts for proposed volume reduction projects, may be assumed. The annual certification of disposal capacity shall be approved by the board of commissioners. Failure to approve an annual certification by June 30 is equivalent to a finding that less than a sufficient amount of capacity is available and the interim siting mechanism will then be operative on the first day of the following January. As part of the department's responsibility to act on construction permit applications, the department has final decision authority to approve or disapprove capacity certifications and to determine consistency of a proposed disposal area with the solid waste management plan.

(5) A board of commissioners may adopt a new certification of disposal capacity at any time. A new certification of disposal capacity shall supersede all previous certifications, and become effective 30 days after adoption by the board of commissioners and remain in effect until subsequent certifications are adopted.

(6) In order for a disposal area to serve the disposal needs of another county, state, or country, the service, including the disposal of municipal solid waste incinerator ash, must be explicitly authorized in the approved solid waste management plan of the receiving county. With regard to intercounty service within Michigan, the service must also be explicitly authorized in the solid waste management plan of the exporting county.

(7) A person shall not dispose of, store, or transport solid waste in this state unless the person complies with the requirements of this part.

(8) An ordinance, law, rule, regulation, policy, or practice of a municipality, county, or governmental authority created by statute,

which prohibits or regulates the location or development of a solid waste disposal area, and which is not part of or not consistent with the approved solid waste management plan for the county, shall be considered in conflict with this part and shall not be enforceable.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 44, Imd. Eff. Mar. 29, 2004
Constitutionality: US Supreme Court held that MCL 299.413a and 299.430(2) prohibiting private landfill operators from accepting out-of-county solid waste, unless authorized by county's solid waste management plan, are unconstitutional as a violation of the Commerce Clause. Fort Gratiot Landfill v Mich Dept of Nat Res, 504 US 353; 112 S Ct 2019; 119 L Ed2d 139 (1992).
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act
Admin Rule: R 299.4101 et seq. of the Michigan Administrative Code.

324.11539 Plan update; approval; conditions; rules.
Sec. 11539. (1) The director shall not approve a plan update unless:

(a) The plan contains an analysis or evaluation of the best available information applicable to the plan area in regard to recyclable materials and all of the following:

(i) The kind and volume of material in the plan area's waste stream that may be recycled or composted.

(ii) How various factors do or may affect a recycling and composting program in the plan area. Factors shall include an evaluation of the existing solid waste collection system; materials market; transportation networks; local composting and recycling support groups, or both; institutional arrangements; the population in the plan area; and other pertinent factors.

(iii) An identification of impediments to implementing a recycling and composting program and recommended strategies for removing or minimizing impediments.

(iv) How recycling and composting and other processing or disposal methods could complement each other and an examination of the feasibility of excluding site separated material and source separated material from other processing or disposal methods.

(v) Identification and quantification of environmental, economic, and other benefits that could result from the implementation of a recycling and composting program.

(vi) The feasibility of source separation of materials that contain potentially hazardous components at disposal areas. This subparagraph applies only to plan updates that are due after January 31, 1989.

(b) The plan either provides for recycling and composting recyclable materials from the plan area's waste stream or establishes that recycling and composting are not necessary or feasible or is only necessary or feasible to a limited extent.

(c) A plan that proposes a recycling or composting program, or both, details the major features of that program, including all of the following:

(i) The kinds and volumes of recyclable materials that will be recycled or composted.

(ii) Collection methods.

(iii) Measures that will ensure collection such as ordinances or cooperative arrangements, or both.

(iv) Ordinances or regulations affecting the program.

(v) The role of counties and municipalities in implementing the plan.

(vi) The involvement of existing recycling interests, solid waste haulers, and the community.

(vii) Anticipated costs.

(viii) On-going program financing.

(ix) Equipment selection.

(x) Public and private sector involvement.

(xi) Site availability and selection.

(xii) Operating parameters such as pH and heat range.

(d) The plan includes an evaluation of how the planning entity is meeting the state's waste reduction and recycling goals as established pursuant to section 11541(4).

(2) The director may promulgate rules as may be necessary to implement this section.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act
Admin Rule: R 299.4101 et seq. of the Michigan Administrative Code.

324.11539a Plan update; submission to legislature; standard format.
Sec. 11539a. (1) The department shall prepare a proposed standard format for the submittal of updates to solid waste management plans. This proposed standard format shall be submitted to the standing committees of the legislature that address issues primarily pertaining to natural resources and the environment by November 1, 1994 for a 30-day review and comment period. Following this 30-day period, the department shall finalize the standard format and provide a copy of the standard format to each planning entity in the state that the department knows will be preparing an update to a solid waste management plan. The standard format shall be submitted to planning entities by January 1, 1995. Additionally, the department shall provide the standard format to any other person upon request.

(2) Notwithstanding any other provision of this part, the department shall not require planning entities to begin the process for updating solid waste management plans prior to January 1, 1995.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11540 Rules; sanitary design and operational standards.

Sec. 11540. Not later than September 11, 1979, the department shall submit to the legislature rules that contain sanitary design and operational standards for solid waste transporting units and disposal areas and otherwise implement this part. The rules shall include standards for hydrogeologic investigations; monitoring; liner materials; leachate collection and treatment, if applicable; groundwater separation distances; environmental assessments; methane gas control; soil erosion; sedimentation control; groundwater and surface water quality; noise and air pollution; and the use of floodplains and wetlands.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act
Admin Rule: R 299.4101 et seq. of the Michigan Administrative Code.

324.11541 State solid waste management plan; contents; duties of department.

Sec. 11541. (1) The state solid waste management plan shall consist of the state solid waste plan and all county plans approved or prepared by the department.

(2) The department shall consult and assist in the preparation and implementation of the county solid waste management plans.

(3) The department may undertake or contract for studies or reports necessary or useful in the preparation of the state solid waste management plan.

(4) The department shall promote policies that encourage resource recovery and establishment of waste-to-energy facilities.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 358, Eff. Oct. 1, 1996
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11542 Municipal solid waste incinerator ash; disposal.
Sec. 11542. (1) Except as provided in subsection (5), municipal solid waste incinerator ash shall be disposed of in 1 of the following:

(a) A landfill that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) A compacted clay liner of 5 feet or more with a maximum hydraulic conductivity of 1 x 10-7 centimeters per second.

(D) A leak detection and leachate collection system.

(E) A compacted clay liner at least 3 feet thick with a maximum hydraulic conductivity of 1 x 10-7 centimeters per second or a synthetic liner at least 40 mils thick.

(b) A landfill that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A composite liner, as defined in R 299.4102 of the Michigan administrative code.

(C) A leak detection and leachate collection system.

(D) A second composite liner.

(iv) If contaminants that may threaten the public health, safety, or welfare, or the environment are found in the leachate collection system described in subparagraph (iii)(C), the owner or operator of the landfill shall determine the source and nature of the contaminants and make repairs, to the extent practicable, that will prevent the contaminants from entering the leachate collection system. If the department determines that the source of the contaminants is caused by a design failure of the landfill, the department, notwithstanding an approved construction permit or operating license, may require landfill cells at that landfill that will be used for the disposal of municipal solid waste incinerator ash, which are under construction or will be constructed in the future at the landfill, to be constructed in conformance with improved design standards approved by the department. However, this subparagraph does not require the removal of liners or leak detection and leachate collection systems that are already in place in a landfill cell under construction.

(c) A landfill that is a monitorable unit, as defined in R 299.4104 of the Michigan administrative code, and that meets all of the following requirements:

(i) The landfill is in compliance with this part and the rules promulgated under this part.

(ii) The landfill is used exclusively for the disposal of municipal solid waste incinerator ash.

(iii) The landfill design includes all of the following in descending order according to their placement in the landfill:

(A) A leachate collection system.

(B) A synthetic liner at least 60 mils thick.

(C) Immediately below the synthetic liner, either 2 feet of compacted clay with a maximum hydraulic conductivity of 1 x 10- 7 centimeters per second or a bentonite geocomposite liner, as specified in R 299.4914 of the Michigan administrative code.

(D) At least 10 feet of either natural or compacted clay with a maximum hydraulic conductivity of 1 x 10-7 centimeters per second, or equivalent.

(d) A landfill with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subdivisions (a) to (c).

(e) A type II landfill, as defined in R 299.4105 of the Michigan administrative code, if both of the following conditions apply:

(i) The ash was generated by a municipal solid waste incinerator that is designed to burn at a temperature in excess of 2500 degrees Fahrenheit.

(ii) The ash from any individual municipal solid waste incinerator is disposed of pursuant to this subdivision for a period not to exceed 60 days.

(2) Except as provided in subsection (3), a landfill that is constructed pursuant to the design described in subsection (1) shall be capped following its closure by all of the following in descending order:

(a) Six inches of top soil with a vegetative cover.

(b) Two feet of soil to protect against animal burrowing, temperature, erosion, and rooted vegetation.

(c) An infiltration collection system.

(d) A synthetic liner at least 30 mils thick.

(e) Two feet of compacted clay with a maximum hydraulic conductivity of 1 x 10-7 centimeters per second.

(3) A landfill that receives municipal solid waste incinerator ash under this section may be capped with a design approved by the department that will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the design requirements of subsection (2).

(4) If leachate is collected from a landfill under this section, the leachate shall be monitored and tested in accordance with this part and the rules promulgated under this part.

(5) As an alternative to disposal described in subsection (1), the owner or operator of a municipal solid waste incinerator may process municipal solid waste incinerator ash through mechanical or chemical methods, or both, to substantially diminish the toxicity of the ash or its constituents or limit the leachability of the ash or its constituents to minimize threats to human health and the environment, if processing is performed on the site of the municipal solid waste incinerator or at the site of a landfill described in subsection (1), if the process has been approved by the department as provided by rule, and if the ash is tested after processing in accordance with a protocol approved by the department as provided by rule. The department shall approve the process and testing protocol

under this subsection only if the process and testing protocol will protect human health and the environment. In making this determination, the department shall consider all potential pathways of human and environmental exposure, including both short-term and long-term, to constituents of the ash that may be released during the reuse or recycling of the ash. The department shall consider requiring methods to determine the leaching, total chemical analysis, respirability, and toxicity of reused or recycled ash. A leaching procedure shall include testing under both acidic and native conditions. If municipal solid waste incinerator ash is processed in accordance with the requirements of this subsection and the processed ash satisfies the testing protocol approved by the department as provided by rule, the ash may be disposed of in a municipal solid waste landfill, as defined by R 299.4104 of the Michigan administrative code, licensed under this part or may be used in any manner approved by the department. If municipal solid waste incinerator ash is processed as provided in this subsection, but does not satisfy the testing protocol approved by the department as provided by rule, the ash shall be disposed of in accordance with subsection (1).

(6) The disposal of municipal solid waste incinerator ash within a landfill that is in compliance with subsection (1) does not constitute a new proposal for which a new construction permit is required under section 11510, if a construction permit has previously been issued under section 11509 for the landfill and the owner or operator of the landfill submits 6 copies of an operating license amendment application to the department for approval pursuant to part 13. The operating license amendment application shall include revised plans and specifications for all facility modifications including a leachate disposal plan, an erosion control plan, and a dust control plan which shall be part of the operating license amendment. The dust control plan shall contain sufficient detail to ensure that dust emissions are controlled by available control technologies that reduce dust emissions by a reasonably achievable amount to the extent necessary to protect human health and the environment. The dust control plan shall provide for the ash to be wet during all times that the ash is exposed to the atmosphere at the landfill or otherwise to be covered by daily cover material; for dust emissions to be controlled during dumping, grading, loading, and bulk transporting of

the ash at the landfill; and for dust emissions from access roads within the landfill to be controlled. With the exception of a landfill that is in existence on June 12, 1989 that the department determines is otherwise in compliance with this section, the owner or operator of the landfill shall obtain the operating license amendment prior to initiating construction. Prior to operation, the owner or operator of a landfill shall submit to the department certification from a licensed professional engineer that the landfill has been constructed in accordance with the approved plan and specifications. At the time the copies are submitted to the department, the owner or operator of the landfill shall send a copy of the operating license amendment application to the municipality where the landfill is located. At least 30 days prior to making a final decision on the operating license amendment, the department shall hold at least 1 public meeting in the vicinity of the landfill to receive public comments. Prior to a public meeting, the department shall publish notice of the meeting in a newspaper serving the local area.

(7) The owner or operator of a municipal solid waste incinerator or a disposal area that receives municipal solid waste incinerator ash shall allow the department access to the facility for the purpose of supervising the collection of samples or obtaining samples of ash to test or to monitor air quality at the facility.

(8) As used in subsection (1), “landfill” means a landfill or a specific portion of a landfill.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1996, Act 359, Imd. Eff. July 1, 1996 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11543 Municipal solid waste incinerator ash; transportation.
Sec. 11543. (1) If municipal solid waste incinerator ash is transported, it shall be transported in compliance with section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws.

(2) If municipal solid waste incinerator ash is transported by rail, it shall be transported in covered, leakproof railroad cars.

(3) The outside of all vehicles and accessory equipment used to transport municipal solid waste incinerator ash shall be kept free of the ash.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11544 List of laboratories capable of performing test provided for in MCL 324.11542; compilation; publication; definitive testing; fraudulent or careless testing.
Sec. 11544. (1) The department shall compile a list of approved laboratories that are capable of performing the test provided for in section 11542.

(2) The department shall publish the list compiled under subsection (1) on or before July 1, 1989, and shall after that date make the list available to any person upon request.

(3) Except as provided in subsection (4), a test conducted by an approved laboratory from the list compiled under subsection (1) is definitive for purposes of this part.

(4) If the department has reason to believe that test results provided by an approved laboratory are fraudulent or that a test was carelessly performed, the department may conduct its own test or may have an additional test performed at the department's expense.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11545 Incineration of used oil prohibited; "oil" defined.
Sec. 11545. Beginning June 21, 1993, a municipal solid waste incinerator shall not incinerate used oil. As used in this section, used oil has the meaning ascribed to this term in part 167.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11546 Action for appropriate relief; penalties for violation or noncompliance; restoration; return; civil action.
Sec. 11546. (1) The department or a health officer may request that the attorney general bring an action in the name of the people of the state, or a municipality or county may bring an action based on facts arising within its boundaries, for any appropriate relief, including injunctive relief, for a violation of this part or rules promulgated under this part.

(2) In addition to any other relief provided by this section, the court may impose on any person who violates any provision of this part or rules promulgated under this part or who fails to comply with any permit, license, or final order issued pursuant to this part a civil fine as follows:

(a) Except as provided in subdivision (b), a civil fine of not more than $10,000.00 for each day of violation.

(b) For a second or subsequent violation, a civil fine of not more than $25,000.00 for each day of violation.

(3) In addition to any other relief provided by this section, the court may order a person who violates this part or the rules promulgated under this part to restore, or to pay to the state an amount equal to the cost of restoring, the natural resources of this state affected by the violation to their original condition before the violation, and to pay to the state the costs of surveillance and enforcement incurred by the state as a result of the violation.

(4) In addition to any other relief provided by this section, the court shall order a person who violates section 11526e to return, or to pay to the state an amount equal to the cost of returning, the solid waste that is the subject of the violation to the country in which that waste was generated.

(5) This part does not preclude any person from commencing a civil action based on facts that may also constitute a violation of this part or the rules promulgated under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2004, Act 41, Imd. Eff. Mar. 29, 2004 ;-- Am. 2006, Act 56, Imd. Eff. Mar. 13, 2006
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11547 Grant program; establishment; purpose; interlocal agreements; separate planning grant; appropriation; use of grant funds by department; rules; financial assistance to certified health department.

Sec. 11547. (1) In order for a county to effectively implement the planning responsibilities designated under this part, a grant program is established to provide financial assistance to county or regional solid waste management planning agencies. Municipalities joined together with interlocal agreements relating to solid waste management plans, within a county having a city of a population of more than 750,000, are eligible for a separate planning grant in addition to those granted to counties. This separate grant allocation provision does not alter the planning and approval process requirements for county plans as specified in this part. Eighty percent of the money for the program not provided for by federal funds shall be appropriated annually by the legislature from the general fund of the state and 20% shall be appropriated by the applicant. Grant funds appropriated for local planning may be used by the department if the department finds it necessary to invoke the department's authority to develop a local plan under section 11533(6). The department shall promulgate rules for the distribution of the appropriated funds.

(2) In order for a certified health department to effectively implement the responsibilities designated under this part, an annual grant shall be appropriated by the legislature from the general fund of the state to provide financial assistance to a certified health department. A certified health department is eligible to receive 100% of reasonable personnel costs as determined by the department based on criteria established by rule. The department shall promulgate rules for the distribution of the appropriated funds.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 1998, Act 466, Imd. Eff. Jan. 4, 1999
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11548 Private sector; legislative intent; salvaging not prohibited.
Sec. 11548. (1) This part is not intended to prohibit the continuation of the private sector from doing business in solid waste disposal and transportation. This part is intended to encourage the continuation of the private sector in the solid waste disposal and transportation business when in compliance with the minimum requirements of this part.

(2) This part is not intended to prohibit salvaging.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11549 Violation as misdemeanor; violation as felony; penalty; separate offenses.
Sec. 11549. (1) A person who violates this part, a rule promulgated under this part, or a condition of a permit, license, or final order issued pursuant to this part is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 for each violation and costs of prosecution and, if in default of payment of fine and costs, imprisonment for not more than 6 months.

(2) A person who knowingly violates section 11526e is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $5,000.00, or both.

(3) Each day upon which a violation described in this section occurs is a separate offense.

History: 1994, Act 451, Eff. Mar. 30, 1995 ;-- Am. 2006, Act 58, Imd. Eff. Mar. 13, 2006
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

324.11550 Solid waste management fund; creation; deposit of money into fund; establishment of solid waste staff account and perpetual care account; expenditures; report.
Sec. 11550. (1) The solid waste management fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(2) Money in the solid waste management fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) The state treasurer shall establish, within the solid waste management fund, a solid waste staff account and a perpetual care account.

(4) Money shall be expended from the solid waste staff account, upon appropriation, only for the following purposes:

(a) Preparing generally applicable guidance regarding the solid waste permit and license program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit or license, permit or license revision, or permit or license renewal, including the cost of public notice and public hearings.

(c) Performing an advisory analysis under section 11510(1).

(d) General administrative costs of running the permit and license program, including permit and license tracking and data entry.

(e) Inspection of licensed disposal areas and open dumps.

(f) Implementing and enforcing the conditions of any permit or license.

(g) Groundwater monitoring audits at disposal areas which are or have been licensed under this part.

(h) Reviewing and acting upon corrective action plans for disposal areas which are or have been licensed under this part.

(i) Review of certifications of closure.

(j) Postclosure maintenance and monitoring inspections and review.

(k) Review of bonds and financial assurance documentation at disposal areas which are or have been licensed under this part.

(5) Money shall be expended from the perpetual care account only for the purpose of conducting the following activities at disposal areas which are or have been licensed under this part:

(a) Postclosure maintenance and monitoring at a disposal area where the owner or operator is no longer required to do so.

(b) To conduct closure, or postclosure maintenance and monitoring and corrective action if necessary, at a disposal area where the owner or operator has failed to do so. Money shall be expended from the account only after funds from any perpetual care fund or other financial assurance mechanisms held by the owner or operator have been expended and the department has used reasonable efforts to obtain funding from other sources.

(6) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairs of the standing committees of the senate and house of representatives with primary responsibility for issues related to natural resources and the environment, and the chairs of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the staff account of the solid waste management fund established in this section. This report shall include, at a minimum, all of the following as it relates to the department:

(a) The number of full-time equated positions performing solid waste management permitting, compliance, and enforcement activities.

(b) All of the following information related to the construction permit applications received under section 11509:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within 120 days of receipt as required by section 11511.

(c) All of the following information related to the operating license applications received under section 11512:

(i) The number of applications received by the department, reported as the number of applications determined to be administratively incomplete and the number determined to be administratively complete.

(ii) The number of applications determined to be administratively complete for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.

(iii) The percentage and number of applications determined to be administratively complete for which a final decision was made within 90 days of receipt as required by section 11516.

(d) The number of inspections conducted at licensed disposal areas as required by section 11519.

(e) The number of letters of warning sent to licensed disposal areas.

(f) The number of contested case hearings and civil actions initiated and completed, the number of voluntary consent orders and administrative orders entered or issued, and the amount of fines and penalties collected through such actions or orders.

(g) For each enforcement action that includes a penalty, a description of what corrective actions were required by the enforcement action.

(h) The number of solid waste complaints received, investigated, resolved, and not resolved by the department.

(i) The amount of revenue in the staff account of the solid waste management fund at the end of the fiscal year.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996 ;-- Am. 2003, Act 153, Eff. Oct. 1, 2003
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Solid Waste Act

Chapter 8
UNDERGROUND STORAGE TANKS

Part 211
UNDERGROUND STORAGE TANK REGULATIONS

****** 324.21101 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21101 Definitions; applicability of certain authority.
Sec. 21101. As used in this part:

(a) “Department” means the department of natural resources, underground storage tank division.

(b) “Fund” means the underground storage tank regulatory enforcement fund created in section 21104.

(c) “Local unit of government” means a municipality, county, or governmental authority or any combination of municipalities, counties, or governmental authorities.

(d) “Natural gas” means natural gas, synthetic gas, and manufactured gas.

(e) “Operator” means a person who is presently, or was at the time of a release, in control of or responsible for the operation of an underground storage tank system.

(f) “Owner” means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located, including, but not limited to, a trust, vendor, vendee, lessor, or lessee. However, owner does not include a person or a regulated financial institution who, without participating in the management of an underground storage tank system

and who is not otherwise engaged in petroleum production, refining, or marketing relating to the underground storage tank system, is acting in a fiduciary capacity or who holds indicia of ownership primarily to protect the person's or the regulated financial institution's security interest in the underground storage tank system or the property on which it is located. This exclusion does not apply to a grantor, beneficiary, remainderman, or other person who could directly or indirectly benefit financially from the exclusion other than by the receipt of payment for fees and expenses related to the administration of a trust.

(g) “Regulated substance” means any of the following:

(i) A substance defined in section 101(14) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9601, but not including a substance regulated as a hazardous waste under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b.

(ii) Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). Petroleum includes but is not limited to mixtures of petroleum with de minimis quantities of other regulated substances, and petroleum-based substances composed of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, or finishing such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and petroleum solvents.

(iii) A substance listed in section 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(h) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank system into groundwater, surface water, or subsurface soils.

(i) “Underground storage tank system” means a tank or combination of tanks, including underground pipes connected to the tank or tanks, which

is, was, or may have been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to the tank or tanks, is 10% or more beneath the surface of the ground. An underground storage tank system does not include any of the following:

(i) A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(ii) A tank used for storing heating oil for consumptive use on the premises where the tank is located.

(iii) A septic tank.

(iv) A pipeline facility, including gathering lines regulated under either of the following:

(A) The natural gas pipeline safety act of 1968, Public Law 90-481, 49 U.S.C. Appx 1671 to 1677, 1679a to 1682, and 1683 to 1687.

(B) Sections 201 to 215 and 217 of the hazardous liquid pipeline safety act of 1979, title II of Public Law 96-129, 49 U.S.C. Appx 2001 to 2015.

(v) A surface impoundment, pit, pond, or lagoon.

(vi) A storm water or wastewater collection system.

(vii) A flow-through process tank.

(viii) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(ix) A storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(x) Any pipes connected to a tank that is described in subparagraphs (i) to (xvi).

(xi) An underground storage tank system holding hazardous wastes listed or identified under subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6921 to 6931 and 6933 to 6939b, or a mixture of such hazardous waste and other regulated substances.

(xii) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) of title III or section 402 of title IV of the federal water pollution control act, 33 U.S.C. 1317 and 1342.

(xiii) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(xiv) An underground storage tank system with a capacity of 110 gallons or less.

(xv) An underground storage tank system that contains a de minimis concentration of regulated substances.

(xvi) An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

History: 1994, Act 451, Eff. Mar. 30, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Underground Storage Tank Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

****** 324.21102 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21102 Underground storage tank system; registration or renewal of registration; exemption; notification of change; indication of materials stored; tests; forwarding copy of registration or notification of change to local unit of government; registration fee; deposit of fees; rules; exemption; notification of closure or removal; continuation of fees.

Sec. 21102. (1) A person who is the owner of an underground storage tank system shall register and annually renew the registration on the underground storage tank system with the department. However, the owner or operator of an underground storage tank closed prior to January 1, 1974 in compliance with the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, and the rules promulgated under that act, is exempt from the registration requirements of this section.

(2) A person who is the owner of an underground storage tank system shall register the underground storage tank system with the department prior to bringing the underground storage tank system into use. Additionally, an installation registration form containing the information required by the department shall be submitted to the department at least 45 days prior to the installation of the underground storage tank system.

(3) The department shall accept the registration or renewal of registration of an underground storage tank system under this section only if the owner of the underground storage tank system pays the registration fee specified in subsection (8).

(4) Except as otherwise provided in subsections (5) and (6), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) shall notify the department of any change in the information required under section 3 or of the removal of an underground storage tank system from service.

(5) A person who is the owner of an underground storage tank system, the contents of which are changed routinely, may indicate all the materials that are stored in the underground storage tank system on the registration form described in section 21103. A person providing the

information described in this subsection is not required to notify the department of changes in the contents of the underground storage tank system unless the material to be stored in the system differs from the information provided on the registration form.

(6) Except as otherwise provided in section 21103(2), a person who is the owner of an underground storage tank system registered under subsection (1) or (2) is not required to notify the department of a test conducted on the tank system but shall furnish this information upon the request of the department.

(7) Upon the request of a local unit of government in which an underground storage tank system is located, the department shall forward a copy of registration or notification of change to the local unit of government where the underground storage tank system is located.

(8) Except as provided in section 21104(3), the owner of an underground storage tank system shall, upon registration or renewal of registration, pay a registration fee of $100.00 for each underground storage tank included in that underground storage tank system. The department shall deposit all registration fees it collects into the fund.

(9) The department may promulgate rules that require proof of registration under this part to be attached to the underground storage tank system or to the property where the underground storage tank system is located.

(10) Except as otherwise provided in this subsection, an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed pursuant to rules promulgated under this part is exempt from the requirements of this section. However, the owner of an underground storage tank system or an underground storage tank that is part of the system that has been closed or removed shall notify the department of the closure or removal pursuant to rules promulgated by the department. The owner of an underground storage tank system shall continue to pay registration fees on underground storage tanks that have been closed or removed until notification of the

closure or removal is provided on the required form pursuant to these rules.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21103 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21103 Registration forms; suspected or confirmed release from system; notice; supplementary information.
Sec. 21103. (1) The registration required by section 21102(1) and (2) shall be provided either:

(a) On a form provided by the department and in compliance with section 9002 of the solid waste disposal act, 42 U.S.C. 6991a.

(b) On a form approved by the department and in compliance with section 9002 of the solid waste disposal act.

(2) If there is a suspected or confirmed release from an underground storage tank system, the owner or operator of the underground storage tank system shall notify the department within 24 hours and if requested by the department shall file the following supplementary information if known:

(a) The owner of the property where the underground storage tank system is located.

(b) A history of the current and previous contents of the underground storage tank system, including the generic chemical name, chemical abstract service number, or trade name, whichever is most descriptive of the contents, and including the date or dates on which the contents were changed or removed.

(c) A history of the monitoring procedures and leak detection tests and methods employed with respect to the underground storage tank system and the resulting findings.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21104 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21104 Underground storage tank regulatory enforcement fund; creation; receipts; investment; crediting interest and earnings; reversion to general fund prohibited; use of money; suspension of registration fee; notice of balance in fund.
Sec. 21104. (1) The underground storage tank regulatory enforcement fund is created in the state treasury. The fund may receive money as provided in this part and as otherwise provided by law. The state treasurer shall direct the investment of the fund. Interest and earnings of the fund shall be credited to the fund. Money in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(2) Money in the fund shall be used only by the department to enforce this part and the rules promulgated under this part and the rules promulgated under the fire prevention code, Act No. 207 of the Public Acts of 1941, being sections 29.1 to 29.33 of the Michigan Compiled Laws, pertaining to the delivery and dispensing operations of regulated substances.

(3) Notwithstanding section 21102(8), if at the close of any fiscal year the amount of money in the fund exceeds $8,000,000.00, the department shall not collect a registration fee for the following year from existing underground storage tank systems. After the registration fee has been suspended under this subsection, it shall only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than $4,000,000.00.

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

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21105 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21105 Collection and evaluation of information; report.
Sec. 21105. The department shall collect and evaluate the information obtained through the registration of underground storage tanks required by section 21102. Not later than September 30, 1987, the department shall provide to the legislature a report containing a compilation of the underground storage tank registration data and an assessment of the actual and potential environmental hazard posed by the tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21106 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21106 Rules.
Sec. 21106. The department shall promulgate rules relating to underground storage tank systems that are at least as stringent as the rules promulgated by the United States environmental protection agency under subtitle I of title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i. These rules shall include a requirement that the owner or operator of an underground storage tank system provide financial responsibility in the event of a release from the underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 29.2101 et seq. of the Michigan Administrative Code.

****** 324.21107 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21107 Maintaining pollution liability insurance; limits.
Sec. 21107. A person who installs or removes underground storage tank systems shall maintain pollution liability insurance with limits of not less than $1,000,000.00 per occurrence.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21108 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21108 Enforcement of part and rules.
Sec. 21108. (1) The department shall enforce this part and the rules promulgated under this part.

(2) The department may delegate the authority to enforce this part and the rules promulgated under this part to a local unit of government that has sufficient employees who are certified by the department under subsection (3) as underground storage tank system inspectors. A local unit of government may apply for delegation under this section by submitting a resolution of the governing body of the local unit of government and an application containing the information required by the department. The department may revoke a delegation under this section for a violation of this part, the rules promulgated under this part, or a contract entered between the department and the local unit of government.

(3) The department may certify individuals who are qualified to enforce this part and the rules promulgated under this part as underground storage tank system inspectors. The department may revoke an individual's certification under this section for violating this part or rules promulgated under this part.

(4) If the department elects to delegate enforcement authority under subsection (2), the department shall promulgate rules that do both of the following:

(a) Establish criteria for delegation under subsection (2).

(b) Establish qualifications for certification of individuals as underground storage tank system inspectors under subsection (3).

(5) The department may contract with a local unit of government for the purpose of enforcing this part and the rules promulgated under this part.

(6) The department or a certified underground storage tank system inspector within his or her jurisdiction, at the discretion of the department or inspector and without a complaint and without restraint or liability for trespass, may, at an hour reasonable under the circumstances involved, enter into and upon real property including a building or premises where regulated substances may be stored for the purpose of inspecting and examining the property, buildings, or premises, and their occupancies and contents to determine compliance with this part and the rules promulgated under this part.

(7) The department shall enhance its audit and inspection program to monitor the installation and operation of new underground storage tank systems or components to ensure that equipment meets minimum quality standards, that the installation is done properly, and that the monitoring systems are properly utilized.

(8) The department shall conduct a study regarding the causes of underground storage tank leaks and prepare a report making recommendations regarding upgrading underground storage tank system

standards, establishing timetables for the replacement of equipment, and instituting any other practices or procedures which will minimize releases of regulated substances into the environment. The report shall be submitted by July 1, 1995 to the members of the legislature who are members of committees dealing with natural resource issues.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21109 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21109 Additional safeguards; resolution; enactment or enforcement of certain ordinances prohibited.
Sec. 21109. (1) The department may, upon resolution of the governing body of a local unit of government in whose jurisdiction an underground storage tank system is being installed, require additional safeguards, other than those specified in rules, when the public health, safety, or welfare, or the environment is endangered.

(2) A local unit of government shall not enact or enforce a provision of an ordinance that is inconsistent with this part or rules promulgated under this part.

(3) A local unit of government shall not enact or enforce a provision of an ordinance that requires a permit, license, approval, inspection, or the payment of a fee or tax for the installation, use, closure, or removal of an underground storage tank system.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21110 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21110 Prohibited conduct.
Sec. 21110. (1) A person shall not knowingly deliver a regulated substance into an underground storage tank system that is not registered under this part.

(2) A person shall not repair or test an underground storage tank system that is not registered under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21111 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21111 Deferments.
Sec. 21111. The following are deferred from regulation under this part until such time as the department determines that they should be regulated:

(a) Wastewater treatment tank systems.

(b) An underground storage tank system containing radioactive material that is regulated under the atomic energy act of 1954, chapter 1073, 68 Stat. 919.

(c) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. part 50, appendix A to part 50 of title 10 of the code of federal regulations.

(d) Airport hydrant fuel distribution systems.

(e) Underground storage tank systems with field-constructed tanks.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21112 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21112 Violation; misdemeanor; penalty; civil fine.
Sec. 21112. (1) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(2) A person who violates this part or a rule promulgated under this part or who knowingly submits false information when registering an underground storage tank system under this part is subject to a civil fine of not more than $5,000.00 for each underground storage tank system for each day of violation. A civil fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with this part and the rules promulgated under this part.

(3) A civil fine collected under subsection (2) shall be deposited into the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

****** 324.21113 THIS SECTION IS REPEALED BY ACT 451 OF 1994 EFFECTIVE UPON THE EXPIRATION OF 12 MONTHS AFTER PART 215 BECOMES INVALID PURSUANT TO SECTION 21546 (3) ******

324.21113 Repeal of part.
Sec. 21113. This part is repealed upon the expiration of 12 months after part 215 becomes invalid pursuant to section 21546(3).

History: 1994, Act 451, Eff. Mar. 30, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 301

INLAND LAKES AND STREAMS

324.30101 Definitions.

Sec. 30101. As used in this part:

(a) "Bottomland" means the land area of an inland lake or stream that lies below the ordinary high-water mark and that may or may not be covered by water.

(b) "Bulkhead line" means a line that is established pursuant to this part beyond which dredging, filling, or construction of any kind is not allowed without a permit.

(c) "Dam" means an artificial barrier, including dikes, embankments, and appurtenant works, that impounds, diverts, or is designed to impound or divert water.

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

(e) "Fund" means the land and water management permit fee fund created in section 30113.

(f) "Height of the dam" means the difference in elevation measured vertically between the natural bed of an inland lake or stream at the downstream toe of the dam, or, if it is not across a stream channel or watercourse, from the lowest elevation of the downstream toe of the dam, to the design flood elevation or to the lowest point of the top of the dam, whichever is less.

(g) "Impoundment" means water held back by a dam, dike, floodgate, or other barrier.

(h) "Inland lake or stream" means a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water, including the St. Marys, St. Clair, and Detroit rivers. Inland lake or stream does not include the Great Lakes, Lake St. Clair, or a lake or pond that has a surface area of less than 5 acres.

(i) "Marina" means a facility that is owned or operated by a person, extends into or over an inland lake or stream, and offers service to the public or members of the marina for docking, loading, or other servicing of recreational watercraft.

(j) "Minor offense" means either of the following violations of this part if the project involved in the offense is a minor project as listed in R 281.816 of the Michigan administrative code or the department determines that restoration of the affected property is not required:

(i) The failure to obtain a permit under this part.

(ii) A violation of a permit issued under this part.

(k) "Ordinary high-water mark" means the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high-water mark.

(l) "Project" means an activity that requires a permit pursuant to section 30102.

(m) "Property owners' association" means any group of organized property owners publishing a directory of their membership, the majority of which are riparian owners and are located on the inland lake or stream that is affected by the proposed project.

(n) "Riparian owner" means a person who has riparian rights.

(o) "Riparian rights" means those rights which are associated with the ownership of the bank or shore of an inland lake or stream.

(p) "Seasonal structure" includes any type of dock, boat hoist, ramp, raft, or other recreational structure that is placed into an inland lake or stream and removed at the end of the boating season.

(q) "Structure" includes a marina, wharf, dock, pier, dam, weir, stream deflector, breakwater, groin, jetty, sewer, pipeline, cable, and bridge.

(r) "Upland" means the land area that lies above the ordinary high-water mark.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2006, Act 275, Imd. Eff. July 7, 2006
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.30102 Operations prohibited without permit.
Sec. 30102. Except as provided in this part, a person without a permit from the department shall not do any of the following:

(a) Dredge or fill bottomland.

(b) Construct, enlarge, extend, remove, or place a structure on bottomland.

(c) Erect, maintain, or operate a marina.

(d) Create, enlarge, or diminish an inland lake or stream.

(e) Structurally interfere with the natural flow of an inland lake or stream.

(f) Construct, dredge, commence, extend, or enlarge an artificial canal, channel, ditch, lagoon, pond, lake, or similar waterway where the purpose is ultimate connection with an existing inland lake or stream, or where any part of the artificial waterway is located within 500 feet of the ordinary high-water mark of an existing inland lake or stream.

(g) Connect any natural or artificially constructed waterway, canal, channel, ditch, lagoon, pond, lake, or similar water with an existing inland lake or stream for navigation or any other purpose.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.30103 Exceptions; "water withdrawal" defined.
Sec. 30103. (1) A permit is not required under this part for any of the following:

(a) Any fill or structure existing before April 1, 1966, in waters covered by former 1965 PA 291, and any fill or structures existing before January 9, 1973, in waters covered for the first time by former 1972 PA 346.

(b) A seasonal structure placed on bottomland to facilitate private noncommercial recreational use of the water if it does not unreasonably interfere with the use of the water by others entitled to use the water or interfere with water flow.

(c) Reasonable sanding of beaches to the existing water's edge by a riparian owner.

(d) Construction or maintenance of a private agricultural drain regardless of outlet.

(e) A waste collection or treatment facility that is ordered to be constructed or is approved for construction by the department.

(f) Construction and maintenance of minor drainage structures and facilities which are identified by rule promulgated by the department pursuant to section 30110(1). Before such a rule is promulgated, the rule shall be approved by the majority of a committee consisting of the director, the director of the department of agriculture, and the director of the state transportation department or their designated representatives. The rules shall be reviewed at least annually.

(g) Maintenance and improvement of all drains legally established or constructed prior to January 1, 1973, pursuant to the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, except those legally established drains constituting mainstream portions of certain natural watercourses identified in rules promulgated by the department under section 30110.

(h) Projects constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666, 16 USC 1001 to 1008 and 1010.

(i) Construction and maintenance of privately owned cooling or storage ponds used in connection with a public utility except at the interface with public waters.

(j) Maintenance of a structure constructed under a permit issued pursuant to this part and identified by rule promulgated under section 30110(1), if the maintenance is in place and in kind with no design or materials modification.

(k) A water withdrawal.

(2) As used in this section, "water withdrawal" means the removal of water from its source for any purpose.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006
Popular Name: Act 451
Admin Rule: R 281.811 et seq. of the Michigan Administrative Code.
Popular Name: NREPA

324.30104 Application for permit; fees.

Sec. 30104. (1) A person shall not undertake a project subject to this part except as authorized by a permit issued by the department pursuant to part 13. An application for a permit shall include any information that may be required by the department. If a project includes activities at multiple locations, 1 application may be filed for the combined activities.

(2) Except as provided in subsections (3) and (4), until October 1, 2011, an application for a permit shall be accompanied by a fee based on an administrative cost in accordance with the following schedule:

(a) For a minor project listed in R 281.816 of the Michigan administrative code, or a seasonal drawdown or the associated reflooding, or both, of a dam or impoundment for the purpose of weed control, a fee of $50.00. However, for a permit for a seasonal drawdown or associated reflooding, or both, of a dam or impoundment for the purpose of weed control that is issued for the first time after October 9, 1995, an initial fee of $500.00 with subsequent permits for the same purpose being assessed a $50.00 fee.

(b) For authorization under a general permit, a $50.00 fee.

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

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

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

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

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

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

(d) For renewal of a marina operating permit, a fee of $50.00.

(e) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of $2,000.00:

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

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

(iii) Seawalls, bulkheads, or revetments of 500 feet or more.

(iv) Filling or draining of 1 acre or more of wetland contiguous to a lake or stream.

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

(vi) Shore projections, such as groins and underwater stabilizers, that extend 150 feet or more into a lake or stream.

(vii) New commercial docks or wharves of 300 feet or more in length.

(viii) Stream enclosures 100 feet or more in length.

(ix) Stream relocations 500 feet or more in length.

(x) New golf courses.

(xi) Subdivisions.

(xii) Condominiums.

(f) For all other projects not listed in subdivisions (a) through (e), a fee of $500.00.

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

(a) Part 303.

(b) Part 323.

(c) Part 325.

(d) Section 3104.

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995 ;-- Am. 1996, Act 97, Imd. Eff. Feb. 28, 1996 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2006, Act 275, Imd. Eff. July 7, 2006 ;-- Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006 ;-- Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008
Popular Name: Act 451
Popular Name: NREPA

****** 324.30104b THIS SECTION IS REPEALED BY ACT 592 OF 2006 EFFECTIVE OCTOBER 1, 2010 *****

324.30104b Applicability of MCL 324.30306b to proposed project or permit application; repeal of section effective October 1, 2010.
Sec. 30104b. (1) Section 30306b applies to a proposed project or a permit application under this part.

(2) This section is repealed effective October 1, 2010.

History: Add. 2006, Act 592, Imd. Eff. Jan. 3, 2007
Popular Name: Act 451
Popular Name: NREPA

324.30105 Pending applications; posting on website; public hearing; review of application; statement; final inspection and certification; notice of hearing; conditional permit in emergency; provisions applicable to minor project; issuance of general permits; minor project category; "small qualifying dam" defined.
Sec. 30105. (1) The department shall post on its website all of the following under this part:

(a) A list of pending applications.

(b) Public notices.

(c) Public hearing schedules.

(2) The department may hold a public hearing on pending applications.

(3) Except as otherwise provided in this section, upon receiving an application, the department shall submit copies for review to the director of the department of community health or the local health department designated by the director of the department of community health, to the city, village, or township and the county where the project is to be located, to the local conservation district, to the watershed council established under part 311, if any, to the local port commission, if any, and to the persons required to be included in the application pursuant to section 30104(1). Each copy of the application shall be accompanied by a statement that unless a written request is filed with the department within 20 days after the submission for review, the department may grant

the application without a public hearing where the project is located. The department may hold a public hearing upon the written request of the applicant or a riparian owner or a person or governmental unit that is entitled to receive a copy of the application pursuant to this subsection.

(4) After completion of a project for which an application is approved, the department may cause a final inspection to be made and certify to the applicant that the applicant has complied with the department's permit requirements.

(5) At least 10 days' notice of a hearing to be held under this section shall be given by publication in a newspaper circulated in the county where the project is to be located, to the person requesting the hearing, and to the persons and governmental units that are entitled to receive a copy of the application pursuant to subsection (3).

(6) In an emergency, the department may issue a conditional permit before the expiration of the 20-day period referred to in subsection (3).

(7) The department, by rule, may establish minor project categories of activities and projects that are similar in nature and have minimal adverse environmental impact. The department may act upon an application received pursuant to section 30104 for an activity or project within a minor project category without providing notices or holding a public hearing pursuant to subsection (3). A final inspection or certification of a project completed under a permit granted pursuant to this subsection is not required, but all other provisions of this part are applicable to a minor project.

(8) The department, after notice and an opportunity for a public hearing, may issue general permits on a statewide basis or within a local unit of government for projects that are similar in nature, that will cause only minimal adverse environmental impacts when performed separately, and that will only have minimal cumulative adverse impact on the environment. A general permit issued under this subsection shall not be valid for more than 5 years. Among the activities the department may

consider for general permit eligibility under this subsection are the following:

(a) The removal of qualifying small dams.

(b) The maintenance or repair of an existing pipeline, if the pipeline is maintained or repaired in a manner to assure that any adverse impact on the lake or stream will be minimized.

(9) The department may issue, deny, or impose conditions on project activities authorized under a minor project category or a general permit if the conditions are designed to remove an impairment to the lake or stream, to mitigate the impact of the project, or to otherwise improve water quality. The department may also establish a reasonable time when the proposed project is to be completed or terminated.

(10) If the department determines that activity in a proposed project, although within a minor project category or a general permit, is likely to cause more than minimal adverse environmental impacts, the department may require that the application be processed according to subsection (3) and reviewed for compliance with section 30106.

(11) As used in this section, "qualifying small dam" means a dam that meets all of the following conditions:

(a) The height of the dam is less than 2 feet.

(b) The impoundment from the dam covers less than 2 acres.

(c) The dam does not serve as the first dam upstream from the Great Lakes or their connecting waterways.

(d) The dam is not serving as a sea lamprey barrier.

(e) There are no threatened or endangered species that have been identified in the area that will be impacted by the project.

(f) There are no known areas of contaminated sediments in the area that will be impacted by the project.

(g) The department has received written permission for the removal of the dam from all riparian property owners adjacent to the dam's impoundment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2006, Act 275, Imd. Eff. July 7, 2006 ;-- Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 281.811 et seq. of the Michigan Administrative Code.

324.30106 Prerequisite to issuance of permit; specification in permit.
Sec. 30106. The department shall issue a permit if it finds that the structure or project will not adversely affect the public trust or riparian rights. In passing upon an application, the department shall consider the possible effects of the proposed action upon the inland lake or stream and upon waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry. The department shall not grant a permit if the proposed project or structure will unlawfully impair or destroy any of the waters or other natural resources of the state. This part does not modify the rights and responsibilities of any riparian owner to the use of his or her riparian water. A permit shall specify that a project completed in accordance with this part shall not cause unlawful pollution as defined by part 31.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30107 Duration, terms, and revocation of permit; hearing; modification or revocation of general permit.
Sec. 30107. (1) A permit is effective until revoked for cause but not beyond its term and may be subject to renewal. A permit may specify the term and conditions under which the work is to be carried out. A permit

may be revoked after a hearing for violation of any of its provisions, any provision of this part, any rule promulgated under this part, or any misrepresentation in application.

(2) A general permit may be modified or revoked if, after opportunity for a public hearing, the department determines that the activities authorized by the general permit have more than a minimal adverse impact on the environment on an individual or cumulative basis, or the activities generally would be more appropriately processed according to section 30105(3) and reviewed for compliance with section 30106.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 531, Imd. Eff. Dec. 29, 2006
Popular Name: Act 451
Popular Name: NREPA

324.30108 Bulkhead line; establishment; application; jurisdiction; duties.

Sec. 30108. The department may establish by permit a bulkhead line on its own application or on the application of a local unit of government. The application shall be filed as provided in section 30104(1) with public notice and hearings as provided in section 30105. Upon acceptance of the bulkhead line by the affected units of government, the area landward of the bulkhead line shall after that acceptance be under the jurisdiction of those units of government as to the placement of structures and fills in the waters unless jurisdiction is returned to the state. In establishing a bulkhead line, the department shall provide for local requirements and ensure the public trust in the adjacent waters against unreasonable interferences.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30109 Ordinary high-water mark agreement with riparian owner; agreement as proof of location; fee.

Sec. 30109. Upon the written request of a riparian owner and upon payment of a service fee, the department may enter into a written

agreement with a riparian owner establishing the location of the ordinary high-water mark for his or her property. In the absence of substantially changed conditions, the agreement shall be conclusive proof of the location in all matters between the state and the riparian owner and his or her successors in interest. Until October 1, 2011, the service fee provided for in this section shall be $500.00. The department shall forward all service fees collected under this section to the state treasurer for deposit into the fund.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003 ;-- Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008
Popular Name: Act 451
Popular Name: NREPA

324.30110 Rules; promulgation and enforcement; hearing; review; proceeding by riparian owner.

Sec. 30110. (1) The department may promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, he or she may request a formal hearing on the matter involved. The hearing shall be conducted by the commission in accordance with the provisions for contested cases in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A determination, action, or inaction by the commission following the hearing is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969.

(4) This section does not limit the right of a riparian owner to institute proceedings in any circuit court of the state against any person when necessary to protect his or her rights.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 281.811 et seq. of the Michigan Administrative Code.

324.30111 Rights of riparian owner as to water frontage and exposed bottomland.

Sec. 30111. This part does not deprive a riparian owner of rights associated with his or her ownership of water frontage. A riparian owner among other rights controls any temporarily or periodically exposed bottomland to the water's edge, wherever it may be at any time, and holds the land secure against trespass in the same manner as his or her upland subject to the public trust to the ordinary high-water mark.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30112 Civil action; commencement by department; fine; violation as misdemeanor; penalty; civil penalty as appropriate to violation.

Sec. 30112. (1) The department may commence a civil action in the circuit court of the county in which a violation occurs to enforce compliance with this part, to restrain violation of this part or any action contrary to an order of the department denying a permit, to enjoin the further performance of, or order the removal of, any project that is undertaken contrary to this part or after denial of a permit by the department, or to order the restoration of the affected area to its prior condition.

(2) In a civil action commenced under this part, the circuit court, in addition to any other relief granted, may assess a civil fine of not more than $5,000.00 per day for each day of violation.

(3) Except as provided in subsection (4), a person who violates this part or a permit issued under this part is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00 per day for each day of violation.

(4) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of

the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(5) A person who knowingly makes a false statement, representation, or certification in an application for a permit or in a notice or report required by a permit, or a person who knowingly renders inaccurate any monitoring device or method required to be maintained by a permit, is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00 per day for each day of violation.

(6) Any civil penalty assessed, sought, or agreed to by the department shall be appropriate to the violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30113 Land and water management permit fee fund.
Sec. 30113. (1) The land and water management permit fee fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The state treasurer shall annually present to the department an accounting of the amount of money in the fund.

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

(4) The department shall expend money from the fund, upon appropriation, only to implement this part and the following:

(a) Sections 3104, 3107, and 3108.

(b) Before October 1, 2004, section 12562 of the public health code, 1978 PA 368, MCL 333.12562, or, on or after October 1, 2004, part 33.

(c) Part 303.

(d) Part 315.

(e) Part 323.

(f) Part 325.

(g) Part 339.

(h) Part 353.

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

(5) The department shall annually report to the legislature how money in the fund was expended during the previous fiscal year.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 171, Imd. Eff. Oct. 9, 1995 ;-- Am. 2004, Act 246, Eff. Oct. 1, 2004 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2006, Act 496, Imd. Eff. Dec. 29, 2006
Popular Name: Act 451
Popular Name: NREPA

Part 303

WETLANDS PROTECTION

324.30301 Definitions.
Sec. 30301. As used in this part:

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

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

(i) Manual or mechanized leveling of sand.

(ii) Mowing of vegetation.

(iii) Manual de minimis removal of vegetation.

(iv) Grooming of soil.

(v) Construction and maintenance of a path.

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

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

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

(f) “Fill material” means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

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

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

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

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

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

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

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

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

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

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

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

(ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size; except this subparagraph shall not be of effect, except for the purpose of inventorying, in counties of

less than 100,000 population until the department certifies to the commission it has substantially completed its inventory of wetlands in that county.

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30302 Legislative findings; criteria to be considered in administration of part.

Sec. 30302. (1) The legislature finds that:

(a) Wetland conservation is a matter of state concern since a wetland of 1 county may be affected by acts on a river, lake, stream, or wetland of other counties.

(b) A loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland:

(i) Flood and storm control by the hydrologic absorption and storage capacity of the wetland.

(ii) Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

(iii) Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.

(iv) Pollution treatment by serving as a biological and chemical oxidation basin.

(v) Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

(vi) Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

(c) Wetlands are valuable as an agricultural resource for the production of food and fiber, including certain crops which may only be grown on sites developed from wetland.

(d) That the extraction and processing of nonfuel minerals may necessitate the use of wetland, if it is determined pursuant to section 30311 that the proposed activity is dependent upon being located in the wetland and that a prudent and feasible alternative does not exist.

(2) In the administration of this part, the department shall consider the criteria provided in subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30303 Studies regarding wetland resources; contracts; study as public record for distribution at cost.
Sec. 30303. The department may enter into an agreement to make contracts with the federal government, other state agencies, local units of government, private agencies, or persons for the purposes of making studies for the efficient preservation, management, protection, and use of wetland resources. A study shall be available as a public record for distribution at cost as provided in section 4 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.234 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30304 Prohibited activities.
Sec. 30304. Except as otherwise provided in this part or by a permit issued by the department under sections 30306 to 30314 and pursuant to part 13, a person shall not do any of the following:

(a) Deposit or permit the placing of fill material in a wetland.

(b) Dredge, remove, or permit the removal of soil or minerals from a wetland.

(c) Construct, operate, or maintain any use or development in a wetland.

(d) Drain surface water from a wetland.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30305 Activities not requiring permit under part; uses allowed without permit; farming operation in wetland not requiring permit; incidental creation of wetland.

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

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

(a) Fishing, trapping, or hunting.

(b) Swimming or boating.

(c) Hiking.

(d) Grazing of animals.

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

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

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

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

(i) An existing private agricultural drain.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 550, Imd. Eff. Jan. 15, 1997 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30306 Permit for use or development listed in MCL 324.30304; filing, form, and contents of application; proposed use or development as single permit application; fee; work done in violation of permit requirement; fee refund.
Sec. 30306. (1) Except as provided in section 30307(6), to obtain a permit for a use or development listed in section 30304, a person shall file an application with the department on a form provided by the department. The application shall include all of the following:

(a) The person's name and address.

(b) The location of the wetland.

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

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

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

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

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

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

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

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

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

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

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

(iii) A new golf course impacting wetland.

(iv) A subdivision impacting wetland.

(v) A condominium impacting wetland.

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

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

(a) Section 3104.

(b) Part 301.

(c) Part 323.

(d) Part 325.

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1998, Act 228, Imd. Eff. July 3, 1998 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

****** 324.30306b THIS SECTION IS REPEALED BY ACT 592 OF 2006 EFFECTIVE OCTOBER 1, 2010 ******

324.30306b Preapplication meeting; fee; withdrawal of request; refund of fee; duration of written agreement.

Sec. 30306b. (1) If a preapplication meeting is requested in writing by the landowner or another person who is authorized in writing by the landowner, the department shall meet with the person or his or her representatives to review a proposed project or a proposed permit application in its entirety. The preapplication meeting shall take place at the department's district office for the district that includes the project site or at the project site itself, as specified in the request.

(2) Except as provided in this subsection, the request shall be accompanied by a fee. The fee for a preapplication meeting at the district office is $150.00. The fee for a preapplication meeting at the project site is $250.00 for the first acre or portion of an acre of project area, plus $50.00 for each acre or portion of an acre in excess of the first acre, but not to exceed a fee of $1,000.00. However, if the location of the project is a single family residential lot that is less than 1 acre in size, there is no fee for a preapplication meeting at the district office, and the fee for a preapplication meeting at the project site is $100.00.

(3) If the person withdraws the request at least 24 hours before the preapplication meeting, the department may agree with the person to reschedule the meeting or shall promptly refund the fee and need not meet as provided in this section. Otherwise, if, after agreeing to the time and place for a preapplication meeting, the person is not represented at the meeting, the person shall forfeit the fee for the meeting. If, after agreeing to the time and place for a preapplication meeting, the department is not represented at the meeting, the department shall refund the fee and send a representative to a rescheduled meeting to be held within 10 days of the first scheduled meeting date.

(4) Any written agreement provided by the department as a result of the preapplication meeting regarding the need to obtain a permit is binding on the department for 2 years from the date of the agreement.

History: Add. 2006, Act 435, Imd. Eff. Oct. 5, 2006
Popular Name: Act 451

Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30307 Hearing; location; notice; approval or disapproval of permit application; appeal; legal action; request and fee for notification of pending permit applications; biweekly list of applications; effect of ordinance regulating wetlands; review of permit application by local unit of government; effect of failure to approve or disapprove within time period; recommendations; notice of permit issuance.

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

(2) The action taken by the department on a permit application under this part and part 13 may be appealed pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A property owner may, after exhaustion of administrative remedies, bring appropriate legal action in a court of competent jurisdiction.

(3) A person who desires notification of pending permit applications may make a written request to the department accompanied by an annual fee of $25.00, which shall be credited to the general fund of the state. The department shall prepare a biweekly list of the applications made during the previous 2 weeks and shall promptly mail copies of the list for the remainder of the calendar year to the persons who requested notice. The biweekly list shall state the name and address of each applicant, the location of the wetland in the proposed use or development, including the size of both the proposed use or development and of the wetland

affected, and a summary statement of the purpose of the use or development.

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

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

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

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

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

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

(6) A local unit of government that adopts an ordinance regulating wetlands shall use an application form supplied by the department, and each person applying for a permit shall make application directly to the local unit of government. Upon receipt, the local unit of government shall forward a copy of each application along with any state fees that may have been submitted under section 30306 to the department. The department shall begin reviewing the application as provided in this part. The local unit of government shall review the application pursuant to its ordinance and shall modify, approve, or deny the application within 90 days after receipt. If a local unit of government does not approve or disapprove the permit application within the time period provided by this subsection, the permit application shall be considered approved, and the

local unit of government shall be considered to have made the determinations as listed in section 30311. The denial of a permit shall be accompanied by a written statement of all reasons for denial. The failure to supply complete information with a permit application may be reason for denial of a permit. If requested, the department shall inform a person whether or not a local unit of government has an ordinance regulating wetlands. If the department receives an application with respect to a wetland located in a local unit of government that has an ordinance regulating wetlands, the department immediately shall forward the application to the local unit of government, which shall modify, deny, or approve the application under this subsection. The local unit of government shall notify the department of its decision. The department shall proceed as provided in this part.

(7) If a local unit of government does not have an ordinance regulating wetlands, the department shall promptly send a copy of the permit application to the local unit of government where the wetland is located. The local unit of government may review the application; may hold a hearing on the application; may recommend approval, modification, or denial of the application to the department or may notify the department that the local unit of government declines to make a recommendation. The recommendation of the local unit of government, if any, shall be made and returned to the department at any time within 45 days after the local unit of government's receipt of the permit application.

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 103, Imd. Eff. June 23, 1995 ;-- Am. 1998, Act 228, Imd. Eff. July 3, 1998 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004 ;-- Am. 2006, Act 430, Imd. Eff. Oct. 5, 2006
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30308 Adoption of wetlands ordinance by local unit of government; availability of wetland inventory; completion of inventory map; notice; enforceable presumptions not created; processing wetland use applications.
Sec. 30308. (1) Prior to the effective date of an ordinance authorized under section 30307(4), a local unit of government that wishes to adopt such an ordinance shall complete and make available to the public at a reasonable cost an inventory of all wetland within the local unit of government, except that a local unit of government located in a county that has a population of less than 100,000 is not required to include public lands on its map. A local unit of government shall make a draft of the inventory map available to the public, shall provide for public notice and comment opportunity prior to finalizing the inventory map, and shall respond in writing to written comments received by the local unit of government regarding the contents of the inventory. A local unit of government that has a wetland ordinance on December 18, 1992 has until June 18, 1994 to complete an inventory map and to otherwise comply with this part, or the local unit of government shall not continue to enforce that ordinance. Upon completion of an inventory map or upon a subsequent amendment of an inventory map, the local unit of government shall notify each record owner of property on the property tax roll of the local unit of government that the inventory maps exist or have been amended, where the maps may be reviewed, that the owner's property may be designated as a wetland on the inventory map, and that the local unit of government has an ordinance regulating wetland. The notice shall also inform the property owner that the inventory map does not necessarily include all of the wetlands within the local unit of government that may be subject to the wetland ordinance. The notice may be given by including the required information with the annual notice of the property owner's property tax assessment. A wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not a wetland.

(2) A local unit of government that adopts a wetland ordinance shall process wetland use applications in a manner that ensures that the same entity makes decisions on site plans, plats, and related matters, and

wetland determinations, and that the applicant is not required to submit to a hearing on the application before more than 1 local unit of government decision making body. This requirement does not apply to either of the following:

(a) A preliminary review by a planning department, planning consultant, or planning commission, prior to submittal to the decision making body if required by an ordinance.

(b) An appeal process that is provided for appeal to the legislative body or other body designated to hear appeals.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30309 Regulation by local unit of government of wetland less than 2 acres; permit application; determination.
Sec. 30309. A local unit of government that has adopted an ordinance under section 30307(4) that regulates wetland within its jurisdiction that is less than 2 acres in size shall comply with this section. Upon application for a wetland use permit in a wetland that is less than 2 acres in size, the local unit of government shall approve the permit unless the local unit of government determines that the wetland is essential to the preservation of the natural resources of the local unit of government and provides these findings, in writing, to the permit applicant stating the reasons for this determination. In making this determination, the local unit of government must find that 1 or more of the following exist at the particular site:

(a) The site supports state or federal endangered or threatened plants, fish, or wildlife appearing on a list specified in section 36505.

(b) The site represents what is identified as a locally rare or unique ecosystem.

(c) The site supports plants or animals of an identified local importance.

(d) The site provides groundwater recharge documented by a public agency.

(e) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.

(f) The site provides wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

(g) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.

(h) The site provides pollution treatment by serving as a biological and chemical oxidation basin.

(i) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

(j) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30310 Regulation by local unit of government of wetland less than 2 acres; revaluation for assessment purposes; protest and appeal; judicial review; right to initiate proceedings not limited by section.

Sec. 30310. (1) A local unit of government that adopts an ordinance authorized under section 30307(4) shall include in the ordinance a provision that allows a landowner to request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction if a permit is denied by a local unit of government for a proposed wetland use. A landowner who is aggrieved by a

determination, action, or inaction under this subsection may protest and appeal that determination, action, or inaction pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(2) If a permit applicant is aggrieved by a determination, action, or inaction by the local unit of government regarding the issuance of a permit, that person may seek judicial review in the same manner as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person when necessary to protect the wetland owner's rights.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30311 Permit for activity listed in MCL 324.30304; approval conditioned on certain determinations; criteria; findings of necessity; criteria for determining unacceptable disruption to aquatic resources; additional showing.
Sec. 30311. (1) A permit for an activity listed in section 30304 shall not be approved unless the department determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

(2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national and state concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

(a) The relative extent of the public and private need for the proposed activity.

(b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.

(c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.

(d) The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.

(e) The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.

(f) The size of the wetland being considered.

(g) The amount of remaining wetland in the general area.

(h) Proximity to any waterway.

(i) Economic value, both public and private, of the proposed land change to the general area.

(3) In considering a permit application, the department shall give serious consideration to findings of necessity for the proposed activity which have been made by other state agencies.

(4) A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in section 30302 and subsection (2) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:

(a) The proposed activity is primarily dependent upon being located in the wetland.

(b) A feasible and prudent alternative does not exist.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30312 General permit for category of activities; notice and public hearing; determinations; requirements and standards; conditions; time for completion or termination of construction, development, or use; duration of general permit; mowing or removal of vegetation.

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

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

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30313 Grounds for revocation or modification of general permit; grounds for termination or modification for cause of general permit.

Sec. 30313. (1) A general permit may be revoked or modified if, after opportunity for a public hearing or a contested case hearing under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the department determines that the activities authorized by the general permit have an adverse impact on the environment or the activities would be more appropriately authorized by an individual permit.

(2) A permit may be terminated or modified for cause, including:

(a) A violation of a condition of the permit.

(b) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts.

(c) A change in a condition that requires a temporary or permanent change in the activity.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30313b Minor permit revisions.

Sec. 30313b. (1) The department may make minor revisions in a permit issued under this part if all of the following apply:

(a) The project is in compliance with the permit and this part.

(b) The minor revisions are requested by the permittee in writing.

(c) The request is accompanied by a fee of $250.00.

(d) If the request is for a transfer of the permit, the request is accompanied by a written agreement between the current and new owners or operators containing a specific date for transfer of responsibility, coverage, and liability under the permit.

(2) The department shall approve or deny the request within 20 business days. However, if the only minor revision requested is a transfer under subsection (4)(a), the department shall approve or deny the request within 10 business days. If the department fails to approve or deny the request within the time required by this subsection, the department shall refund the fee.

(3) If the department determines that none of the changes requested are minor revisions, the department shall retain the fee but the permittee may apply the fee toward a new permit for a project at that site.

(4) As used in this section, "minor revision" means either of the following with respect to a permit issued under this part:

(a) A transfer.

(b) A revision that does not increase the overall impact of a project on wetlands and that is within the scope of the project as described in the original permit.

History: Add. 2006, Act 431, Imd. Eff. Oct. 5, 2006
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30314 Information required to obtain compliance with part; entering on premises.

Sec. 30314. (1) The department shall require the holder of a permit to provide information the department reasonably requires to obtain compliance with this part.

(2) Upon reasonable cause or obtaining a search warrant, the department may enter on, upon, or through the premises on which an activity listed in section 30304 is located or on which information required to be maintained under subsection (1) is located.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30315 Violation; order requiring compliance; civil action.
Sec. 30315. (1) If, on the basis of information available to the department, the department finds that a person is in violation of this part or a condition set forth in a permit issued under section 30311 or 30312, the department shall issue an order requiring the person to comply with the prohibitions or conditions or the department shall request the attorney general to bring a civil action under section 30316(1).

(2) An order issued under subsection (1) shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the department determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30316 Civil action; commencement; request; venue; jurisdiction; violations; penalties; restoration of wetland.
Sec. 30316. (1) The attorney general may commence a civil action for appropriate relief, including injunctive relief upon request of the department under section 30315(1). An action under this subsection may

be brought in the circuit court for the county of Ingham or for a county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance with this part. In addition to any other relief granted under this section, the court may impose a civil fine of not more than $10,000.00 per day of violation. A person who violates an order of the court is subject to a civil fine not to exceed $10,000.00 for each day of violation.

(2) A person who violates this part is guilty of a misdemeanor, punishable by a fine of not more than $2,500.00.

(3) A person who willfully or recklessly violates a condition or limitation in a permit issued by the department under this part, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor, punishable by a fine of not less than $2,500.00 nor more than $25,000.00 per day of violation, or by imprisonment for not more than 1 year, or both. A person who violates this section a second or subsequent time is guilty of a felony, punishable by a fine of not more than $50,000.00 for each day of violation, or by imprisonment for not more than 2 years, or both.

(4) In addition to the penalties provided under subsections (1), (2), and (3), the court may order a person who violates this part to restore as nearly as possible the wetland that was affected by the violation to its original condition immediately before the violation. The restoration may include the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30317 Disposition of fees and civil fines; expenditures; report.
Sec. 30317. The civil fines collected under this part shall be forwarded to the state treasurer for deposit in the general fund of the state. The fees collected under this part shall be deposited in the land and water management permit fee fund created in section 30113. Subject to section

30113, the department shall expend money from the land and water management permit fee fund, upon appropriation, to support guidance for property owners and applicants, permit processing, compliance inspections, and enforcement activities under this part. Not more than 90 days after the end of each state fiscal year ending after 1997, the department shall prepare a report describing how money from the land and water management permit fee fund was expended during that fiscal year and an evaluation of the current statutory and department rules, bulletins, and letters definition of a wetland and any appropriate changes to that definition in the first report submitted to the legislature under this section and shall submit the report to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. Other than civil fines and costs, the disposition of which is governed by section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, or criminal fines, funds collected by a local unit of government under an ordinance authorized under section 30307(4) shall be deposited in the general fund of the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 530, Imd. Eff. Jan. 13, 1997 ;-- Am. 1998, Act 228, Imd. Eff. July 3, 1998
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30318 Revaluation of property for assessment purposes.

Sec. 30318. If a permit is denied for a proposed wetland activity, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30319 Rules; hearing; judicial review; proceedings to protect wetland owner's rights.

Sec. 30319. (1) The department shall promulgate and enforce rules to implement this part.

(2) If a person is aggrieved by any action or inaction of the department, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) A determination, action, or inaction by the department following the hearing is subject to judicial review as provided in Act No. 306 of the Public Acts of 1969.

(4) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person when necessary to protect the wetland owner's rights.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act
Admin Rule: R 281.921 et seq. of the Michigan Administrative Code.

324.30320 Inventories of wetland; use; updating; maps, ground surveys, and descriptions as public documents; availability and cost of aerial photographs and satellite telemetry data reproduction to county register of deeds.
Sec. 30320. (1) As inventories of wetland are completed, the inventories shall be used as 1 of the criteria by the department in issuing permits. The inventories shall be periodically updated. The maps, ground surveys, and descriptions of wetlands included in the inventories shall be submitted to the respective county register of deeds and shall become a public document available to review by any member of the public.

(2) Aerial photographs and satellite telemetry data reproductions shall be made available to the respective county register of deeds for cost as determined by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30321 Basis and filing of preliminary inventory of wetland; hearing in state planning and development region; notice; issuance and distribution of final inventory; legislators to receive inventories; assessment of property; report; reassessment; fee.
Sec. 30321. (1) The department shall make or cause to be made a preliminary inventory of all wetland in this state on a county by county basis and file the inventory with the agricultural extension office, register of deeds, and county clerk.

(2) At least 2 hearings shall be held in each state planning and development region created by Executive Directive No. 1973-1. The hearing shall be held by the department after publication and due notice so that interested parties may comment on the inventory. After the hearings, the department shall issue a final inventory which shall be sent and kept by the agricultural extension office, register of deeds, and county clerk. Legislators shall receive an inventory of a county or regional classification for their districts including both preliminary and final inventories unless the legislators request not to receive the materials.

(3) Before an inventory is made of a county, a person who owns or leases a parcel of property located in that county may request that the department of environmental quality assess whether the parcel of property or a portion of the parcel is wetland. The request shall satisfy all of the following requirements:

(a) Be made on a form provided by the department.

(b) Be signed by the person who owns or leases the property.

(c) Contain a legal description of the parcel and, if only a portion of the parcel is to be assessed, a description of the portion to be assessed.

(d) Include a map showing the location of the parcel.

(e) Grant the department or its agent permission to enter on the parcel for the purpose of conducting the assessment.

(4) The department shall assess the parcel within a reasonable time after the request is made. The department may enter upon the parcel to conduct the assessment. Upon completion of the assessment, the department shall provide the person with a written assessment report. The assessment report shall do all of the following:

(a) Identify in detail the location of any wetland in the area assessed.

(b) If wetland is present in the area assessed, describe the types of activities that require a permit under this part.

(c) If the assessment report determines that the area assessed or part of the area assessed is not wetland, state that the department lacks jurisdiction under this part as to the area that the report determines is not wetland and that this determination is binding on the department for 3 years from the date of the assessment.

(d) Contain the date of the assessment.

(e) Advise that the person may request the department to reassess the parcel or any part of the parcel that the person believes was erroneously determined to be wetland if the request is accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department.

(f) Advise that the assessment report does not constitute a determination of wetland that may be regulated under local ordinance or wetland areas that may be regulated under federal law and advise how a determination of wetland areas regulated under federal law may be obtained.

(g) List regulatory programs that may limit land use activities on the parcel, advise that the list is not exhaustive, and advise that the

assessment report does not constitute a determination of jurisdiction under those programs. The regulatory programs listed shall be those under the following parts:

(i) Part 31, with respect to floodplains and floodways.

(ii) Part 91.

(iii) Part 301.

(iv) Part 323.

(v) Part 325.

(vi) Part 353.

(5) A person may request the department to reassess any area assessed under subsections (3) and (4) that the person believes the department erroneously determined to be wetland. The requirements of subsections (3) and (4) apply to the request, assessment, and assessment report. However, the request shall be accompanied by evidence pertaining to wetland vegetation, soils, or hydrology that is different from or in addition to the information relied upon by the department. The assessment report shall not contain the information required by subsection (4)(e).

(6) If an assessment report determines that the area assessed or part of the area assessed is not a wetland regulated by the department under this part, then the area determined by the assessment report not to be a wetland is not a wetland regulated by the department under this part for a period of 3 years after the date of the assessment.

(7) The department may charge a fee for an assessment requested under subsection (3) based upon the cost to the department of conducting an assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 530, Imd. Eff. Jan. 13, 1997
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30322 Notice to owners of record of change in status of property.
Sec. 30322. As wetland inventories are completed as specified in section 30321, owners of record as identified by the current property tax roll shall be notified of the possible change in the status of their property. Notification shall be printed on the next property tax bill mailed to property owners in the county. It shall contain information specifying that a wetland inventory has been completed and is on file with the agricultural extension office, register of deeds, and county clerk, and that property owners may be subject to regulation under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

324.30323 Legal rights or authority not abrogated; action to determine if property taken without just compensation; court order; limitation on value of property.
Sec. 30323. (1) This part shall not be construed to abrogate rights or authority otherwise provided by law.

(2) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and been denied a permit from the state or from a local unit of government that adopts an ordinance pursuant to section 30307(4), who has been made subject to modifications or conditions in the permit under this part, or who has been made subject to the action or inaction of the department pursuant to this part or the action or inaction of a local unit of government that adopts an ordinance pursuant to section 30307(4) may file an action in a court of competent jurisdiction.

(3) If the court determines that an action of the department or a local unit of government pursuant to this part or an ordinance authorized pursuant

to section 30307(4) constitutes a taking of the property of a person, then the court shall order the department or the local unit of government, at the department's or the local unit of government's option, as applicable, to do 1 or more of the following:

(a) Compensate the property owner for the full amount of the lost value.

(b) Purchase the property in the public interest as determined before its value was affected by this part or the local ordinance authorized under section 30307(4) or the action or inaction of the department pursuant to this part or the local unit of government pursuant to its ordinance.

(c) Modify its action or inaction with respect to the property so as to minimize the detrimental affect to the property's value.

(4) For the purposes of this section, the value of the property may not exceed that share of the state equalized valuation of the total parcel that the area in dispute occupies of the total parcel of land, multiplied by 2, as determined by an inspection of the most recent assessment roll of the township or city in which the parcel is located.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Wetland Protection Act

Part 309

INLAND LAKE IMPROVEMENTS

324.30901 Definitions.
Sec. 30901. As used in this part:

(a) “Benefit” or “benefits” means advantages resulting from a project to public corporations, the inhabitants of public corporations, the inhabitants of this state, and property within public corporations. Benefit includes benefits that result from elimination of pollution and elimination of flood damage, elimination of water conditions that

jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement, or development of a lake for fishing, wildlife, boating, swimming, or any other recreational, agricultural, or conservation uses.

(b) “Inland lake” means a public inland lake or a private inland lake.

(c) “Interested person” means a person who has a record interest in the title to, right of ingress to, or reversionary right to a piece or parcel of land that would be affected by a permanent change in the bottomland of a natural or artificial, public or private inland lake, or adjacent wetland. In all cases, whether having such an interest or not, the department is an interested person.

(d) “Local governing body” means the legislative body of a local unit of government.

(e) “Preliminary costs” includes costs of the engineering feasibility report, economic study, estimate of total cost, and cost of setting up the assessment district.

(f) “Private inland lake” means an inland lake other than a public inland lake.

(g) “Public inland lake” means a lake that is accessible to the public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30902 Petition for improvement of lake or wetland; local governing bodies' powers; lake boards.

Sec. 30902. (1) The local governing body of any local unit of government in which the whole or any part of the waters of any public

inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.

(2) Upon receipt of the petition or upon its own motion, the local governing body within 60 days shall set up a lake board as provided in section 30903 that shall proceed with the necessary steps for improving the lake or to void the proposed project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30903 Lake board; composition; election of chairperson, treasurer, and secretary; quorum; concurrence of majority required; technical data; recommendations.
Sec. 30903. (1) The lake board shall consist of all of the following:

(a) A member of the county board of commissioners appointed by the chairperson of the county board of commissioners of each county affected by the lake improvement project; 1 representative of each local unit of government, other than a county, affected by the project, or, if there is only 1 such local unit of government, 2 representatives of that local unit of government, appointed by the legislative body of the local unit of government; and the county drain commissioner or his or her designee, or a member of the county road commission in counties not having a drain commissioner.

(b) A member elected by the members of the lake board serving pursuant to subdivision (a) at the first meeting of the board or at any time a vacancy exists under this subdivision. Only a person who has an interest in a land contract or a record interest in the title to a piece or parcel of land that abuts the lake to be improved is eligible to be elected and to

serve under this subdivision. An organization composed of and representing the majority of lakefront property owners on the affected lake may submit up to 3 names to the board, from which the board shall make its selection. The terms served by this member shall be 4 years in length.

(2) The lake board shall elect a chairperson, treasurer, and secretary. The secretary shall attend meetings of the lake board and shall keep a record of the proceedings and perform other duties delegated by the lake board. A majority of the members of the lake board constitutes a quorum. The concurrence of a majority in any matter within the duties of the board is required for the determination of a matter.

(3) The department, upon request of the lake board, shall provide whatever technical data it has available and make recommendations in the interests of conservation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 522, Eff. Mar. 1, 2005
Popular Name: Act 451
Popular Name: NREPA

324.30904 Initiation of action by freeholders.

Sec. 30904. Action may be initiated under section 30902 relating to any private inland lake only upon petition of 2/3 of the freeholders owning lands abutting the lake.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30905 Preliminary costs; revolving funds; assessments.

Sec. 30905. The county board of commissioners may provide for a revolving fund to pay for the preliminary costs of improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the lake board after notice of the hearing is given pursuant to Act No. 162 of the Public Acts of 1962,

being sections 211.741 to 211.746 of the Michigan Compiled Laws, and shall be repaid to the fund where the project is not finally constructed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30906 Institution of proceedings for lake improvement; conflicts with local ordinances and charters.

Sec. 30906. (1) Whenever a local governing body, in accordance with section 30902, considers it expedient to have a lake improved, it, by resolution, shall direct the lake board to institute proceedings as prescribed in this part.

(2) When the waters of any inland lake are situated in 2 or more local units of government, the improvement of the lake may be determined jointly in the same manner as provided in this part, if the local governing bodies of all local units of government involved determine it to be expedient in accordance with section 30902 and, by resolution, direct the lake board to institute proceedings as prescribed in this part. Where local ordinances and charters conflict, this part shall govern.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30907 Lake improvement; initiation by department.

Sec. 30907. If the department considers it expedient, in accordance with section 30902, to have a lake dredged or improved, the department may petition the local governing body or governing bodies in which the lake is located for an improvement of the lake. The department may also join with the local governing body of any local unit of government in instituting proceedings for improvements as set forth in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30908 Lake board; determination of scope of project; establishment of special assessment districts; ministerial duties.
Sec. 30908. The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment district all parcels of land and local units which will be benefited by the improvement of the lake. The local governing body may delegate to the lake board other ministerial duties including preparation, assembling, and computation of statistical data for use by the board and the superintending, construction, and maintenance of any project under this part, as the local governing body considers necessary.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30909 Engineering and economic reports; cost estimates.
Sec. 30909. (1) The lake board shall retain a licensed professional engineer to prepare an engineering feasibility report, an economic study report, and an estimate of cost. The report shall include, when applicable, recommendations for normal lake levels and the methods for maintaining those levels.

(2) The engineering feasibility report shall include the methods proposed to implement the recommended improvements, such as dredging, removal, disposal, and disposal areas for undesirable materials from the lake. The report shall include an investigation of the groundwater conditions and possible effects on lake levels from removal of bottom materials. A study of existing nutrients and an estimate of possible future conditions shall be included. Estimate of costs of right-of-way shall be included.

(3) The estimate of cost prepared under subsection (1) shall show probable assessments for the project. The economic report shall analyze the existing local tax structure and the effects of the proposed assessments on the local units of government involved. A copy of the report shall be furnished to each member of the lake board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30910 Review of reports by board; determinations of practicability; public hearings; notice; determination.
Sec. 30910. Within 60 days after his or her receipt of the reports, the chairperson shall hold a meeting of the lake board to review the reports required under section 30909 and to determine the practicability of the project. The hearing shall be public, and notice of the hearing shall be published twice in a newspaper of general circulation in each local unit of government to be affected. The first publication shall be not less than 20 days prior to the time of the hearing. The board shall determine the practicability of the project within 10 days after the hearing unless it is determined at the hearing that more information is needed before the determination can be made. Immediately upon receipt of the additional information, the board shall make its determination.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30911 County contributions toward costs of improvement. Sec. 30911. The county board of commissioners may provide up to 25% of the cost of a lake improvement project on any public inland lake.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30912 Approval of plans and cost estimates; sufficiency of petition; resolution; publication; assessment roll.
Sec. 30912. If the lake board passes a resolution in which it determines the project to be practicable, the lake board shall determine to proceed with the project, shall approve the plans and estimate of costs as originally presented or as revised, corrected, amended, or changed, and shall determine the sufficiency of the petition for the improvement. The resolution shall be published once in a newspaper of general circulation in each local unit of government to be affected. After the resolution has

been published, the sufficiency of the petition shall not be subject to attack except in an action brought in a court of competent jurisdiction within 30 days after publication. The lake board, after finally accepting the special assessment district, shall prepare an assessment roll based upon the benefits to be derived from the proposed lake improvement, and the lake board shall direct the assessing official of each local unit of government to be affected to join in making an assessment roll in which shall be entered and described all the parcels of land to be assessed, with the names of the respective owners of the parcels of land, if known, and the total amount to be assessed against each parcel of land and against each local unit of government to be affected, which amount shall be such relative portion of the whole sum to be levied against all parcels of land and local units of government in the special assessment district as the benefit to such parcel of land and local unit of government bears to the total benefit to all parcels of land and local units of government in the special assessment district. When the assessment roll has been completed, each assessing official shall affix to the assessment roll his or her certificate stating that it was made pursuant to a resolution of the lake board adopted on a specified date, and that in making the assessment roll he or she has, according to his or her best judgment, conformed in all respects to the directions contained in the resolution and the statutes of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30913 Report of assessment to lake board; review; notice and hearing; confirmation.

Sec. 30913. The assessment roll shall be reported to the lake board by the assessing official of the local unit or units of government initiating the proceeding and filed in the office of the clerk of each local unit of government to be affected. Before confirming the assessment roll, the lake board shall appoint a time and place when it will meet and review the assessment roll and hear any objections to the assessment roll, and shall publish notice of the hearing and the filing of the assessment roll twice prior to the hearing in a newspaper of general circulation in each local unit of government to be affected, the first publication to be at least

10 days before the hearing. Notice of the hearing shall also be given in accordance with Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The hearing may be adjourned from time to time without further notice. Any person or local unit of government objecting to the assessment roll shall file his or her objection in writing with the chairperson before the close of the hearing or within such further time period as the lake board may grant. After the hearing, the lake board may confirm the special assessment roll as reported to it or as amended or corrected by it, may refer it back to the assessing officials for revision, or may annul it and direct a new roll to be made. When a special assessment roll has been confirmed, the clerk of each local unit of government shall endorse on the assessment roll the date of the confirmation. After confirmation, the special assessment roll and all assessments on the assessment roll shall be final and conclusive unless attacked in a court of competent jurisdiction within 30 days after notice of confirmation has been published in the same manner as the notice of hearing.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30914 Special assessments; installments; interest; penalties. Sec. 30914. Upon the confirmation of the assessment roll, the lake board may provide that the assessments be payable in 1 or more approximately equal annual installments, not exceeding 30. The amount of each installment, if more than 1, need not be extended upon the special assessment roll until after confirmation. The first installment of a special assessment shall be due on or before such time after confirmation as the board shall establish, and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from such other date as the board shall establish. All unpaid installments, prior to their transfer to the tax roll of each local unit of government involved, shall bear interest, payable annually on each installment due date, at a rate to be set by the board, not exceeding 6% per annum, from such date as established by the board. Future due installments of an assessment against a parcel of land may be paid to the treasurer of each local unit of government at any time in full, with interest accrued to the

due date of the next installment. If any installment of a special assessment is not paid when due, then it shall be considered to be delinquent and there shall be collected on the installment, in addition to interest as above provided, a penalty at the rate of 1/2 of 1% for each month or fraction of a month that it remains unpaid before being reported to the township board for reassessment upon the tax roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30915 Special assessments; liens.

Sec. 30915. All special assessments contained in any special assessment roll, including any part of the special assessment payment that is deferred, constitute a lien, from the date of confirmation of the roll, upon the respective parcels of land assessed. The lien shall be of the same character and effect as the lien created for taxes in each local unit of government and shall include accrued interest and penalties. A judgment, decree, or any act of the board vacating a special assessment does not destroy or impair the lien upon the premises assessed for the amount of the assessment as may be equitably charged against the premises, or as by a regular mode of proceeding might be lawfully assessed on the premises.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30916 Special assessments; collections.

Sec. 30916. When any special assessment roll is confirmed, the lake board shall direct the assessments made in the roll to be collected. The clerk of each local unit of government involved shall then deliver to the treasurer of each local unit of government the special assessment roll, to which he or she shall attach his or her warrant commanding the treasurer to collect the assessments in the roll in accordance with the directions of the lake board. The warrant shall further require the treasurer, on September 1 following the date when any assessments or any part of an assessment have become due, to submit to the lake board a sworn

statement setting forth the names of delinquent persons, if known, a description of the parcels of land upon which there are delinquent assessments, and the amount of the delinquency, including accrued interest and penalties computed to September 1 of the year. Upon receiving the special assessment roll and warrant, the treasurer shall collect the amounts assessed as they become due.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30917 Delinquent assessments; reassessment.

Sec. 30917. If the treasurer reports as delinquent any assessment or part of an assessment, the lake board shall certify the delinquency to the assessing official of each local unit of government, who shall reassess, on the annual tax roll of the local unit of government of that year, in a column headed “special assessments”, the delinquent sum, with interest and penalties to September 1 of that year, and an additional penalty of 6% of the total amount. Thereafter, the statutes relating to taxes shall be applicable to the reassessments in each local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30918 Division of land parcels; uncollected assessment apportioned.

Sec. 30918. If any parcel of land is divided after a special assessment on the land has been confirmed and before the collection of the assessment, the lake board may require the assessment official to apportion the uncollected amounts between the divisions of the parcel of land, and the report of the apportionment when confirmed by the lake board shall be conclusive upon all parties. If the interested parties do not agree in writing to the apportionment, then, before confirmation, notice of hearing shall be given to all the interested parties, either by personal service or by publication as provided in the case of an original assessment roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30919 Additional special assessments.

Sec. 30919. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessment, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessment, then the lake board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30920 Special assessments; invalidity and new assessments.

Sec. 30920. Whenever, in the opinion of the lake board, any special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges such assessment illegal, the lake board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on that reassessment and for the collection of the assessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside, if the assessment or part of an assessment has been paid and not refunded, the payment shall be applied upon the reassessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30921 Special assessments; exempt lands.
Sec. 30921. The governing body of any department of the state or any of its political subdivisions, municipalities, school districts, townships, or counties, whose lands are exempt by law, may by resolution agree to pay the special assessments against the lands, in which case the assessment, including all the installments of the assessment, shall be a valid claim against the local unit of government.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30922 Borrowing; issuance of lake level orders and bonds.
Sec. 30922. The lake board may borrow money and issue lake level orders or the bonds of the special assessment district in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds or lake level orders shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. Collections on special assessments to the extent pledged for the payment of bonds or lake level orders shall be set aside in a special fund for the payment of the bonds or lake level orders. The issuance of special assessments bonds or lake level orders shall be governed by the general laws of this state applicable to the issuance of special assessments bonds or lake level orders and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds or lake level orders may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district. The local governing body may pledge the full faith and credit of a local unit of government for the prompt payment of the principal of and interest on the bonds or lake level orders as they become due. The pledge of full faith and credit of the local unit of government shall be included within the total limitation prescribed by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds and lake level orders issued under this part shall be executed by the chairperson and secretary of the lake board, and the interest coupons to be attached to the bonds and

orders shall be executed by the officials causing their facsimile signatures to be affixed to the bonds and orders.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 218, Imd. Eff. Apr. 29, 2002
Popular Name: Act 451
Popular Name: NREPA

324.30923 Condemnation; commencement and conduct of proceedings.

Sec. 30923. Whenever the lake board determines by proper resolution that it is necessary to condemn private property for the purpose of this part, the condemnation proceedings shall be commenced and conducted in accordance with Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30924 Gifts and grants-in-aid; acceptance by lake board; contract or agreement.

Sec. 30924. (1) The lake board may receive and accept gifts or grants-in-aid for the purpose of implementing this part.

(2) The lake board may contract or make agreement with the federal government or any agency of the federal government whereby the federal government will pay the whole or any part of the costs of a project or will perform all or any part of the work connected with the project. The contract or agreement may include any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30925 Gifts and grants-in-aid; acceptance by department.
Sec. 30925. The department in carrying out the purposes of this part may receive and accept, on behalf of the state, gifts and grants-in-aid.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30926 Advertising for bids; letting of contracts; work relief project.
Sec. 30926. (1) Except as provided in subsection (2), the chairperson of the lake board shall advertise for bids. A contract shall be let to the lowest bidder giving adequate security for the performance of the contract, but the lake board shall reserve the right to reject any and all bids.

(2) The lake board may let a contract with a local, incorporated, nonprofit homeowner association, the membership of which is open on a nondiscriminatory basis to all residents within the geographic area to be assessed or serviced, without advertising for public bids. The homeowner association shall give adequate security for the performance of the contract.

(3) The local governing body may improve a lake as a work relief project pursuant to applicable provisions of law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30927 Costs of projects; computation; expenditures; representation by attorney.
Sec. 30927. (1) Within 10 days after the letting of contracts or, in case of an appeal, immediately after the appeal has been decided, the lake board shall make a computation of the entire cost of a project under this part that includes all preliminary costs and engineering and inspection costs incurred and all of the following:

(a) The fees and expenses of special commissioners.

(b) The contracts for dredging or other work to be done on the project.

(c) The estimated cost of an appeal if the apportionment made by the lake board is not sustained.

(d) The estimated cost of inspection.

(e) The cost of publishing all notices required.

(f) All costs of the circuit court.

(g) Any legal expenses incurred in connection with the project, including litigation expenses, the costs of any judgments or orders entered against the lake board or special assessment district, and attorney fees.

(h) Fees for any permits required in connection with the project.

(i) Interest on bonds for the first year, if bonds are to be issued.

(j) Any other costs necessary for the administration of lake board proceedings, including, but not limited to, compensation of the members of the lake board, record compilation and retention, and state, county, or local government professional staff services.

(2) In addition to the amounts computed under subsection (1), the lake board may add not less than 10% or more than 15% of the gross sum to cover contingent expenses, including additional necessary hydrological studies by the department. The sum of the amounts computed under subsection (1) plus the amount added under this subsection is considered to be the cost of the lake improvement project.

(3) A lake board shall not expend money for improvements, services, or other purposes unless the lake board has adopted an annual budget.

(4) A lake board may retain an attorney to advise the lake board in the proper performance of its duties. The attorney shall represent the lake board in actions brought by or against the lake board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 522, Eff. Mar. 1, 2005
Popular Name: Act 451
Popular Name: NREPA

324.30928 Intervention by department.

Sec. 30928. Whenever a public inland lake is to be improved, the department may intervene for the protection and conservation of the natural resources of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.30929 Lake board for public inland lake; dissolution.

Sec. 30929. A lake board for a public inland lake is dissolved if all of the following requirements are met:

(a) The governing body of each local unit of government in which all or part of the lake is located holds a public hearing on the proposed dissolution, determines that the lake board is no longer necessary for the improvement of the lake because the reasons for the establishment of the lake board no longer exist, and approves the dissolution of the lake board. The governing body of each local unit of government in which all or part of the lake is located may hold the public hearing on the dissolution of the lake board on its own initiative. The governing body of each local unit of government in which all or part of the lake is located shall hold a public hearing on the dissolution of the lake board upon petition of 2/3 of the freeholders owning land abutting the lake. Notice of the public hearing shall be published twice in a newspaper of general circulation in each local unit of government in which all or part of the lake is located. The first notice shall be published not less than 10 days before the date of the hearing.

(b) All outstanding indebtedness and expenses of the lake board are paid in full.

(c) Any excess funds of the lake board are refunded based on the last approved special assessment roll. However, if the amount of excess funds is de minimis, the excess funds shall be distributed to the local units of government in which all or part of the lake is located, apportioned based on the amounts assessed against each local unit of government and lands in that local unit on the last approved special assessment roll.

(d) The lake board determines that it is no longer necessary for the improvement of the lake, because the reasons for its establishment no longer exist, and adopts an order approving its dissolution.

History: Add. 2004, Act 522, Eff. Mar. 1, 2005
Popular Name: Act 451
Popular Name: NREPA

Part 311

LOCAL RIVER MANAGEMENT

324.31101 Definitions.
Sec. 31101. As used in this part:

(a) "Board" means a river management board created as the governing body of a river management district in accordance with this part.

(b) "Council" means a watershed council created under this part.

(c) "District" means a river management district established under this part.

(d) "Level of stream flow" means a measure of water quantity including the amount of water passing a designated point over a designated period and the levels of lakes that are an integral part of the surface drainage system of the watershed.

(e) "Local agencies" means local units of government, special districts, or other legally constituted agencies of local units of government exercising powers that may affect water resources.

(f) "River management" means the control of river flow by the operation of dams, reservoirs, conduits, and other human-made devices in order to improve and expand the uses of the river for those who depend upon it for a variety of private and public benefits.

(g) "Watershed" means the drainage area of a stream.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31102 Watershed council; petition; contents; organizational meeting; notice.

Sec. 31102. (1) To promote cooperation among local units of government in river management, a watershed council shall be established by the department upon a petition from 3 or more local units of government lying wholly or partially in the watershed as defined in the petition. The petition shall provide a statement of necessity, a description of general purposes and functions to be performed, a description of the area, including a map, and a list of all local units of government lying wholly or partly within the watershed, which shall be eligible for membership on the watershed council.

(2) Upon finding that the petition is in conformance with this part, the department shall establish the council, schedule an organizational meeting, and notify all local units of government eligible for membership by registered mail. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31103 Watershed council; membership; voting rights; term; river management board.
Sec. 31103. (1) The watershed council shall be composed of representatives of local units of government within the watershed who are appointed to and maintain membership in the council in the following manner:

(a) Each local unit of government using the river for water supply or waste disposal shall appoint 1 representative for each 20,000 population or fraction thereof. The governing body of each local unit of government shall determine the method by which its representatives are selected.

(b) Each county having 15% or more of its area in the watershed shall appoint 1 representative, and 1 additional representative for each 20,000 population or fraction thereof, which aggregate total shall be computed from the population of eligible townships not otherwise represented. These townships shall be eligible under this section if they have 15% or more of their respective areas in the basin. The methods by which the county representatives are selected shall be determined by the county board of commissioners.

(c) Any local agency wholly or partly within the basin may appoint a representative to the council upon a finding by the council that the agency is so affected by or concerned with the use and development of water resources in the basin as to warrant representation. If any township is represented under this subdivision, its population shall not be counted in determining the eligible total representatives of its county.

(2) Representatives on the watershed council shall be appointed for 2 years, but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the council unless the local government he or she represents has met its financial obligations to the council.

(3) Representatives to the watershed council may also represent their local units of government, if so designated by their local units of

government, on river management boards established in accordance with this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31104 Watershed council; duties.
Sec. 31104. In carrying out its authorized functions, the council shall do all of the following:

(a) Adopt bylaws that govern its operations.

(b) Prepare an annual operating budget, including apportionment of costs to member governments.

(c) Hold an annual meeting at which time it shall elect a chairperson, vice-chairperson, and secretary-treasurer, submit an annual report to the member governments, and adopt an annual budget that constitutes the council's authorization of activities for the year.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31105 Watershed council; powers.
Sec. 31105. A watershed council may do 1 or more of the following:

(a) Conduct, or cause to be conducted, studies of the water resources of the watershed, including investigations of water uses, water quality, and the reliability of the water resource.

(b) Prepare periodic reports concerning, among other things, trends in water use and availability, emerging water problems, and recommendations for appropriate public policies and programs necessary to maintain adequate water resources for the watershed area.

(c) Request the department to survey the watershed for the purpose of determining minimum levels of stream flow necessary for health, welfare, and safety as provided in sections 31112 through 31117.

(d) Recommend the creation of a river management district or districts under the provisions of sections 31106 through 31111 when the need for river management seems to warrant such an action.

(e) Advise agencies of federal, state, and local units of government as to the council's view of the watershed's problems and needs.

(f) Cooperate with federal, state, and local agencies in providing stream gauges, water quality sampling stations, or other water resource data-gathering facilities or programs that aid the council in its responsibility for studying and reporting on water conditions.

(g) Employ an executive secretary and such other professional, administrative, or clerical staff, including consultants, as may be provided for in an approved budget.

(h) Establish such subcommittees or advisory committees as are considered helpful in the discharge of its functions.

(i) Establish special project funds as needed to finance special studies outside its annual budget capacity. For this purpose, the council may accept gifts and grants from any person.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31106 River management district; establishment; powers; consolidation; coordination.

Sec. 31106. (1) The governing bodies of 2 or more local units of government may petition the department to establish a river management district in order to provide an agency for the acquisition, construction, operation, and financing of water storage and other river control facilities necessary for river management. The petition shall be accompanied by a

statement of necessity, a description of the district purposes, functions, and operating procedures, which shall include methods of financing capital improvements and of apportioning benefit charges, and a general plan of development. Not later than 60 days following receipt of such a petition, the department shall establish the time and place for a public hearing on the petition and shall publish notice of the hearing. The notice shall be published twice in each county involved in at least 1 newspaper of general circulation in the county. At the hearing, the applicant and any other interested party may appear, present witnesses, and submit evidence. Following the hearing, the department may establish the district and publish notice of the establishment in the manner provided for publication of notice of hearing, upon finding the following conditions:

(a) That the proposal is consistent with the public interest in the conservation, development, and use of water resources, and the proposed district is geographically suitable to effectuation of the district purposes.

(b) That the establishment and operation of the district will not unreasonably impair the interests of the public or of riparians in lands or waters or the beneficial public use of lands or waters, and will not endanger public health or safety.

(2) A management district shall not be created that affects any city now or hereafter having a population of more than 1,500,000, except with the concurrence of the governing body of that city.

(3) Prior to approving the establishment of a district consisting of a portion of a river basin, the department shall determine the feasibility of establishing the district to include the entire river basin or as large a portion of the basin as possible. Approval of districts consisting of a portion of a river basin shall be on the basis that when in the judgment of the department it becomes feasible to form a district including the entire river basin, the river management boards shall initiate proceedings to combine the smaller districts into larger districts or into an entire watershed-wide district.

(4) Any plans for a river management district shall be coordinated with plans of adjacent river basins, organizations, or agencies and with any comprehensive regional master programs for river management.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31107 River management district; organizational meeting; notice; date; board; membership; term; voting rights.
Sec. 31107. (1) Within 60 days after establishing a district, the department shall schedule an organizational meeting of the district board and shall provide notice of the meeting by registered mail to the governing bodies of all local units of government comprising the district. The date for the meeting shall be not less than 60 or more than 90 days after the date of mailing the notice. At the meeting, the department shall serve as temporary chairperson. The board shall elect a chairperson, vice-chairperson, secretary, and treasurer and adopt bylaws.

(2) A district shall be governed by a river management board composed of representatives of local units of government within the district. The representation of each local unit of government on the board may be provided as part of the operating procedures submitted to the department in the petition of local units of government made in accordance with section 31106. If the composition of the board is not so designated, representation shall be established under section 31103.

(3) Representatives on the river management board shall be appointed for 2 years but are subject to replacement at the pleasure of the appointing authority. A representative is not eligible to vote on the board unless the local government he or she represents has met its financial obligations to the district.

(4) Representatives to the river management board may also serve as representatives of their local units of government, if so designated by their local units of government, on the watershed council.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31108 River management board; powers.
Sec. 31108. A river management board may do any of the following:

(a) Conduct a continuing study of river use requirements and needs for river management within its area of jurisdiction; analyze alternative methods of meeting needs; and develop and adopt a river management program, including plans for constructing, operating, and financing water storage and river control structures and negotiating coordinated policies and programs relating to river use among local units of government within the district.

(b) Impound and control the waters of the river system within the district, subject to minimum levels of stream flow established pursuant to sections 31112 and 31113, through acquisition, construction, maintenance, and/or operation of water storage reservoirs, dams, or other river control structures as necessary to assure adequate quantity, quality, and stability of river flow to protect the public health, welfare, and safety. A river management district shall not release water in such an amount as to produce or increase flooding or otherwise damage downstream interests.

(c) Contract with or enter into agreement with the federal government or any agency or department of the federal government or with other governmental agencies or with private individuals or corporations that may maintain and operate reservoirs and control structures or that may construct, maintain, and operate new reservoirs and control structures as necessary to carry out the purposes of this part.

(d) Perform, with respect to the area within the district, the functions assigned to a watershed council by sections 31102 through 31105 whenever a relevant watershed council has not been formed, or if the appropriate watershed council's failure to act impairs the functions and programs of a district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31109 River management district; body corporate; powers; taxing power.

Sec. 31109. A district formed under this part is a body corporate with powers to contract; to sue and be sued; to exercise the right of eminent domain; to apportion administrative costs and benefit charges for river management and related facilities among the local units of government members, which costs shall be payable from general funds or taxes raised by the local units of government; to collect revenues for services rendered by the exercise of its functions; to issue bonds; to apply for and receive grants, gifts, and other devises from any governmental agency or from the federal government; and to exercise other powers as necessary to implement this part. The river management district shall not have direct taxing power.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31110 River management board; duties.

Sec. 31110. A river management board shall do all of the following:

(a) Adopt bylaws to govern its operations.

(b) Prepare an annual operating budget and levy an annual assessment of local unit of government members to cover costs of organizing, developing plans, and maintaining general overhead administration.

(c) Adopt and maintain a schedule of benefit assessments upon local units of government in the district levied to help defray the costs of capital improvements, which schedule constitutes a legal obligation upon those assessed.

(d) Hold an annual meeting at which it shall report to its members and to the watershed council, elect officers, and adopt an annual budget.

(e) Maintain a public record of its transactions.

(f) Do all other things necessary for the operation of the district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31111 Executive secretary; additional staff.
Sec. 31111. The executive secretary of a watershed council may serve as executive secretary to the river management board. If a relevant watershed council does not exist, or if the executive secretary of a watershed council is otherwise unavailable, the board may employ an executive secretary. In addition, the board may employ additional staff as it determines appropriate within its approved budget.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31112 Minimum level of stream flow; industrial use of water.
Sec. 31112. Upon request of a council or a board, the department shall determine, within the watershed subject to the council, the minimum level of stream flow necessary to safeguard the public health, welfare, and safety, but a determination or order shall not prevent any industry along the stream from using water from the stream for industrial use sufficient for the industry's requirement if all the water used is returned to the stream within 72 hours of the taking.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31113 Minimum level of stream flow; order of determination; notice; publication; review.
Sec. 31113. In carrying out its authority to determine minimum levels of stream flow, the department, after public hearing, shall issue an order of determination setting forth minimum levels at locations as necessary to

carry out the purposes of this part. Notice of the order of determination shall be published and the order may be reviewed in the circuit court in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, upon petition filed by any person within 15 days following the last date of the publication.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31114 Minimum level of stream flow; determination by watershed council or department; request.

Sec. 31114. A river management board may request a watershed council to seek a determination of minimum levels of stream flow in accordance with sections 31112 and 31113, or the board may request the department to make the determinations if a watershed council has not been formed for the larger watershed of which the district is a part, or when an appropriately established council fails to act within 90 days upon the district's request.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31115 Measurement of stream flow, lake levels, and water quality; gauges and sampling devices; entering public property.

Sec. 31115. The department may maintain gauges and sampling devices to measure stream flow, lake levels, and water quality as necessary to implement this part, and may enter at all reasonable times in or upon any public property for the purpose of inspecting and investigating conditions relating to implementing this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31116 Preparation of river management plan; advice, assistance, and supervision by department.

Sec. 31116. The department may cooperate and negotiate with any person in establishing and maintaining gauges and sampling devices to measure stream flow, lake levels, or water quality or in implementing any other provision of this part. When requested by a council or board, the department shall provide technical advice and assistance in the preparation of a river management plan of the district. A river management plan shall not be placed into effect until it has been approved by the department as conforming to the stated objectives of the petition. The department shall maintain supervision over the functioning of the district to the extent it considers necessary for the purpose of ensuring conformance with the plan in the public interest.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31117 Rules.

Sec. 31117. The department shall promulgate rules to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31118 Authority of department not affected by part.

Sec. 31118. This part does not abridge the authority vested in the department by part 31. Permits granted by the department in accordance with part 35 are not affected by this part. The granting of future permits under part 35 shall proceed without regard to anything contained in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.31119 Director of public health; powers unaffected.

Sec. 31119. The functions, powers, and duties of the director of public health as provided for by Act No. 98 of the Public Acts of 1913, being

sections 325.201 to 325.214 of the Michigan Compiled Laws, shall remain unaffected by this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

PART 312

WATERSHED ALLIANCES

324.31201 Definitions.

Sec. 31201. As used in this part:

(a) "County agency" means an agency created or controlled by a county board of commissioners or a county executive, a board of county road commissioners, or an office of the county drain commissioner.

(b) "Member" means a municipality, county, county agency, public school district, public college or university, or other local or regional public agency that is a member of a watershed alliance as provided for in this part.

(c) "Watershed" means a geographic area in the state within which surface water drains into a common river, stream, or body of water.

(d) "Watershed alliance" means an organization established under section 31202.

(e) "Watershed management plan" means a written document prepared and approved by a watershed alliance that identifies water management issues and problems, proposes goals and objectives, and outlines actions to achieve the goals and objectives identified by members of a watershed alliance.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: NREPA

324.31202 Watershed alliance; establishment by municipalities; purpose; resolution; bylaws; voluntary membership.
Sec. 31202. (1) Two or more municipalities, by resolution of their respective governing bodies, may establish a watershed alliance for the purpose of studying problems and planning and implementing activities designed to address surface water quality or water flow issues of mutual concern within the portion of a watershed located within their boundaries, including 1 or more of the following:

(a) Preparation of watershed management plans and other required documents as part of state or federal requirements to obtain water discharge permits or grant funding.

(b) Monitoring, sampling, and analyses of data necessary to manage the watershed, including, but not limited to, surface water quality, water quantity and flows, ecosystem health, recreational use, and the publication of results.

(c) Conducting public surveys, preparing and distributing informational and educational materials, and organizing activities involving the public.

(d) Designing and implementing projects and conducting activities to protect or enhance water quality and related beneficial uses, or manage flows to protect or reduce damage to riparian property and aquatic habitat.

(e) Designing and implementing other actions consistent with watershed management plans adopted by a watershed alliance, or required to protect public health, and maintain and restore beneficial public uses of the surface water resources of the watershed.

(2) A resolution under subsection (1) establishing a watershed alliance shall include bylaws that identify, at a minimum, all of the following:

(a) The structure of the organization and decision-making process.

(b) The geographic boundaries of the watershed.

(c) The municipalities, counties, county agencies, public school districts, and other local or regional public agencies eligible for membership in the watershed alliance as provided under subsection (3).

(d) The basis for assessing costs to members.

(e) A mechanism to be used for adoption of an annual budget to support projects and activities.

(3) A watershed alliance shall provide an equitable basis for all municipalities, counties, and county agencies within the geographic boundaries of the watershed to voluntarily join as members. In addition, at its discretion, the watershed alliance may authorize the voluntary membership of any local public school district, public college or university, or any other local or regional public agency that has water management responsibilities. Following establishment of a watershed alliance under subsection (1), by resolution of its governing body, a municipality, county, county agency, public school district, public college or university, or other local or regional public agency established under state law with surface water management responsibility may voluntarily join a watershed alliance as provided for in this subsection.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: NREPA

324.31203 Watershed alliance as body corporate; powers and authority.

Sec. 31203. A watershed alliance is a body corporate with power to sue and be sued in any court of this state and with the authority to carry out its responsibilities under this part and as otherwise provided by law.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: NREPA

324.31204 Watershed alliance; powers and authority; report; assessment or collection of fees or taxes.

Sec. 31204. (1) A watershed alliance, consistent with the purposes identified in section 31202 and its bylaws, may do 1 or more of the following:

(a) Employ personnel to coordinate and implement actions.

(b) Enter into agreements or contracts with public or private entities to coordinate or implement actions.

(c) Assess and collect fees from members with approval of the governing bodies of the members.

(d) Solicit grants, gifts, and contributions from federal, state, regional, or local public agencies and from private sources.

(e) Expend funds provided by members, or through grants, gifts, and contributions.

(f) Represent members of the watershed alliance before other bodies considering issues affecting water quality or flow management issues within the designated watershed, including obtaining local, state, or federal permits or authorizations that may be required to carry out activities as may be authorized by its members.

(2) A watershed alliance shall prepare and deliver to its members on or before April 1 of each year a report detailing the revenue received and expenditures by the watershed alliance during the immediately prior January 1 through December 31 period.

(3) A watershed alliance shall have no independent authority to assess or collect any fees or taxes directly from individuals or property owners. A watershed alliance member may allocate the use of public funds from fees, taxes, or assessments generated under the provisions of other state laws for use by a watershed alliance.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: NREPA

324.31205 Audit.
Sec. 31205. (1) A watershed alliance shall obtain an audit of its financial records, accounts, and procedures at least every other year.

(2) A watershed alliance shall submit the results of an audit under subsection (1) to the governing bodies of its members and to the state treasurer.

(3) An audit under subsection (1) shall satisfy all audit requirements set under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005
Popular Name: NREPA
Popular Name: Act 451

324.31206 Additional authority prohibited.
Sec. 31206. This part does not provide a watershed alliance or any of its members with any additional authority not otherwise provided by law.

History: Add. 2004, Act 517, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: NREPA

THE GREAT LAKES
Part 321

THE GREAT LAKES COMPACT AUTHORIZATION

324.32101 Great Lakes compact; cooperation with Ontario and bordering states; agreement authority.
Sec. 32101. So that the state of Michigan can consult and cooperate with the other states bordering on the Great Lakes and the province of Ontario in regard to all matters and things affecting the rights and interests of this state and such other states and province, in the management, control and supervision of the waters of the Great Lakes including the marine life therein, the governor of the state of Michigan is hereby authorized and

empowered for and in the name of the state of Michigan to execute an agreement or agreements with any or all the other states bordering on the Great Lakes and the province of Ontario, in conformity with the terms, conditions and provisions contained in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32102 Compact; ratification.

Sec. 32102. Such compact shall become operative whenever, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York and Minnesota shall have ratified it and congress has given its consent, if needed. The province of Ontario may become a party to this compact by taking such action as its laws and the laws of the Dominion of Canada may prescribe for ratification.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32103 Compact; terms; conditions; provisions.

Sec. 32103. In addition to other pertinent and necessary provisions which are in consonance with the expressed purposes of the compact as herein provided, such a compact shall contain the following terms, conditions and provisions: Said compact shall authorize the compacting parties to do all things reasonably necessary for carrying out the purposes of this part but such a compact shall be entered into solely for the purpose of empowering the duly appointed representatives of said states and the province of Ontario to meet, consult with and make recommendations to their respective governors, legislative bodies or governmental agencies and to the international joint commission established under the treaty of 1909 between the United States and Great Britain with respect to the management, control and supervision of the waters of the Great Lakes including the marine life therein. However, it is distinctly provided that any such recommendation and any decision or agreement arrived at among the compacting parties shall at no time have any force of law or be binding on any compacting party.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32104 Compact commission; memberships.

Sec. 32104. Each compacting party shall have the right to designate 5 representatives to such interstate compact commission to be known as the Great Lakes compact commission. The representatives from this state shall be as provided in section 32202.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32105 Compact; effective date; commission meetings; officers; duties; quorum.

Sec. 32105. The compact herein provided shall become effective upon the adoption of laws by the states referred to in section 2 in conformity with the provisions of this part. When, in addition to Michigan, any 3 of the states of Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, New York, and Minnesota have adopted such laws and the congress of the United States has given its consent, if needed, the designated representatives of the Great Lakes compact commission shall meet upon the call of any governor of any of the ratifying states or the legally designated governmental official of the province of Ontario. At such meeting or at any subsequent meeting the duly designated representatives shall adopt a compact agreement not inconsistent in any way with this part and containing the necessary provisions for enabling the commission to carry out the purposes of this part. At such meeting or at subsequent meetings, the representatives composing such commission shall select a chairman and a secretary from among their numbers and such other officers as to them may seem expedient and shall prescribe the duties of such officers. A 2/3 majority of all representatives designated shall be sufficient to form a quorum for the transaction of business. Said commission shall meet from time to time or at such places or locations as it shall seem necessary and proper or shall meet upon the call of the chairman and such call shall designate the time and place of meeting and the purpose thereof.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32106 Compact; commission; records of meetings and proceedings; reports.

Sec. 32106. Said commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each compacting party.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32107 Compact commission; expenses.

Sec. 32107. Each compacting party shall pay for the expenses of its representatives on said commission and each compacting party shall pay to the secretary of the commission a pro rata share of the expenses of said commission. No expenditures shall be authorized under the provisions of this part unless and until moneys shall be appropriated therefor by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 322

GREAT LAKES BASIN COMPACT

324.32201 Great Lakes basin compact; ratification; contents.

Sec. 32201. The great lakes basin compact is hereby ratified, enacted into law, and entered into by this state as a party thereto with any other state or province which, pursuant to article II of said compact, has legally joined therein in the form substantially as follows:

GREAT LAKES BASIN COMPACT

The party states solemnly agree:

Article I. Purpose

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).

2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.

3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.

4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.

5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

Article II. Enactment and Effective Date

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any 4 of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as

their laws and the laws of the government of Canada may prescribe for adherence thereto. For the purpose of this compact the word “state” shall be construed to include a Province of Canada.

Article III. The Basin

The Great Lakes Commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact, shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them.

2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise part of any watershed draining into any of said lakes.

Article IV. The Commission

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words “The Great Lakes Commission” and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

B. The Commission shall be composed of not less than 3 commissioners nor more than 5 commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to 3 votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any 2 or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his or her vote may be cast by another representative or commissioner of his or her state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept for any of the Commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain 1 or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind bylaws, rules and regulations for the conduct of its business.

L. The organization meeting of the Commission shall be held within 6 months from the effective date of this compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

Article V. Finance

A. The members of the Commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he or she represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

Article VI. Powers of Commission

The Commission shall have power to:

A. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.

B. Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the Basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.

C. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.

D. Consider means of improving navigation and port facilities in the Basin or any portion thereof.

E. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.

F. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.

G. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies, or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Basin or any portion thereof.

H. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.

I. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor.

J. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.

K. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548).

L. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.

M. At the request of the United States, or in the event that a Province shall be a party state, at the request of the government of Canada, assist

in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the Basin or any portion thereof.

N. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact; provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

Article VII. State Action

Each party state agrees to consider the action the Commission recommends in respect to:

A. Stabilization of lake levels.

B. Measures for combating pollution, beach erosion, floods, and shore inundation.

C. Uniformity in navigation regulations within the constitutional powers of the states.

D. Proposed navigation aids and improvements.

E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wild life and other water resources.

F. Suitable hydroelectric power developments.

G. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.

H. Diversion of waters from and into the Basin.

I. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

Article VIII. Renunciation

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state; provided that such renunciation shall not become effective until 6 months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

Article IX. Construction and Severability

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32202 Great Lakes commission; membership; oath; expenses; voting rights.

Sec. 32202. (1) For purposes of this section through section 32206, “commission” means the Great Lakes commission established in the compact entered into by this part.

(2) In pursuance of article IV of the compact, there shall be 5 commissioners on the Great Lakes commission from this state. Each commissioner shall have all of the powers conferred on a commissioner by the compact or which shall be necessary or incidental to the performance of his or her functions as a commissioner. For this state, the governor, or the governor's designee, the attorney general, or the attorney general's designee, an appointee of the majority leader of the senate, and an appointee of the speaker of the house of representatives shall be members of the Michigan representation. In addition, the governor shall appoint, with the advice and consent of the senate, the remaining 1 member who shall come from groups or organizations interested in or affected by the Great Lakes, which member shall serve at the governor's pleasure. The appointees of the governor, the majority leader of the senate, and of the speaker of the house of representatives, before entering upon the performance of their office, shall take and subscribe to the constitutional oath of office. Each commissioner shall receive necessary expenses incurred in the performance of his or her duties. Each commissioner shall have the right to cast 3/5 of a vote whenever a vote is required by the terms of the compact.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32203 Commission; cooperation by state officers.

Sec. 32203. All officers of this state are hereby authorized and directed to do all things falling within their respective jurisdictions necessary to or incidental to the carrying out of said compact in every particular, it being hereby declared to be the policy of this state to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments, and persons of and in the state government or administration of this state are hereby authorized and directed at reasonable times and upon request of said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal powers respectively.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32204 Commission; budget; appropriations.

Sec. 32204. The budget of the estimated expenditures of the commission shall be submitted to the director and to the director of the department of commerce for such period and in form as shall be required by them. Neither the compact nor this part shall be construed to commit, or authorize the expenditure of, any funds of the state except in pursuance of appropriations made by the legislature.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32205 Basin compact; transmission of copy of part and compact to other parties.

Sec. 32205. The governor is hereby authorized and directed to transmit a duly authenticated copy of this part and the compact contained herein to each jurisdiction now party to the compact and to each jurisdiction which is or subsequently shall become party to the compact.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32206 Limiting diversions of water of Great Lakes.

Sec. 32206. The commissioners who represent this state shall request the commission to consider and recommend amendments or agreements supplementary to the Great Lakes basin compact that would give the party states the authority to limit diversions of the waters of the Great Lakes.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Part 325

GREAT LAKES SUBMERGED LANDS

324.32501 Additional definitions.
Sec. 32501. As used in this part:

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

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

(i) Manual or mechanized leveling of sand.

(ii) Mowing of vegetation.

(iii) Manual de minimis removal of vegetation.

(iv) Grooming of soil.

(v) Construction and maintenance of a path.

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

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

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

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

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

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

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

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

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.32502 Unpatented lake bottomlands and unpatented made lands in Great Lakes; construction of part.

Sec. 32502. The lands covered and affected by this part are all of the unpatented lake bottomlands and unpatented made lands in the Great

Lakes, including the bays and harbors of the Great Lakes, belonging to the state or held in trust by it, including those lands that have been artificially filled in. The waters covered and affected by this part are all of the waters of the Great Lakes within the boundaries of the state. This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, to provide for the sale, lease, exchange, or other disposition of unpatented lands and the private or public use of waters over patented and unpatented lands, and to permit the filling in of patented submerged lands whenever it is determined by the department that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired by those agreements for use, sales, lease, or other disposition. The word “land” or “lands” as used in this part refers to the aforesaid described unpatented lake bottomlands and unpatented made lands and patented lands in the Great Lakes and the bays and harbors of the Great Lakes lying below and lakeward of the natural ordinary high-water mark, but this part does not affect property rights secured by virtue of a swamp land grant or rights acquired by accretions occurring through natural means or reliction. For purposes of this part, the ordinary high-water mark shall be at the following elevations above sea level, international Great Lakes datum of 1955: Lake Superior, 601.5 feet; Lakes Michigan and Huron, 579.8 feet; Lake St. Clair, 574.7 feet; and Lake Erie, 571.6 feet.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Compiler's Notes: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.
Popular Name: Act 451
Popular Name: NREPA

324.32503 Agreements pertaining to waters over and filling in of submerged patented lands; lease or deed of unpatented lands; terms, conditions, and requirements; reservation of mineral rights;

exception; riparian owner dredging or placing materials on bottomland; permit; lease or deed allowing drilling operations for exploration of oil or gas purposes; execution of agreement, lease, or deed with United States.

Sec. 32503. (1) Except as otherwise provided in this section, the department, after finding that the public trust in the waters will not be impaired or substantially affected, may enter into agreements pertaining to waters over and the filling in of submerged patented lands, or to lease or deed unpatented lands, after approval of the state administrative board. Quitclaim deeds, leases, or agreements covering unpatented lands may be issued or entered into by the department with any person, and shall contain such terms, conditions, and requirements as the department determines to be just and equitable and in conformance with the public trust. The department shall reserve to the state all mineral rights, including, but not limited to, coal, oil, gas, sand, gravel, stone, and other materials or products located or found in those lands, except where lands are occupied or to be occupied for residential purposes at the time of conveyance.

(2) A riparian owner shall not dredge or place spoil or other materials on bottomland except as authorized by a permit issued by the department pursuant to part 13.

(3) The department shall not enter into a lease or deed that allows drilling operations beneath unpatented lands for the exploration or production of oil or gas.

(4) An agreement, lease, or deed entered into under this part by the department with the United States shall be entered into and executed pursuant to the property rights acquisition act, 1986 PA 201, MCL 3.251 to 3.262.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 148, Imd. Eff. Apr. 5, 2002 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Compiler's Notes: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature

having continued in session.
Popular Name: Act 451
Popular Name: NREPA

324.32504 Unpatented lake lands and unpatented made lands; application for conveyance; contents; qualifications of applicant; consent; approval; fee.

Sec. 32504. (1) Application for a deed or lease to unpatented lands or agreement for use of water areas over patented lands shall be on forms provided by the department. An application shall include a surveyed description of the lands or water area applied for, together with a surveyed description of the riparian or littoral property lying adjacent and contiguous to the lands or water area, certified to by a registered land surveyor. The description shall show the location of the water's edge at the time it was prepared and other information that is required by the department. The applicant shall be a riparian or littoral owner or owners of property touching or situated opposite the unpatented land or water area over patented lands applied for or an occupant of that land. The application shall include the names and mailing addresses of all persons in possession or occupancy or having an interest in the adjacent or contiguous riparian or littoral property or having riparian or littoral rights or interests in the lands or water areas applied for, and the application shall be accompanied by the written consent of all persons having an interest in the lands or water areas applied for in the application.

(2) Before an application is acted upon by the department, the applicant shall secure approval of or permission for his or her proposed use of such lands or water area from any federal agency as provided by law, the department with the advice of the Michigan waterways commission, and the legislative body of the local unit or units of government within which such land or water area is or will be included, or to which it is contiguous or adjacent. A deed, lease, or agreement shall not be issued or entered into by the department without such approvals or permission. The department may also require the applicant to furnish an abstract of title and ownership, and a 20-year tax history on the riparian or littoral property that is contiguous or adjacent to the lands or water area applied for, as well as on the lands applied for, if available.

(3) The department shall require the applicant to deposit a fee of not less than $50.00 for each application filed. The fee shall be deposited with the state treasurer to the credit of the state's general fund. If a deed, lease, or other agreement is approved by the department, the applicant is entitled to credit for the fee against the consideration that is paid for the deed, lease, or other agreement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32504a Restoration or maintenance of lighthouse; lease or agreement for use of lands; "approved organization" defined.
Sec. 32504a. (1) The department may accept an application under this part from an approved organization, whether or not the approved organization is a riparian landowner, and may enter into a lease or agreement for the use of lands described in section 32502 on which a lighthouse is located, including the use of water over those lands immediately adjacent to the lighthouse.

(2) As used in this section, "approved organization" means a lawful nonprofit entity as approved by the department, a local unit of government, a federal or state agency or department, an educational agency, or a community development organization, that is seeking to secure a lease or agreement under this section for the purpose of restoring or maintaining a lighthouse.

History: Add. 2002, Act 650, Imd. Eff. Dec. 23, 2002
Popular Name: Act 451
Popular Name: NREPA

324.32505 Unpatented lake bottomlands and unpatented made lands; consideration for conveyances or lease.
Sec. 32505. (1) If the department determines that it is in the public interest to grant an applicant a deed or lease to such lands or enter into an agreement to permit use and improvements in the waters or to enter into any other agreement in regard thereto, the department shall determine the

amount of consideration to be paid to the state by the applicant for the conveyance or lease of unpatented lands.

(2) The department may permit, by lease or agreement, the filling in of patented and unpatented submerged lands and permit permanent improvements and structures after finding that the public trust will not be impaired or substantially injured.

(3) The department may issue deeds or may enter into leases if the unpatented lands applied for have been artificially filled in or are proposed to be changed from the condition that exists on October 14, 1955 by filling, sheet piling, shoring, or by any other means, and such lands are used or to be used or occupied in whole or in part for uses other than existing, lawful riparian or littoral purposes. The consideration to be paid to the state for the conveyance or lease of unpatented lands by the applicant shall be not less than the fair, cash market value of the lands determined as of the date of the filing of the application, minus any improvements placed on the lands, but the sale price shall not be less than 30% of the value of the land. In determining the fair, cash market value of the lands applied for, the department may give due consideration to the fact that the lands are connected with the riparian or littoral property belonging to the applicant, and to the uses, including residential and commercial, being made or which can be made of the lands.

(4) Agreements for the lands or water area described in section 32502 may be granted to or entered into with local units of government for public purposes and containing those terms and conditions that may be considered just and equitable in view of the public trust involved and may include the granting of permission to make such fills as may be necessary.

(5) If the unpatented lands applied for have not been filled in or in any way substantially changed from their natural character at the time the application is filed with the department, and the application is filed for the purpose of flood control, shore erosion control, drainage and sanitation control, or to straighten irregular shore lines, then the

consideration to be paid to the state by the applicant shall be the fair, cash value of such land, giving due consideration to its being adjacent to and connected with the riparian or littoral property owned by the applicant.

(6) Leases or agreements covering unpatented lands may be granted or entered into with riparian or littoral proprietors for commercial marina purposes or for marinas operated by persons for consideration and containing terms and conditions that are considered by the department to be just and equitable. The leases may include either filled or unfilled lake bottomlands, or both. Rental shall commence as of the date of use of the unpatented lands for the marina operations. Dockage and other uses by marinas in waters over patented lands on October 14, 1955 shall be considered to be lawful riparian use.

(7) If the department after investigation determines that an applicant has willfully and knowingly filled in or in any way substantially changed the lands applied for with an intent to defraud, or if the applicant has acquired such lands with knowledge of such a fraudulent intent and is not an innocent purchaser, the sale price shall be the fair, cash market value of the land. An applicant may request a hearing of a determination made under this subsection. The department shall grant a hearing if requested.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32506 Unpatented lands and unpatented made lands; value determination by department; appraisal; decision of court.
Sec. 32506. The fair, cash market value of lands approved for sale under this part shall be determined by the department. Consideration paid to the state shall not be less than $50.00. If the applicant is not satisfied with the value determined by the department, within 30 days after the receipt of the determination he or she may submit a petition in writing to the circuit court of the county in which the lands are located, and the court shall appoint an appraiser or appraisers as the court shall determine for an appraisal of the lands. The decision of the court is final.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32507 Receipts; disposition; accounting; employees.

Sec. 32507. (1) All money received by the department from the sale, lease, or other disposition of land and water areas under this part shall be forwarded to the state treasurer and be credited to the land and water management permit fee fund created in section 30113.

(2) The department shall comply with the accounting laws of this state and the requirements with respect to submission of budgets. The department may hire employees, assistants, and services that may be necessary within the appropriation made by the legislature and may delegate this authority as may be necessary to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32508 Lands conveyed; taxation.

Sec. 32508. All lands conveyed or leased under this part are subject to taxation and the general property tax laws and other laws as other real estate used and taxed by the governmental unit or units within which the land is or may be included.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32509 Rules.

Sec. 32509. The department may promulgate rules, in accordance with the requirements of law, consistent with this part, that may be necessary to implement this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32510 Land filled, excavated, or modified without approval; misdemeanor; penalty; issuance or service of appearance ticket; "minor offense" defined.

Sec. 32510. (1) Except as provided in subsection (2), a person who excavates or fills or in any manner alters or modifies any of the land or waters subject to this part without the approval of the department is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both. Land altered or modified in violation of this part shall not be sold to any person convicted under this section at less than fair, cash market value.

(2) A person who commits a minor offense is guilty of a misdemeanor, punishable by a fine of not more than $500.00 for each violation. A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9a to 9g of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(3) As used in this section, "minor offense" means either of the following violations of this part if the department determines that restoration of the affected property is not required:

(a) The failure to obtain a permit under this part.

(b) A violation of a permit issued under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32511 Certificate of location of lakeward boundary; application; riparian owner; fee.

Sec. 32511. A riparian owner may apply to the department for a certificate suitable for recording indicating the location of his or her lakeward boundary or indicating that the land involved has accreted to his or her property as a result of natural accretions or placement of a lawful, permanent structure. The application shall be accompanied by a fee of $200.00 and proof of upland ownership.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32512 Acts prohibited; exceptions.

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

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

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

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

(d) Construct a marina.

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

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

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

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003
Popular Name: Act 451
Popular Name: NREPA

324.32512a Mowing or removal of vegetation; general permit.
Sec. 32512a. (1) The department, after notice and opportunity for a public hearing, may issue general permits on a statewide basis or within a local unit of government for a category of activities if the department determines that the activities are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. A general permit issued under this subsection shall be based on the requirements of this part and the rules promulgated under this part, and shall set forth the requirements and standards that shall apply to an activity authorized by the general permit.

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

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

History: Add. 2003, Act 14, Imd. Eff. June 5, 2003
Popular Name: Act 451
Popular Name: NREPA

324.32513 Application for permit; contents; fees; disposition of fees.
Sec. 32513. (1) Before any work or connection specified in section 32512 or 32512a is undertaken, a person shall file an application with the department of environmental quality setting forth the following:

(a) The name and address of the applicant.

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

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

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

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

(2) Except as provided in subsections (3) and (4), until October 1, 2011, an application for a permit under this section shall be accompanied by a fee according to the following schedule:

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

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

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

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

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

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

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

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

(d) For major projects other than a project described in subdivision (c)(v), involving any of the following, a fee of $2,000.00:

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

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

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

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

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

(vi) New breakwater or channel jetty.

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

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

(e) For all other projects not listed in subdivisions (a) through (d), $500.00.

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

(a) Part 301.

(b) Part 303.

(c) Part 323.

(d) Section 3104.

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

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

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

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 170, Imd. Eff. Oct. 9, 1995 ;-- Am. 1999, Act 106, Imd. Eff. July 7, 1999 ;-- Am. 2003, Act 14, Imd. Eff. June 5, 2003 ;-- Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003 ;-- Am. 2008, Act 276, Imd. Eff. Sept. 29, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32514 Application for permit; copies; local units; adjacent riparian owners; objections; hearing; time; notice.

Sec. 32514. Upon receipt of the application, the department shall mail copies to the department of public health, the clerks of the county, city, village, and township, and the drain commissioner of the county or, if none, the road commissioner of the county, in which the project or body of water affected is located, and to the adjacent riparian owners,

accompanied by a statement that unless a written objection is filed with the department within 20 days after the mailing of the copies, the department may take action to grant the application. The department may set the application for public hearing. At least 10 days' notice of the hearing shall be given by publication in a newspaper circulated in the county and by mailing copies of the notice to the persons named in this section.
History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32515 Artificial waterway; permit; issuance; conditions; maintenance.

Sec. 32515. If the department finds that the project will not injure the public trust or interest including fish and game habitat, that the project conforms to the requirements of law for sanitation, and that no material injury to the rights of any riparian owners on any body of water affected will result, the department shall issue a permit authorizing enlargement of the waterway affected. The permit shall provide that the artificial waterway shall be a public waterway, except intake or discharge canals or channels on property owned, controlled, and used by a public utility. The existing and future owners of land fronting on the artificial waterway are liable for maintenance of the waterway in accordance with the conditions of the permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.32516 Removal of vegetation; designation of areas; conditions; procedures; report.

Sec. 32516. (1) Within 10 working days after the effective date of the amendatory act that added this section, the director shall identify 2 areas of the shoreline of the Great Lakes and Lake St. Clair where the removal of vegetation between the ordinary high-water mark and the water's edge shall be allowed without a permit under this part or part 303. The designation shall be made in writing, is final, and is not subject to appeal.

Within 1 year after this designation is made, the director may designate additional areas unless he or she determines that making additional designations would result in pollution, impairment, or destruction to the natural resources of the state. Within areas designated by the director under this subsection, the removal of vegetation is allowed if all of the following conditions are met:

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

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

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

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

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

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

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

(2) A person who owns riparian property on the shoreline of the Great Lakes or Lake St. Clair within an area designated under subsection (1) may submit to the director a request to conduct removal of vegetation. The request shall be submitted by certified mail or facsimile and shall include the address of the property, a parcel description by section, township, and range, the parcel tax number, the width in feet of the

shoreline frontage, the width of the area proposed for removal of vegetation, and permission for the department to conduct an on-site inspection, if needed. Within 10 working days after receipt of a request under this subsection, the director shall notify the riparian property owner, in writing, whether the conditions in subsection (1)(a) are met.

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

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

History: Add. 2003, Act 14, Imd. Eff. June 5, 2003
Popular Name: Act 451
Popular Name: NREPA

Part 327

GREAT LAKES PRESERVATION

324.32701 Definitions; retention of established baseline capacity.
Sec. 32701. (1) As used in this part:

(a) "Adverse resource impact" means any of the following:

(i) Until February 1, 2009, decreasing the flow of a river or stream by part of the index flow such that the river's or stream's ability to support characteristic fish populations is functionally impaired.

(ii) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cold river system by part of the index flow as follows:

(A) For a cold stream, the withdrawal will result in a 3% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, the withdrawal will result in a 1% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iii) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cold-transitional river system by part of the index flow such that the withdrawal will result in a 5% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a cool river system by part of the index flow as follows:

(A) For a cool stream, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a cool small river, the withdrawal will result in a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, the withdrawal will result in a 12% or more reduction in the density of thriving fish populations as determined by the thriving fish curve.

(v) Beginning February 1, 2009, subject to subparagraph (vi), decreasing the flow of a warm river system by part of the index flow as follows:

(A) For a warm stream, the withdrawal will result in a 5% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For a warm small river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(C) For a warm large river, the withdrawal will result in a 10% or more reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(vi) Beginning February 1, 2009, decreasing the flow of a stream or river by more than 25% of its index flow.

(vii) Decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired. As used in this subparagraph, lake or pond does not include a retention pond or other artificially created surface water body.

(b) "Agricultural purpose" means the agricultural production of plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy animals and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product, as determined by the commission of agriculture, that incorporates the use of food, feed, fiber, or fur.

(c) "Assessment tool" means the water withdrawal assessment tool provided for in section 32706a.

(d) "Baseline capacity", subject to subsection (2), means any of the following, which shall be considered the existing withdrawal approval amount under section 4.12.2 of the compact:

(i) The following applicable withdrawal capacity as reported to the department or the department of agriculture, as appropriate, by the person making the withdrawal in the annual report submitted under section 32707 not later than April 1, 2009 or in the water use conservation plan submitted under section 32708 not later than April 1, 2009:

(A) Unless reported under a different provision of this subparagraph, for a quarry or mine that holds an authorization to discharge under part 31 that includes a discharge volume, the discharge volume stated in that authorization on February 28, 2006.

(B) The system capacity used or developed to make a withdrawal on February 28, 2006, if the system capacity and a description of the system capacity are included in an annual report that is submitted under this part not later than April 1, 2009.

(ii) If the person making the withdrawal does not report under subparagraph (i), the highest annual amount of water withdrawn as reported under this part for calendar year 2002, 2003, 2004, or 2005. However, for a person who is required to report by virtue of the 2008 amendments to section 32705(2)(d), baseline capacity means the person's withdrawal capacity as reported in the April 1, 2009 annual report submitted under section 32707.

(iii) For a community supply, the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, on February 28, 2006 as reported to the department in a report submitted not later than April 1, 2009.

(e) "Characteristic fish curve" means a fish functional response curve that describes the abundance of characteristic fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(f) "Characteristic fish population" means the fish species, including thriving fish, typically found at relatively high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(g) "Cold river system" means a stream or small river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will not cause a decline in these populations, as determined by a scientific methodology adopted by order of the commission.

(h) "Cold-transitional river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of cold-water fish species, and where small increases in water temperature will cause a decline in the proportion of cold-water species, as determined by a scientific methodology adopted by order of the commission.

(i) "Community supply" means that term as it is defined in section 2 of the safe drinking water act, 1976 PA 399, MCL 325.1002.

(j) "Compact" means the Great Lakes-St. Lawrence river basin water resources compact provided for in part 342.

(k) "Consumptive use" means that portion of water withdrawn or withheld from the Great Lakes basin and assumed to be lost or otherwise not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of the packaging of products or agricultural products, or other processes. Consumptive use includes a withdrawal of waters of the Great Lakes basin that is packaged within the Great Lakes basin in a container of 5.7 gallons (20 liters) or less and is bottled drinking water as defined in the food code, 2005 recommendations of the food and drug administration of the United States public health service.

(l) "Cool river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed mostly of warm-water fish species, but also contains some cool-water species or cold-water species, or both, as determined by a scientific methodology adopted by order of the commission.

(m) "Council" means the Great Lakes-St. Lawrence river basin water resources council created in the compact.

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

(o) "Designated trout stream" means a trout stream identified on the document entitled "Designated Trout Streams for the State of Michigan", as issued under order of the director of the department of natural resources, FO-210.04, on October 10, 2003.

(p) "Diversion" means a transfer of water from the Great Lakes basin into another watershed, or from the watershed of 1 of the Great Lakes into that of another by any means of transfer, including, but not limited to, a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, tanker ship, tanker truck, or rail tanker but does not apply to water that is used in the Great Lakes basin or a Great Lake watershed to manufacture or produce a product that is then transferred out of the Great Lakes basin or watershed. Diverted has a corresponding meaning. Diversion includes a transfer of water withdrawn from the waters of the Great Lakes basin that is removed from the Great Lakes basin in a container greater than 5.7 gallons (20 liters). Diversion does not include any of the following:

(i) A consumptive use.

(ii) The supply of vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of vehicles.

(iii) Use in a noncommercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

(iv) A transfer of water from a Great Lake watershed to the watershed of its connecting waterways.

(q) "Environmentally sound and economically feasible water conservation measures" means those measures, methods, technologies, or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use, or diversion that meet all of the following:

(i) Are environmentally sound.

(ii) Reflect best practices applicable to the water use sector.

(iii) Are technically feasible and available.

(iv) Are economically feasible and cost-effective based on an analysis that considers direct and avoided economic and environmental costs.

(v) Consider the particular facilities and processes involved, taking into account the environmental impact, the age of equipment and facilities involved, the process employed, energy impacts, and other appropriate factors.

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

(s) "Flow-based safety factor" means a protective measure of the assessment tool that reduces the portion of index flow available for a withdrawal to 1/2 of the index flow for the purpose of minimizing the risk of adverse resource impacts caused by statistical uncertainty.

(t) "Great Lakes" means Lakes Superior, Michigan and Huron, Erie, and Ontario and their connecting waterways including the St. Marys river, Lake St. Clair, the St. Clair river, and the Detroit river. For purposes of

this definition, Lakes Huron and Michigan shall be considered a single Great Lake.

(u) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river.

(v) "Great Lakes charter" means the document establishing the principles for the cooperative management of the Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(w) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the commonwealth of Pennsylvania, and the provinces of Ontario and Quebec, Canada.

(x) "Index flow" means the 50% exceedance flow for the lowest summer flow month of the flow regime, for the applicable stream reach, as determined over the period of record or extrapolated from analyses of the United States geological survey flow gauges in Michigan. Beginning on October 1, 2008, index flow shall be calculated as of that date.

(y) "Intrabasin transfer" means a diversion of water from the source watershed of a Great Lake prior to its use to the watershed of another Great Lake.

(z) "Lake augmentation well" means a water well used to withdraw groundwater for the purpose of maintaining or raising water levels of an inland lake or stream as defined in section 30101.

(aa) "Large quantity withdrawal" means 1 or more cumulative total withdrawals of over 100,000 gallons of water per day average in any consecutive 30-day period that supply a common distribution system.

(bb) "Large river" means a river with a drainage area of 300 or more square miles.

(cc) "New or increased large quantity withdrawal" means a new water withdrawal of over 100,000 gallons of water per day average in any consecutive 30-day period or an increase of over 100,000 gallons of water per day average in any consecutive 30-day period beyond the baseline capacity of a withdrawal.

(dd) "New or increased withdrawal capacity" means new or additional water withdrawal capacity to supply a common distribution system that is an increase from the person's baseline capacity. New or increased capacity does not include maintenance or replacement of existing withdrawal capacity.

(ee) "Online registration process" means the online registration process provided for in section 32706.

(ff) "Preventative measure" means an action affecting a stream or river that prevents an adverse resource impact by diminishing the effect of a withdrawal on stream or river flow or the temperature regime of the stream or river.

(gg) "Registrant" means a person who has registered a water withdrawal under section 32705.

(hh) "River" means a flowing body of water with a drainage area of 80 or more square miles.

(ii) "Site-specific review" means the department's independent review under section 32706c to determine whether the withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a withdrawal is likely to cause an adverse resource impact.

(jj) "Small river" means a river with a drainage area of less than 300 square miles.

(kk) "Source watershed" means the watershed from which a withdrawal originates. If water is withdrawn directly from a Great Lake, then the source watershed shall be considered to be the watershed of that Great

Lake and its connecting waterways. If water is withdrawn from the watershed of a direct tributary to a Great Lake, then the source watershed shall be considered to be the watershed of that Great Lake and its connecting waterways, with a preference for returning water to the watershed of the direct tributary from which it was withdrawn.

(ll) "Stream" means a flowing body of water with a drainage area of less than 80 square miles.

(mm) "Stream reach" means a segment of a stream or river.

(nn) "Thriving fish curve" means a fish functional response curve that describes the initial decline in density of thriving fish populations in response to reductions in index flow as published in the document entitled "Report to the Michigan Legislature in response to 2006 Public Act 34" by the former groundwater conservation advisory council dated July 2007, which is incorporated by reference.

(oo) "Thriving fish population" means the fish species that are expected to flourish at very high densities in stream reaches having specific drainage area, index flow, and summer temperature characteristics.

(pp) "Warm river system" means a stream or river that has the appropriate summer water temperature that, based on statewide averages, sustains a fish community composed predominantly of warm-water fish species, as determined by a scientific methodology adopted by order of the commission.

(qq) "Waters of the Great Lakes basin" means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including groundwater, within the Great Lakes basin.

(rr) "Waters of the state" means groundwater, lakes, rivers, and streams and all other watercourses and waters, including the Great Lakes, within the territorial boundaries of the state. Waters of the state do not include drainage ways and ponds designed and constructed solely for wastewater conveyance, treatment, or control.

(ss) "Withdrawal" means the removal of water from surface water or groundwater.

(tt) "Zone A withdrawal" means the following:

(i) For a cold river system, as follows:

(A) For a cold stream, less than a 1% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, less than 50% of the withdrawal that would result in an adverse resource impact.

(ii) For a cold-transitional river system, there is not a zone A withdrawal.

(iii) For a cool river system, as follows:

(A) For a cool stream, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, less than an 8% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For a warm river system, less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(uu) "Zone B withdrawal" means the following:

(i) There is not a zone B withdrawal for a cold stream or small river.

(ii) For a cold-transitional river system, less than a 5% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cool small river, a 5% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For a cool large river, an 8% or more but less than a 10% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For a warm river system, as follows:

(A) For a warm stream, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a warm small river or a warm large river, a 10% or more but less than a 20% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(vv) "Zone C withdrawal" means the following as long as the withdrawal will not decrease the flow of a stream or river by more than 25% of its index flow:

(i) For a cold river system, as follows:

(A) For a cold stream, a 1% or more but less than a 3% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(B) For a cold small river, 50% or more of the withdrawal that would result in an adverse resource impact but less than a 1% reduction in the

density of thriving fish populations as determined by the thriving fish curve.

(ii) There is not a zone C withdrawal for a cold-transitional river system.

(iii) For a cool river system, as follows:

(A) For a cool stream, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For cool small rivers, a 10% or more but less than a 15% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(C) For cool large rivers, a 10% or more but less than a 12% reduction in the density of thriving fish populations as determined by the thriving fish curve.

(iv) For warm river systems, as follows:

(A) For warm streams, a 15% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 5% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(B) For warm small rivers and warm large rivers, a 20% or more reduction in the density of thriving fish populations as determined by the thriving fish curve but less than a 10% reduction in the abundance of characteristic fish populations as determined by the characteristic fish curve.

(ww) "Zone D withdrawal" means, beginning February 1, 2009, a withdrawal that is likely to cause an adverse resource impact.

(2) For purposes of determining baseline capacity, a person who replaces his or her surface water withdrawal capacity with the same amount of groundwater withdrawal capacity from the drainage area of the same stream reach may retain the baseline capacity established under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 179, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32702 Legislative findings and declarations; authority.
Sec. 32702. (1) The legislature finds and declares that:

(a) A diversion of water out of the basin of the Great Lakes may impair or destroy the Great Lakes. The legislature further finds that a limitation on such diversions is authorized by and is consistent with the mandate of section 52 of article IV of the state constitution of 1963 that the legislature provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction.

(b) Water use registration and reporting are essential to implementing the principles of the Great Lakes charter and necessary to support the state's opposition to diversion of waters of the Great Lakes basin and to provide a source of information on water use to protect Michigan's rights when proposed water losses affect the level, flow, use, or quality of waters of the Great Lakes basin.

(c) The waters of the state are valuable public natural resources held in trust by the state, and the state has a duty as trustee to manage its waters effectively for the use and enjoyment of present and future residents and for the protection of the environment.

(d) The waters of the Great Lakes basin are a valuable public natural resource, and the states and provinces of the Great Lakes region and Michigan share a common interest in the preservation of that resource.

(e) Any new diversion of waters of the Great Lakes basin for use outside of the Great Lakes basin will have significant economic and environmental impact adversely affecting the use of this resource by the Great Lakes states and Canadian provinces.

(f) The continued availability of water for domestic, municipal, industrial, and agricultural water supplies, navigation, hydroelectric power and energy production, recreation, and the maintenance of fish and wildlife habitat and a balanced ecosystem are vital to the future economic health of the states and provinces of the Great Lakes region.

(g) Future interbasin diversions and consumptive uses of waters of the Great Lakes basin may have significant adverse impacts upon the environment, economy, and welfare of the Great Lakes region and of this state.

(h) The states and provinces of the Great Lakes region have a duty to protect, conserve, and manage their shared water resources for the use and enjoyment of present and future residents.

(i) The waters of the Great Lakes basin are capable of concurrently serving multiple uses, and such multiple uses of water resources for municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem and other purposes are encouraged, recognizing that such uses are interdependent and must be balanced.

(j) The waters of the Great Lakes basin are interconnected and part of a single hydrologic system.

(2) The legislature has the authority under sections 51 and 52 of article IV of the state constitution of 1963 to regulate the withdrawal and uses of the waters of the state, including both surface water and groundwater, to promote the public health, safety, and welfare and to protect the natural resources of the state from pollution, impairment, and destruction, subject to constitutional protections against unreasonable or

arbitrary governmental action and the taking of property without just compensation. This authority extends to all waters within the territorial boundaries of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 180, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32703 Diversion of waters prohibited.

Sec. 32703. Subject to section 32704, a diversion of the waters of the state out of the Great Lakes basin is prohibited.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 180, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32703a Diversion; authorization; conditions.

Sec. 32703a. (1) If the prohibition in section 32703 is determined to be invalid, the waters of the state shall not be diverted unless authorized by law.

(2) When considering whether to grant legislative approval for a diversion, the legislature shall consider sections 51 and 52 of article IV of the state constitution of 1963 and whether the project serves a public purpose, whether the project will result in no material harm to the waters of the state, the public trust, or related purposes, and whether the project would result in any improvement to the waters of the state or the water dependent natural resources of the state.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006
Popular Name: Act 451
Popular Name: NREPA

324.32704 Applicability of MCL 324.32703.

Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.32704a Diversion; proposal; comment period; notification; waiver.

Sec. 32704a. The governor shall establish a public comment period with regard to a proposal subject to 42 USC 1962d-20 to divert waters of the Great Lakes basin outside of the Great Lakes basin and shall notify the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment of his or her receipt of the proposal. The governor may waive the comment period under this section if he or she determines that it is necessary to take immediate action to provide humanitarian relief or firefighting capabilities.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006
Popular Name: Act 451
Popular Name: NREPA

324.32705 Registration of withdrawal; use of assessment tool; exception; agricultural purpose; form; calculating total amount of existing or proposed withdrawal; aggregate information; duration of valid registration.

Sec. 32705. (1) Except as otherwise provided in this section, the owner of real property who intends to develop capacity on that property to make a new or increased large quantity withdrawal from the waters of this state shall register the withdrawal with the department after using the assessment tool, if required under this part, and prior to beginning that withdrawal. A registration under this section may be made using the online registration process.

(2) The following persons are not required to register under this section:

(a) Subject to subdivision (c), a person who has previously registered for that property under this part or the owner of real property containing the capacity to make a withdrawal that was previously requested under this part, unless the property owner develops new or increased withdrawal

capacity on the property of an additional 100,000 gallons of water per day from the waters of the state.

(b) A community supply required to obtain a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(c) A person required to obtain a permit under section 32723.

(d) The owner of a noncommercial well located on the following residential property:

(i) Single-family residential property unless that well is a lake augmentation well.

(ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

(3) Subsection (1) does not limit a property owner's ability to withdraw water from a test well prior to registration if the test well is constructed in association with the development of new or increased withdrawal capacity and used only to evaluate the development of new or increased withdrawal capacity.

(4) A registration under this section by the owner of a farm in which the withdrawal is intended for an agricultural purpose, including irrigation for an agricultural purpose, may be submitted to the department of agriculture instead of the department.

(5) A registration submitted under this section that is not submitted via the online registration process shall be on a form provided by the department or the department of agriculture, as appropriate.

(6) In calculating the total amount of an existing or proposed withdrawal for the purpose of this section, a person shall combine all separate withdrawals that the person makes or proposes to make, whether or not these withdrawals are for a single purpose or are for related but separate purposes.

(7) The department shall aggregate information received by the state related to large quantity withdrawal capacities within the state and reported large quantity withdrawals in the state.

(8) Unless a property owner develops the capacity to make the new or increased large quantity withdrawal within 18 months after the property owner registers under subsection (1), the registration is no longer valid.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003 ;-- Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 180, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32706 Development of internet-based online registration process; registration; required statement and supporting documentation.
Sec. 32706. (1) Not later than 1 year after the effective date of the amendatory act that amended this section, the department shall develop and implement an internet-based online registration process that may be used for registrations under section 32705. The online registration process shall be designed to work in conjunction with the assessment tool.

(2) Each registration under this part shall include both of the following:

(a) A statement and supporting documentation that includes all of the following:

(i) The place and source of the proposed withdrawal.

(ii) The location of any discharge or return flow associated with the proposed withdrawal.

(iii) The location and nature of the proposed water use.

(iv) The capacity of the equipment used for making the proposed withdrawal.

(v) The estimated average annual and monthly volumes and rate of the proposed withdrawal.

(vi) The estimated average annual and monthly volumes and rates of consumptive use from the proposed withdrawal.

(b) Beginning 1 year after the effective date of the amendatory act that added this subdivision, for a new or increased large quantity withdrawal from a stream or river or groundwater, the determination from the use of the assessment tool under section 32706b or the determination from a site-specific review, as appropriate.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2008, Act 180, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32706a Internet-based water withdrawal assessment tool; implementation; determination of proposed zone withdrawal; entering and printing data; working in conjunction with online registration process; technical modifications; redesignation of stream or river; report.
Sec. 32706a. (1) On October 1, 2008, the department shall make available for testing and evaluation an internet-based water withdrawal assessment tool based upon the recommendations of the former groundwater conservation advisory council and the requirements of this part. The assessment tool shall contain a flow-based safety factor. Beginning 1 year after the effective date of the amendatory act that added this section, the department shall implement the assessment tool.

(2) The assessment tool shall determine whether a proposed withdrawal is a zone A, zone B, zone C, or zone D withdrawal and whether a proposed withdrawal is likely to cause an adverse resource impact based upon whether the proposed withdrawal is from a cold river system, a cold-transitional river system, a cool river system, or a warm river system. The assessment tool shall account for impacts due to cumulative withdrawals as provided for in section 32706e. The assessment tool shall also distinguish the impact of a proposed withdrawal based upon whether

the proposed withdrawal is from a stream, a small river, or a large river, subject to the following:

(a) Cool streams and warm streams with less than 3 square miles of drainage area shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(b) Cool streams and warm streams with less than 20 square miles of drainage area and less than 1 cubic foot per second of index flow shall be integrated into the next largest drainage area for purposes of assessment tool determinations.

(c) Cool streams and warm streams with a drainage area of more than 3 square miles but less than 6 square miles shall be integrated into the next largest drainage area for purposes of assessment tool determinations for groundwater withdrawals.

(3) The assessment tool shall allow the user to enter into fields the following data related to a proposed withdrawal:

(a) The capacity of the equipment used for making the withdrawal.

(b) The location of the withdrawal.

(c) The withdrawal source, whether surface water or groundwater.

(d) If the source of the withdrawal is groundwater, whether the source of the withdrawal is a glacial stratum or bedrock.

(e) The depth of the withdrawal if from groundwater.

(f) The amount and rate of water to be withdrawn.

(g) Whether the withdrawal will be intermittent.

(4) The assessment tool shall contain a print function that allows the user, upon receipt of the assessment tool's determination, to print the data submitted and the determination returned along with a date and time.

(5) The assessment tool shall work in conjunction with the online registration process and shall also allow operation independent of the online registration process.

(6) On an ongoing basis, the department shall add verified data to the assessment tool's database from reports submitted under sections 32707, water use conservation plans submitted under section 32708, and permits issued under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and other sources of data regarding the waters of the state. Additionally, the department shall make technical modifications to the assessment tool related to considerations of temperature, hydrology, and stream or river flow based upon a scientific methodology adopted by order of the commission.

(7) If a person disagrees with the designation of a particular stream or river as a cold river system, a cold-transitional river system, a cool river system, or a warm river system for use in the assessment tool or otherwise under this part, the person may petition for a redesignation of that stream or river. The petition shall be submitted to the commission for its review and determination.

(8) The department shall report annually to the standing committees of the legislature with jurisdiction primarily pertaining to natural resources and the environment on the implementation of the assessment tool and this part. This report shall include, but is not limited to, all of the following:

(a) The number of zone C withdrawal site-specific reviews requested by applicants each 12 months after the effective date of the implementation of the assessment tool under section 32706a.

(b) The number of zone C withdrawal site-specific review determinations that resulted in changes from zone C to zone B and the number of changes from zone C to zone A.

(c) The number of zone C withdrawal site-specific review determinations that result in a zone D withdrawal determination.

(d) The number of site-specific review determinations where the department failed to meet statutory timelines.

(e) The number of registered assessment tool determinations for each zone.

(f) The number of voluntary requests for site-specific reviews that were submitted to the department and whether the department failed to meet statutory timelines on these site-specific reviews.

(g) The number of registrations submitted to the department under this part.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32706b Utilization of assessment tool; request for site-specific review; designation of proposed withdrawal; registration; rerun of assessment tool; correction of data.
Sec. 32706b. (1) Beginning on the effective date of the implementation of the assessment tool under section 32706a, prior to registering a new or increased large quantity withdrawal under section 32705 for a proposed withdrawal from a stream or river, or from groundwater, the property owner proposing to make the withdrawal shall utilize the assessment tool by entering the data related to the proposed withdrawal into the assessment tool. However, a person who intends to make a new or increased large quantity withdrawal for the purpose of dewatering a mine that has a permit under part 31 and is not regulated under part 631, 632, or 637 may choose to submit a request for a site-specific review rather than utilize the assessment tool.

(2) Upon entry of the relevant data under subsection (1), the assessment tool shall indicate to the user whether or not the proposed withdrawal is likely to cause an adverse resource impact and whether the proposed withdrawal falls into the category of zone A, zone B, zone C, or zone D.

(3) If the assessment tool designates a proposed withdrawal as a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system, the property owner may register the withdrawal and proceed to make the withdrawal.

(4) If the assessment tool designates a proposed withdrawal as a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner shall not register the withdrawal or make the withdrawal except in accordance with section 32706c.

(5) After a property owner registers a withdrawal, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were entered into the assessment tool, the property owner shall rerun the assessment tool and shall enter the corrected data into the assessment tool. The property owner shall notify the department of the corrected data and the corrected results from the assessment tool. If the corrected data do not change the determination of the assessment tool, the property owner may proceed with the withdrawal. If the corrected data change the determination from the assessment tool, the property owner shall proceed under the provisions of this part related to the corrected assessment tool determination.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32706c Request for site-specific review; conditions; form; information to be included; completion of review by department; withdrawals; registration; corrected data; interim site-specific review to determine adverse resource impact.

Sec. 32706c. (1) If the assessment tool determines that a proposed withdrawal is a zone B withdrawal in a cold-transitional river system, or a zone C or zone D withdrawal, the property owner shall submit to the

department a request for a site-specific review. Additionally, if the assessment tool determines that a proposed withdrawal is a zone A withdrawal, or a zone B withdrawal in a cool river system or a warm river system and the property owner wishes to have a site-specific review, the property owner may submit to the department a request for a site-specific review. A request for a site-specific review shall be submitted to the department in a form required by the department and shall include all of the following:

(a) The information described in section 32706a(3).

(b) The intended maximum monthly and annual volumes and rates of the proposed withdrawal, if different from the capacity of the equipment used for making the proposed withdrawal.

(c) If the amount and rate of the proposed withdrawal will have seasonal fluctuations, the relevant information related to the seasonal use of the proposed withdrawal.

(d) A description of how the water will be used and the location, amount, and rate of any return flow.

(e) Any other information the property owner would like the department to consider in making its determination under this section.

(2) Upon receipt of a request for a site-specific review, the department shall consider the information submitted to the department under subsection (1) and shall consider the actual stream or river flow data of any affected stream reach. The department shall also apply the drainage area aggregation standards provided in section 32706a(2)(a), (b), and (c), if applicable, and account for cumulative withdrawals as provided for in section 32706e. The department shall not rely on the assessment tool's determination in making its determination under a site-specific review.

(3) The department shall complete its site-specific review within 10 working days of submittal of a request for a site-specific review. If the department determines, based upon a site-specific review, that the

proposed withdrawal is a zone A or a zone B withdrawal, the department shall provide written notification to the property owner and the property owner may register the withdrawal and may proceed with the withdrawal.

(4) Subject to subsection (5), if the department determines in conducting a site-specific review that the proposed withdrawal is a zone C withdrawal, the property owner may register the withdrawal and proceed to make the withdrawal if the property owner self-certifies that he or she is implementing applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a that the property owner considers to be reasonable or has self-certified that he or she is implementing applicable environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal that the property owner considers to be reasonable.

(5) Except for withdrawals exempt from obtaining a water withdrawal permit under section 32723, if a site-specific review determines that a proposed withdrawal is a zone C withdrawal with capacity in excess of 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system, the person proposing the withdrawal shall not register the withdrawal and shall not proceed with making the withdrawal unless the person obtains a water withdrawal permit under section 32723.

(6) If the department determines, based upon a site-specific review, that the proposed withdrawal is a zone D withdrawal, the property owner shall not register the withdrawal and shall not make the withdrawal unless he or she applies for a water withdrawal permit under section 32723 and the withdrawal is authorized under that section.

(7) After a property owner registers a withdrawal following a site-specific review, if, in developing the capacity to make the withdrawal, the conditions of the withdrawal deviate from the specific data that were evaluated in the site-specific review, the property owner shall notify the department of the corrected data and the department shall confirm its

determination under the site-specific review. If the corrected data do not change the determination under the site-specific review, the property owner may proceed with the withdrawal. If the corrected data change the determination under the site-specific review, the property owner shall proceed under the provisions of this part related to the corrected determination.

(8) Subject to subsection (9), prior to the implementation date of the assessment tool under section 32706a, a property owner proposing to develop withdrawal capacity on his or her property to make a new or increased large quantity withdrawal may submit to the department a request for an interim site-specific review under this subsection to determine whether or not the proposed withdrawal is likely to cause an adverse resource impact. The department, upon request, shall conduct an interim site-specific review under this subsection within a reasonable time period not to exceed 30 days based upon an evaluation of reasonably available information. For purposes of this part, a determination under an interim site-specific review under this subsection shall be afforded the same status as a site-specific review otherwise conducted under this section.

(9) Except for withdrawals exempt from obtaining a permit under section 32723, a property owner who, prior to the implementation of the assessment tool under section 32706a, intends to develop withdrawal capacity on his or her property to make a new or increased large quantity withdrawal of more than 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system shall obtain an interim site-specific review under subsection (8). If the interim site-specific review determines that the proposed withdrawal is a zone C withdrawal, the property owner shall not proceed with making the withdrawal unless the person obtains a water withdrawal permit under section 32723.

History: Add. 2008, Act 181, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32706d Collection of stream or river flow measurements by persons other than department; development and use of protocol; training program.
Sec. 32706d. (1) The department shall develop a protocol for the collection of stream or river flow measurements by persons other than the department for use by the department in the administration of this part. The protocol may specify a minimum number of measurements, stream or river flow and weather conditions when the measurements are to be made, and any other conditions necessary to ensure the adequacy and quality of the measurements. The protocol shall ensure that stream or river flow measurements collected for this purpose meet the same data quality standards as stream or river flow measurements collected by the United States geological survey. The department shall consult with the United States geological survey and other recognized scientific experts in developing this protocol.

(2) The department may use stream or river flow data collected using the protocol under subsection (1) in conducting site-specific reviews, in making water withdrawal permit decisions under section 32723, in issuing permits under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, in updating the water withdrawal assessment tool as appropriate, or in other actions requiring an evaluation of stream or river flow.

(3) The department may establish a program to train and certify individuals in the collection of stream or river flow measurements. The department shall charge a fee sufficient to reimburse the department for the cost of a program developed under this subsection. The department may enter into a cooperative agreement with the United States geological survey to provide training and certification under this section.

History: Add. 2008, Act 181, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32706e Cumulative withdrawals; determination of adverse impact.

Sec. 32706e. The department shall determine whether an adverse resource impact has occurred under this part and whether a withdrawal is a zone A, a zone B, a zone C, or a zone D withdrawal under this part based upon cumulative withdrawals affecting the same stream reach. In accounting for these cumulative withdrawals, the department shall apply both of the following:

(a) Beginning on October 1, 2008, the department shall begin water withdrawal accounting for cumulative withdrawals affecting the same stream reach.

(b) Beginning on February 1, 2009, the department shall adjust the water withdrawal accounting under subdivision (a) such that if cumulative withdrawals beginning on October 1, 2008 have removed a sufficient flow of water from a stream reach to change the zone classification of that stream reach, the department shall reset the water withdrawal accounting benchmark for that stream reach as follows:

(i) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone B withdrawal, the accounting benchmark shall be reset at the beginning point for zone B withdrawals.

(ii) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone C withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals.

(iii) If the cumulative impact of withdrawals on February 1, 2009 results in a classification as a zone D withdrawal, the accounting benchmark shall be reset at the beginning point for zone C withdrawals. If there is not a zone C for the classification of the stream reach, the water withdrawal accounting benchmark shall be reset at the beginning point for zone B withdrawals.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32707 Reporting requirements; forms; water use reporting fees.
Sec. 32707. (1) Except as provided in subsections (2) and (3), a person who is required to register under section 32705 or holds a permit under section 32723 shall file a report annually with the department on a form provided by the department. Reports shall be submitted by April 1 of each year. Except as provided in subsection (8), reports shall include the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis.

(b) The source or sources of the water supply.

(c) The use or uses of the water withdrawn.

(d) The amount of consumptive use of water withdrawn.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(g) Other information specified by rule of the department.

(h) At the discretion of the registrant or permit holder, the baseline capacity of the withdrawal and, if applicable, a description of the system capacity.

(i) At the discretion of the registrant or permit holder, the amount of water returned to the source watershed.

(j) Beginning in 2010, an acknowledgment that the registrant has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(2) If a person reports the information required by this section to the department in conjunction with a permit or for any other purpose, that reporting, upon approval of the department, satisfies the reporting requirements of this section.

(3) The owner of a farm who reports water use under section 32708 is not required to report under subsection (1).

(4) The department may, upon request from a person required to report under this section, accept a formula or model that provides to the department's satisfaction the information required in subsection (1).

(5) The department shall develop forms for reporting under this section that minimize paperwork and allow for a notification to the department instead of a report if the annual amount of water withdrawn by a person required to report under this section is within 4% of the amount last reported and the other information required in subsection (1) has not changed since the last year in which a report was filed.

(6) Information described in section 32701(d)(i)(B) that is provided to the department under subsection (1)(h) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed unless the department determines that the withdrawal is causing an adverse resource impact.

(7) Except as otherwise provided in this subsection, a person who files an annual report or notification under this section shall annually remit a water use reporting fee of $200.00 to the department. Water use reporting fees shall be remitted to the department in conjunction with the annual report or notification submitted under this section. The department shall transmit water use reporting fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714. A water use reporting fee is not required for a report or notification related to a farm that reports withdrawals under section 32708 or for a report under subsection (8).

(8) A person who withdraws less than 1,500,000 gallons of water in any year shall indicate this fact on the reporting form and is not required to provide information under subsection (1)(a) or (d). A person who withdraws less than 1,500,000 gallons of water in any year is not required to pay the water use reporting fee under subsection (7).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 182, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32708 Water use conservation plan; formula or model to estimate consumptive use of withdrawals for agricultural purposes; inclusion of information in statewide groundwater inventory and map; disclosure.
Sec. 32708. (1) The owner of a farm that is registered under this part who makes a withdrawal for an agricultural purpose, including irrigation for an agricultural purpose, may report the water use on the farm by annually submitting to the department of agriculture a water use conservation plan. Conservation plans shall be submitted by April 1 of each year. The water use conservation plan shall include, but need not be limited to, all of the following information:

(a) The amount and rate of water withdrawn on an annual and monthly basis in either gallons or acre inches.

(b) The type of crop irrigated, if applicable.

(c) The acreage of each irrigated crop, if applicable.

(d) The source or sources of the water supply.

(e) If the source of the water withdrawn is groundwater, the location of the well or wells in latitude and longitude, with the accuracy of the reported location data to within 25 feet.

(f) If the water withdrawn is not used entirely for irrigation, the use or uses of the water withdrawn.

(g) If the source of water withdrawn is groundwater, the static water level of the aquifer or aquifers, if practicable.

(h) Applicable water conservation practices and an implementation plan for those practices. Beginning in 2010, the water use conservation plan shall include an acknowledgment that the owner of the farm has reviewed applicable environmentally sound and economically feasible water conservation measures prepared under section 32708a.

(i) At the discretion of the registrant, the baseline capacity of the withdrawal based upon system capacity and a description of the system capacity.

(2) The department and the department of agriculture in consultation with Michigan state university shall validate and use a formula or model to estimate the consumptive use of withdrawals made for agricultural purposes consistent with the objectives of section 32707.

(3) Subject to subsection (4), information provided to the department of agriculture under subsection (1)(a), (d), and (e) shall be forwarded to the department for inclusion in the statewide groundwater inventory and map prepared under section 32802.

(4) Information provided under subsection (1)(a), (e), and (i) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department, the department of agriculture, or the department of natural resources unless the department determines that the withdrawal is causing an adverse resource impact.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003 ;-- Am. 2006, Act 35, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 182, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32708a Generic water conservation measures; preparation; posting on website; submission of water conservation measures by water user's sector; acceptance by department; water conservation measures for agricultural purposes; report; notification of zone C withdrawal; definitions.

Sec. 32708a. (1) Not later than March 31, 2009, the department shall prepare, based upon recommendations from representative trade associations, a set of generic water conservation measures that are applicable to all persons making large quantity withdrawals. The department shall post these generic water conservation measures on its website.

(2) Subject to subsection (3), each water user's sector may prepare and submit to the department water conservation measures that are applicable for water users within its sector. Upon receipt of water conservation measures from a water user's sector, the department shall review the water conservation measures, and, if the department determines that those water conservation measures are appropriate for that sector, the department shall accept those water conservation measures. Upon acceptance, the department shall post the water conservation measures on its website and those water conservation measures shall supersede the generic water conservation measures prepared under subsection (1) for water users within that sector. If the department determines that the water conservation measures are not appropriate for the water user's sector, the department shall provide comments to the water user's sector and suggestions that would result in the department's acceptance of the water conservation measures. A water user's sector may resubmit water conservation measures in response to the department's comments and suggestions.

(3) Water conservation measures for agricultural purposes shall be developed and approved by the commission of agriculture and shall be updated annually as part of the process for review and update of generally accepted agricultural and management practices under the Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474. Water conservation measures approved under this subsection shall be

posted on the department of agriculture's website and shall be forwarded to the department for posting on its website.

(4) By April 1, 2010, the department shall report to the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment on the status of the preparation and acceptance of water user sector conservation measures.

(5) If the department receives a registration for a zone C withdrawal, the department shall notify all other registrants and permit holders whose withdrawals are from the same water source as the zone C withdrawal of the status of the water source. Upon receipt of notification under this subsection, each of these registrants and permit holders shall review and consider implementing the applicable water conservation measures prepared under this section.

(6) Compliance with water conservation measures does not authorize a water withdrawal that is otherwise prohibited by law.

(7) As used in this section:

(a) "Permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) "Water conservation measures" means environmentally sound and economically feasible water conservation measures.

History: Add. 2006, Act 35, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 182, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32709 Informational materials.
Sec. 32709. The department may contract for the preparation and distribution of informational materials to members of the public related to any of the following:

(a) The purposes, benefits, and requirements of this part.

(b) Information on complying with the registration requirement of this part and on any general or applicable methods for calculating or estimating water withdrawals or consumptive uses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2008, Act 182, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32710 Duties of department; electronic mail notification of withdrawals; formation of water resources assessment and education committee.
Sec. 32710. (1) The department shall do all of the following:

(a) Cooperate with the states and provinces in the Great Lakes region to develop and maintain a common base of information on the use and management of the water of the Great Lakes basin and to establish systematic arrangements for the exchange of this information.

(b) Collect and maintain information regarding the locations, types, and quantities of water use, including water withdrawals and consumptive uses, in a form that the department determines is comparable to the form used by other states and provinces in the Great Lakes region.

(c) Collect, maintain, and exchange information on current and projected future water needs with the other states and provinces in the Great Lakes region.

(d) Cooperate with other states and provinces in the Great Lakes region in developing a long-range plan for developing, conserving, and managing the water of the Great Lakes basin.

(e) Participate in the development of a regional consultation procedure for use in exchanging information on the effects of proposed water withdrawals and consumptive uses from the Great Lakes basin.

(f) Develop procedures for notifying water users and potential water users of the requirements of this part.

(g) If the department receives a registration for a zone B or a zone C withdrawal or issues a permit under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, for a zone B or zone C withdrawal, place a notice on the department's website and notify by electronic mail all of the following that have requested under subsection (2) an electronic mail notification:

(i) Conservation districts.

(ii) Regional planning agencies.

(iii) Watershed management planning committees.

(iv) Storm water committees established under part 31.

(v) The chief elected officials of the local units of government.

(vi) Community supplies owned by political subdivisions.

(vii) A water users committee established under section 32725.

(2) An organization listed in subsection (1)(g) that wishes to receive an electronic mail notification of withdrawals described in subsection (1)(g) that are located in its vicinity shall provide to the department an electronic mail address.

(3) Upon receipt of notification from the department under subsection (1)(g), the notified entities may form a water resources assessment and education committee in order to assess trends in water use in the vicinity of the withdrawal and educate water users. The department shall assist in the formation of these water resources assessment and education committees and may provide them with technical information regarding water use and capacity within their vicinity, aggregated at the stream reach level. Meetings of water resources assessment and education

committees shall be open to the general public. A water resources assessment and education committee formed under this subsection may provide educational materials and recommendations regarding any of the following:

(a) Long-term water resources planning.

(b) Use of conservation measures.

(c) Drought management activities.

(d) Other topics related to water use as identified by the committee.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2008, Act 184, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32711, 324.32712 Repealed. 2006, Act 33, Imd. Eff. Feb. 28, 2006.

Compiler's Notes: The repealed sections pertained to an exemption from water withdrawal reporting requirements for a public water supply and the prohibition on the department to mandate a permit or regulate water withdrawal.
Popular Name: Act 451
Popular Name: NREPA

324.32713 Civil action; commencement; civil fine; recovery of surveillance and enforcement costs.

Sec. 32713. (1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a rule promulgated under this part, including falsifying a record submitted under this part. An action under this section shall be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), the court may impose a civil fine as follows:

(a) For a person who knowingly violates section 32721 or 32723 or the terms of a permit issued under section 32723, a civil fine of not more than $10,000.00 per day of violation.

(b) For all other violations of this part, a civil fine of not more than $1,000.00.

(3) In addition to a fine imposed under subsection (2), the attorney general may file a suit in a court of competent jurisdiction to recover the full value of the costs of surveillance and enforcement by the state resulting from the violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 186, Eff. Oct. 7, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32714 Water use protection fund; creation; disposition of assets; investments; money remaining in fund; expenditures.
Sec. 32714. (1) The water use protection fund is created within the state treasury.

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

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

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

(a) The implementation and administration of this part.

(b) The preparation of the statewide groundwater inventory and map under section 32802.

(c) The expenses of the groundwater conservation advisory council under part 328.

(d) The implementation and administration of part 317.

History: Add. 1996, Act 434, Imd. Eff. Dec. 2, 1996 ;-- Am. 2003, Act 148, Imd. Eff. Aug. 8, 2003 ;-- Am. 2006, Act 33, Imd. Eff. Feb. 28, 2006
Popular Name: Act 451
Popular Name: NREPA

324.32721 Large quantity withdrawal; prohibition; exception; certain large quantity withdrawals subject to definition of adverse resource impact existing on February 28, 2006.
Sec. 32721. (1) A person shall not make a new or increased large quantity withdrawal from the waters of the state that causes an adverse resource impact.

(2) This section does not apply to the baseline capacity of a large quantity withdrawal or a well capable of making a large quantity withdrawal that existed on February 28, 2006.

(3) This section does not apply to a withdrawal that is utilized solely for fire suppression.

(4) A person who developed the capacity to make a new or increased large quantity withdrawal on or after February 28, 2006 and prior to February 1, 2009 or who received a determination under former section 32724 during that period is subject to the definition of adverse resource impact that existed on February 28, 2006.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 183, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32722 Presumption.

Sec. 32722. (1) For new or increased large quantity withdrawals developed on or after February 28, 2006 and prior to the implementation date of the assessment tool under section 32706a, there is a rebuttable presumption that the withdrawal will not cause an adverse resource impact in violation of section 32721 under either of the following circumstances:

(a) The location of the withdrawal is more than 1,320 feet from the banks of an affected stream reach.

(b) The withdrawal depth of the well is at least 150 feet.

(2) If the assessment tool determines that a withdrawal is a zone A or a zone B withdrawal and is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis for the assessment tool's determination will not cause an adverse resource impact in violation of section 32721.

(3) If the department determines, based upon a site-specific review, or in connection with a permit or approval issued under section 32723 or the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, that a withdrawal is not likely to cause an adverse resource impact, there is a rebuttable presumption that the withdrawal under the conditions that were the basis of the department's determination will not cause an adverse resource impact in violation of section 32721.

(4) A presumption under this section is not valid if the capacity to make the withdrawal is not developed within 18 months after the withdrawal is registered. A presumption under this section may be rebutted by a preponderance of evidence that a new or increased large quantity withdrawal from the waters of the state has caused or is likely to cause an adverse resource impact.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 183, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32723 Water withdrawal permit; persons required to obtain; application; fee; issuance; conditions; revocation; petition for contested case hearing; exemptions from permit requirements.
Sec. 32723. (1) Except as provided in subsection (13), the following persons shall obtain a water withdrawal permit prior to making the withdrawal:

(a) A person who proposes to develop withdrawal capacity to make a new withdrawal of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(b) A person who proposes to develop increased withdrawal capacity beyond baseline capacity of more than 2,000,000 gallons of water per day from the waters of the state to supply a common distribution system.

(c) A person who proposes to develop withdrawal capacity to make a new or increased large quantity withdrawal of more than 1,000,000 gallons of water per day from the waters of the state to supply a common distribution system that a site-specific review has determined is a zone C withdrawal.

(d) A person who proposes to develop a new or increased withdrawal capacity that will result in an intrabasin transfer of more than 100,000 gallons per day average over any 90-day period.

(2) A person shall apply for a water withdrawal permit under this section by submitting an application to the department containing the information described in section 32706c(1)(a) to (e) and an evaluation of existing hydrological and hydrogeological conditions. If the applicant proposes to undertake a preventative measure along with the withdrawal, the property owner shall provide the department with a detailed description of the preventative measure and relevant information as to how the preventative measure will be implemented. In addition, the applicant shall submit an application fee in the amount of $2,000.00. The department shall transmit application fees collected under this section to the state treasurer to be credited to the water use protection fund created in section 32714.

(3) An application submitted under subsection (2) is considered to be administratively complete effective 30 days after it is received by the department unless the department notifies the applicant, in writing, during this 30-day period that the application is not administratively complete or that the fee required to be accompanied with the application has not been paid. If the department determines that the application is not administratively complete, the notification shall specify the information necessary to make the application administratively complete. If the department notifies the applicant as provided in this subsection, the 30-day period is tolled until the applicant submits to the department the specified information or fee.

(4) The department shall provide public notification of its receipt of applications under this section and shall provide a public comment period of not less than 45 days before applications are acted upon under subsection (5).

(5) The department shall make a decision whether to grant or deny a water withdrawal permit under this section within 120 days of receipt of an administratively complete application.

(6) The department shall issue a water withdrawal permit under subsection (1)(a), (b), or (c) if all of the following conditions are met:

(a) All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.

(b) The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative adverse resource impacts under this subdivision shall be evaluated by the department based upon available information gathered by the department.

(c) Subject to section 32726, the withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, state, and federal laws as well as all legally binding regional interstate and international agreements, including the boundary waters treaty of 1909.

(d) The proposed use is reasonable under common law principles of water law in Michigan.

(e) For permit applications received on or after January 1, 2009, the applicant has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed by the applicable water user's sector under section 32708a or has self-certified that he or she is in compliance with environmentally sound and economically feasible water conservation measures developed for the water use associated with that specific withdrawal.

(f) The department determines that the proposed withdrawal will not violate public or private rights and limitations imposed by Michigan water law or other Michigan common law duties.

(7) The department shall issue a water withdrawal permit under subsection (1)(d) if the transfer complies with section 4.9 of the compact.

(8) In reviewing a proposed preventative measure, the department shall consider the effect of the preventative measure on preventing an adverse resource impact by diminishing the effect of the withdrawal on stream or river flow or the temperature regime of the stream or river. If the department approves a preventative measure in conjunction with a water withdrawal permit under this section, the department shall enter into a legally enforceable implementation schedule for completion of the preventative measure.

(9) A proposed use for which a water withdrawal permit is issued under this section shall be considered to satisfy the requirements of section 4.11 of the compact.

(10) A permit issued under part 31 pursuant to 33 USC 1326(b) shall be considered sufficient to demonstrate that there will not be an adverse resource impact under section 32721 and satisfies the conditions for a water withdrawal permit under this section. Upon receipt of an application under this section and evidence that the applicant holds a part

31 permit described in this subsection, the department shall grant the applicant a water withdrawal permit under this subsection.

(11) The department may revoke a water withdrawal permit issued under this section if the department determines following a hearing, based upon clear and convincing scientific evidence, that the withdrawal is causing an adverse resource impact.

(12) A person who is aggrieved by a determination of the department under this section related to a water withdrawal permit may file a sworn petition with the department setting forth the grounds and reasons for the complaint and asking for a contested case hearing on the matter pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A petition filed more than 60 days after action on the water withdrawal permit may be rejected by the department as being untimely. The department shall issue a final decision on a petition for a contested case hearing within 6 months after receiving the petition. A determination, action, or inaction by the department following a contested case hearing is subject to judicial review as provided in the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(13) The following withdrawals are not required to obtain a water withdrawal permit under this section:

(a) A withdrawal by a community supply that holds a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) Seasonal withdrawals of not more than 2,000,000 gallons of water per day average in any consecutive 90-day period to supply a common distribution system unless the withdrawals result in a diversion.

(c) A withdrawal for the production of bottled drinking water approved by the department under a water source review conducted under section 17 of the safe drinking water act, 1976 PA 399, MCL 325.1017.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 180, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32724 324.32724 Repealed. 2008, Act 181, Imd. Eff. July 9, 2008.

Compiler's Notes: The repealed section pertained to persons exempt from permit requirements.
Popular Name: Act 451
Popular Name: NREPA

324.32725 Water users committee; establishment; purpose; composition; notice of withdrawal; occurrence of adverse resource impacts; recommended solution proposed by department; order by director; petition; "unverified petition" and "permit holders" defined.

Sec. 32725. (1) All persons making large quantity withdrawals within a watershed are encouraged to establish a water users committee to evaluate the status of current water resources, water use, and trends in water use within the watershed and to assist in long-term water resources planning. A water users committee may be composed of all registrants, permit holders, and local government officials within the watershed. Upon establishment of a water users committee, a participating local government official may create an ad hoc subcommittee of residents of that local unit of government to provide that local government official with information and advice on water resources, water use, and trends in water use within the local unit of government.

(2) If the department authorizes a zone B withdrawal in a cold-transitional river system or a zone C withdrawal, the department shall notify all registrants, permit holders, and local government officials within the watershed of the withdrawal and of the authority under this section to establish a water users committee and may provide them technical information regarding water use and capacity within their vicinity aggregated at the stream reach level.

(3) If the department determines by reasonable scientifically-based evidence that adverse resource impacts are occurring or are likely to

occur from 1 or more large quantity withdrawals, the department shall notify the water users committee in the watershed or shall convene a meeting of all registrants and permit holders within the watershed and shall attempt to facilitate an agreement on voluntary measures that would prevent adverse resource impacts.

(4) If, within 30 days after the department has notified the water users committee or convened the meeting under subsection (3), the registrants and permit holders are not able to voluntarily agree to measures that would prevent adverse resource impacts, the department may propose a solution that the department believes would equitably resolve the situation and prevent adverse resource impacts. The recommended solution is not binding on any of the parties.

(5) The director may, without a prior hearing, order permit holders to immediately restrict a withdrawal if the director determines by clear and convincing scientific evidence that there is a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall specify the date on which the withdrawal must be restricted and the date on which it may be resumed. An order issued under this section shall remain in force and effect for not more than 30 days and may be renewed for an additional 30 days if the director determines by clear and convincing scientific evidence that conditions continue to pose a substantial and imminent threat that the withdrawal is causing or is likely to cause an adverse resource impact. The order shall notify the person that the person may request a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The hearing shall be held within 10 business days following the request, unless the permittee requests a later date. As an alternative to requesting a contested case hearing, a person subject to an order under this section may seek judicial review of the order as provided in the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(6) A registrant or permit holder may submit a petition to the director alleging that adverse resource impacts are occurring or are likely to occur from 1 or more water withdrawals. The director shall either

investigate the petition or forward the petition to the director of the department of agriculture if the water withdrawals are from an agricultural well. The petition shall be in writing and shall include all the information requested by the director or the director of the department of agriculture, as appropriate.

(7) A person who submits more than 2 unverified petitions under this section within 1 year may be ordered by the director to pay for the full costs of investigating any third or subsequent unverified petition. As used in this subsection, "unverified petition" means a petition in response to which the director determines that there is not reasonable evidence to suspect adverse resource impacts.

(8) As used in this section, "permit holders" means persons holding a permit under section 32723 and persons holding a permit under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

History: Add. 2006, Act 36, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 184, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32726 Local ordinance.

Sec. 32726. Except as authorized by the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, a local unit of government shall not enact or enforce an ordinance that regulates a large quantity withdrawal. This section is not intended to diminish or create any existing authority of municipalities to require persons to connect to municipal water supply systems as authorized by law.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006
Popular Name: Act 451
Popular Name: NREPA

324.32727 Exemptions; compilation and sharing of certain data.

Sec. 32727. (1) The following withdrawals are exempt from the requirements of this part unless they result in a diversion:

(a) A withdrawal undertaken as part of an activity authorized by the department under part 111, 115, 201, 213, or 615.

(b) A withdrawal undertaken as part of an activity authorized by the United States environmental protection agency under either of the following:

(i) The comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510.

(ii) The resource conservation and recovery act of 1976, Public Law 94-580.

(c) A withdrawal that is undertaken for hydroelectric generation at sites certified, licensed, or permitted by the federal energy regulatory commission.

(d) A hydroelectric facility authorized under section 12 of chapter 264 of the act of March 3, 1909, commonly known as the river and harbor act of 1909, 35 Stat. 821.

(e) A hydroelectric facility authorized under section 1075(c) of the intermodal surface transportation efficiency act of 1991, Public Law 102-240.

(f) A hydroelectric facility authorized under Public Law 85, chapter 1368, 34 Stat. 102.

(g) Removal of water from an artificially created surface water body that has as its primary source of water either of the following:

(i) A withdrawal that is not a new or increased large quantity withdrawal.

(ii) A registered new or increased large quantity withdrawal that has been determined by the assessment tool, a site-specific review, or a permit issued under section 32723 to be a withdrawal that is not likely to cause an adverse resource impact.

(h) A withdrawal from a noncommercial well located on the following residential property:

(i) Single-family residential property unless that well is a lake augmentation well.

(ii) Multifamily residential property not exceeding 4 residential units and not more than 3 acres in size unless that well is a lake augmentation well.

(2) The director of the department shall ensure that data in the possession of the state related to withdrawals that are not regulated under this part are compiled and shared with departmental personnel responsible for implementing this part.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 183, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32728 Construction and scope of act; rules.
Sec. 32728. (1) This part shall not be construed as affecting, intending to affect, or in any way altering or interfering with common law water rights or property rights or the applicability of other laws providing for the protection of natural resources or the environment or limit, waive, cede, or grant any rights or interest that the state possesses as sovereign for the people of the state in the waters or natural resources of the state.

(2) This part does not limit the right of a person whose interests have been or will be adversely affected to institute proceedings in circuit court against any person to protect such interests.

(3) Except as specifically authorized under this part, this part does not authorize the promulgation of rules.

History: Add. 2006, Act 33, Imd. Eff. Feb. 28, 2006 ;-- Am. 2008, Act 185, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32729 Fees not authorized; exception.
Sec. 32729. Except as specifically authorized under this part, this part does not authorize the assessment of fees.

History: Add. 2008, Act 185, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

324.32730 Compact; implementation.
Sec. 32730. The compact shall be implemented as follows:

(a) Except as specifically provided in this part, water withdrawals originating within this state shall be regulated exclusively under this part.

(b) A proposed use for which a water withdrawal permit is issued under section 32723 shall be considered to satisfy the requirements of section 4.11 of the compact.

(c) The 2008 amendments to this part, the 2008 amendments to part 328, and the 2008 amendments to sections 4 and 17 of the safe drinking water act, 1976 PA 399, MCL 325.1004 and 325.1017, are intended to fully implement the compact in this state. For purposes of section 9.1 of the compact, all acts and parts of acts that were inconsistent with the compact on the effective date of the amendatory act that added this section have been modified, as necessary, to be consistent with the compact, and therefore section 9.1 does not repeal any acts or parts of acts.

(d) If the council proposes a revision to the standard of review and decision under section 3.1 and 3.3 of the compact, the governor shall notify the standing committees of the legislature with jurisdiction primarily related to natural resources and the environment. A regulation adopted pursuant to section 3.1 and 3.3 of the compact that amends the standard of review and decision shall not be deemed duly adopted in accordance with the statutory authorities and applicable procedures of this state unless the regulation is approved by the legislature and enacted into law.

History: Add. 2008, Act 190, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

PART 342

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

324.34201 Great Lakes-St. Lawrence River Basin Water Resources Compact.

Sec. 34201. The Great Lakes-St. Lawrence River Basin Water Resources Compact is hereby ratified, enacted into law, and entered into by this state as a party as follows:

AGREEMENT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the "Great Lakes—St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Adaptive Management means a Water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

Agreement means the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

Applicant means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. Application has a corresponding meaning.

Basin or Great Lakes—St. Lawrence River Basin means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

Basin Ecosystem or Great Lakes—St. Lawrence River Basin Ecosystem means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

Community within a Straddling County means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

Compact means this Compact.

Consumptive Use means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

Council means the Great Lakes—St. Lawrence River Basin Water Resources Council, created by this Compact.

Council Review means the collective review by the Council members as described in Article 4 of this Compact.

County means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

Cumulative Impacts mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

Decision-Making Standard means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

Diversion means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. Divert has a corresponding meaning.

Environmentally Sound and Economically Feasible Water Conservation Measures mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that i) are environmentally sound, ii) reflect best practices applicable to the water use sector, iii) are technically feasible and available, iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and v) consider the particular

facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

Exception means a transfer of Water that is excepted under Section 4.9 from the prohibition against Diversions in Section 4.8.

Exception Standard means the standard for Exceptions established in Section 4.9.4.

Intra-Basin Transfer means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

Measures means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

New or Increased Diversion means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

New or Increased Withdrawal or Consumptive Use means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

Originating Party means the Party within whose jurisdiction an Application or registration is made or required.

Party means a State party to this Compact.

Person means a human being or a legal person, including a government or a nongovernmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

Product means something produced in the Basin by human or mechanical effort or through agricultural processes and used in

manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a Product shall be considered to be part of the Product. (ii) Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product. (iii) Except as provided in (i) above, Water which is transferred as part of a public or private supply is not a Product or part of a Product. (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a Product.

Proposal means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

Province means Ontario or Québec.

Public Water Supply Purposes means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be considered to be used for Public Water Supply Purposes.

Regional Body means the members of the Council and the Premiers of Ontario and Québec or their designee as established by the Agreement.

Regional Review means the collective review by the Regional Body as described in Article 4 of this Compact.

Source Watershed means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence

River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

Standard of Review and Decision means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

State means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

Straddling Community means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

Technical Review means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

Waters of the Basin or Basin Water means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

Withdrawal means the taking of water from surface water or groundwater. Withdraw has a corresponding meaning.

Section 1.3. Findings and Purposes.

The legislative bodies of the respective Parties hereby find and declare:

1. Findings:

a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;

b. The Waters of the Basin are interconnected and part of a single hydrologic system;

c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes—St. Lawrence River region;

e. Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,

f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by all Parties.

2. Purposes:

a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and

consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;

b. To remove causes of present and future controversies;

c. To provide for cooperative planning and action by the Parties with respect to such Water resources;

d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;

e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;

f. To prevent significant adverse impacts of Withdrawals and losses on the Basin's ecosystems and watersheds;

g. To promote interstate and State-Provincial comity; and,

h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin's Waters and Water Dependent Natural Resources.

Section 1.4. Science.

1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Compact.

2. The strategy shall guide the collection and application of scientific information to support:

a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;

b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;

c. Improved scientific understanding of the Waters of the Basin;

d. Improved understanding of the role of groundwater in Basin Water resources management; and,

e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

ARTICLE 2

ORGANIZATION

Section 2.1. Council Created.

The Great Lakes—St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

Section 2.2. Council Membership.

The Council shall consist of the Governors of the Parties, ex officio.

Section 2.3. Alternates.

Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

Section 2.4. Voting.

1. Each member is entitled to one vote on all matters that may come before the Council.

2. Unless otherwise stated, the rule of decision shall be by a simple majority.

3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.

4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

Section 2.5. Organization and Procedure.

The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ

or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

Section 2.6. Use of Existing Offices and Agencies.

It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,

3. Develop and adopt plans consistent with the Water resources plans of the Parties.

Section 2.7. Jurisdiction.

The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its powers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

Section 2.8. Status, Immunities and Privileges.

1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by

the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

Section 2.9. Advisory Committees.

The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

ARTICLE 3

GENERAL POWERS AND DUTIES

Section 3.1. General.

The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision

and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact. The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures. The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform and coordinated policies for Water resources conservation and management in the Basin.

Section 3.2. Council Powers.

The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or individual; and, exercise such other and different powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

Section 3.3. Rules and Regulations.

1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which

deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.

2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such Party to carry out the management programs contemplated by this Compact.

Section 3.4. Program Review and Findings.

1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means, and how the provisions of the Standard of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.

2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:

a. 30 days after the first report is submitted by all Parties; and,

b. Every five years after the effective date of this Compact; and,

c. At any other time at the request of one of the Parties.

3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation

and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

ARTICLE 4

WATER MANAGEMENT AND REGULATION

Section 4.1. Water Resources Inventory, Registration and Reporting.

1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals, Diversions and Consumptive Uses. To the extent feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.

2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.

3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include,

at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.

4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party and any other information requested by the Originating Party.

5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

Section 4.2. Water Conservation and Efficiency Programs.

1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are based on the goals of:

a. Ensuring improvement of the Waters and Water Dependent Natural Resources;

b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;

c. Retaining the quantity of surface water and groundwater in the Basin;

d. Ensuring sustainable use of Waters of the Basin; and,

e. Promoting the efficiency of use and reducing losses and waste of Water.

2. Within two years of the effective date of this Compact, each Party shall develop its own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.

3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, shall review and modify as appropriate the Basin-wide objectives, and the Parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.

4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:

a. Measures that promote efficient use of Water;

b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;

c. Application of sound planning principles;

d. Demand-side and supply-side Measures or incentives; and,

e. Development, transfer and application of science and research.

5. Each Party shall implement in accordance with paragraph 2 above a voluntary or mandatory Water conservation program for all, including existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

Section 4.3. Party Powers and Duties.

1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.

2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.

3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.

5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the Council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

Section 4.4. Requirement for Originating Party Approval.

No Proposal subject to management and regulation under this Compact shall hereafter be undertaken by any Person unless it shall have been approved by the Originating Party.

Section 4.5. Regional Review.

1. General.

a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.

b. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Section 4.5.2 of such Proposal is received from the Originating Party.

c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.

d. The Parties agree that the protection of the integrity of the Great Lakes—St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes

and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

e. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal, and shall consult with the Applicant throughout the Regional Review Process.

f. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

2. Notice from Originating Party to the Regional Body.

a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.

b. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision have been provided.

c. An Originating Party may:

i. Provide notice to the Regional Body of an Application, even if notification is not required; or,

ii. Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.

d. An Originating Party may provide preliminary notice of a potential Proposal.

3. Public Participation.

a. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.

b. The Regional Body shall provide notice to the public of a Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Standard of Review and Decision.

c. The Regional Body shall hold a public meeting in the State or Province of the Originating Party in order to receive public comment on the issue of whether the Proposal under consideration meets the Standard of Review and Decision.

d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.

e. The Regional Body shall forward the comments it receives to the Originating Party.

4. Technical Review.

a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.

b. The Originating Party's Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.

c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.

d. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.

e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

5. Declaration of Finding.

a. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.

b. The Regional Body, having considered the notice, the Originating Party's Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Compact shall issue a Declaration of Finding that the Proposal under consideration:

i. Meets the Standard of Review and Decision;

ii. Does not meet the Standard of Review and Decision; or,

iii. Would meet the Standard of Review and Decision if certain conditions were met.

c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.

d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.

e. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.

f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.

g. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party's conclusions.

h. The Regional Body shall release the Declarations of Finding to the public.

i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

Section 4.6. Proposals Subject to Prior Notice.

1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces with detailed and timely notice and an opportunity to comment within 90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. The Originating Party shall provide a response to any such comment received from another Party.

2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

Section 4.7. Council Actions.

1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.

2. The Council shall review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

Section 4.8. Prohibition of New or Increased Diversions.

All New or Increased Diversions are prohibited, except as provided for in this Article.

Section 4.9. Exceptions to the Prohibition of Diversions.

1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:

a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

iii. Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;

b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and,

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that:

a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day average over any 90-day period, the Proposal shall be subject to management and regulation at the discretion of the Originating Party.

b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day or greater average over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than 5 million gallons per day average over any 90-day period:

i. The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,

iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.

c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:

i. The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;

ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies;

iii. The Proposal undergoes Regional Review; and,

iv. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:

a. The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water;

b. The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;

c. The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;

d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

e. Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This Exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;

f. The Proposal undergoes Regional Review; and,

g. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

A Proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:

a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

b. The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from the outside the Basin may be used to satisfy any portion of this criterion except if it:

i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

d. The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;

e. The Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

f. The Exception will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and,

g. All other applicable criteria in Section 4.9 have also been met.

Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.

1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of Source

Watersheds, and that all other objectives of the Compact are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.

2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90 day period.

3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, the Council, in cooperation with the Provinces, shall periodically assess the Water management programs of the Parties. Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the Decision-Making Standard.

Section 4.11. Decision-Making Standard.

Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;

2. The Withdrawal or Consumptive Use will be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;

3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;

4. The Withdrawal or Consumptive Use will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;

5. The proposed use is reasonable, based upon a consideration of the following factors:

a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of Water;

b. If the Proposal is for an increased Withdrawal or Consumptive use, whether efficient use is made of existing water supplies;

c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

d. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,

f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

Section 4.12. Applicability.

1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.

2. Baseline.

a. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:

i. A list of existing Withdrawal approvals as of the effective date of the Compact;

ii. A list of the capacity of existing systems as of the effective date of this Compact. The capacity of the existing systems should be presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.

c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.

3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.

5. Groundwater. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

6. Withdrawal Systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

8. Transmission in Water Lines. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to another within the Basin shall not be considered a Diversion if none of the Water is used outside the Basin.

9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons or less.

Section 4.13. Exemptions.

Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.

1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of this Compact, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

2. The Parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties to the decree shall seek formal input from the Canadian Provinces

of Ontario and Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

3. With the exception of Paragraph 5 of this Section, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Section 4.2.

5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.

6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

Section 4.15. Assessment of Cumulative Impacts.

1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the

Basin, every 5 years or each time the incremental Basin Water losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment shall:

a. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty if serious damage may result;

c. Consider adaptive management principles and approaches, recognizing, considering and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.

3. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

ARTICLE 5

TRIBAL CONSULTATION

Section 5.1. Consultation with Tribes

1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.

2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.

3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually agreed upon mechanisms or processes to facilitate dialogue with, and input from federally recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

ARTICLE 6

PUBLIC PARTICIPATION

Section 6.1. Meetings, Public Hearings and Records.

1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.

2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

Section 6.2. Public Participation.

It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.

2. Assure public accessibility to all documents relevant to an Application, including public comment received.

3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an Application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.

4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

ARTICLE 7

DISPUTE RESOLUTION AND ENFORCEMENT

Section 7.1. Good Faith Implementation.

Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

Section 7.2. Alternative Dispute Resolution.

1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.

2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

Section 7.3. Enforcement.

1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (ii) any aggrieved Person shall have the right to judicial review of a Party's action in the relevant Party's court of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this

paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's jurisdiction.

3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.

a. No action under this subsection may be commenced if:

i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,

ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.

b. No action under this subsection may be commenced unless:

i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,

ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact.

The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

ARTICLE 8

ADDITIONAL PROVISIONS

Section 8.1. Effect on Existing Rights.

1. Nothing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.

2. Nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

3. Nothing in this Compact is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.

4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

Section 8.2. Relationship to Agreements Concluded by the United States of America.

1. Nothing in this Compact is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

2. Nothing in this Compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Compact.

Section 8.3. Confidentiality.

1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

2. A Party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to

other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authorities contained in this Compact.

Section 8.4. Additional Laws.

Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

Section 8.5. Amendments and Supplements.

The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other necessary authority in the same manner as this Compact is required to be ratified to become effective.

Section 8.6. Severability.

Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

Section 8.7. Duration of Compact and Termination.

Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated.

This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE 9

EFFECTUATION

Section 9.1. Repealer.

All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

Section 9.2. Effectuation by Chief Executive.

The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

Section 9.3. Entire Agreement.

The Parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

Section 9.4. Effective Date and Execution.

This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the

Council upon its organization. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this ____ day of (month), (year).

History: Add. 2008, Act 190, Imd. Eff. July 9, 2008
Popular Name: Act 451
Popular Name: NREPA

ENDANGERED SPECIES

Part 365
ENDANGERED SPECIES PROTECTION

324.36501 Definitions.
Sec. 36501. As used in this part:

(a) “Endangered species” means any species of fish, plant life, or wildlife that is in danger of extinction throughout all or a significant part of its range, other than a species of insecta determined by the department or the secretary of the United States department of the interior to constitute a pest whose protection under this part would present an overwhelming and overriding risk to humans.

(b) “Fish or wildlife” means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body or parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.

(c) “Import” means to bring into, introduce into, or attempt to bring into or introduce into any place subject to the jurisdiction of this state.

(d) “Plant or plant life” means any member of the plant kingdom, including seeds, roots, and other parts of a member of the plant kingdom.

(e) “Species” includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.

(f) “Take” means, in reference to fish and wildlife, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.

(g) “Take” means, in reference to plants, to collect, pick, cut, dig up, or destroy in any manner.

(h) “Threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.36502 Duties of department.

Sec. 36502. The department shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species of fish, wildlife, and plants in cooperation with the federal government, pursuant to the endangered species act of 1973, Public Law 93-205, 87 Stat. 884, and with rules promulgated by the secretary of the interior under that act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.36503 Investigations; determinations; rule; review.
Sec. 36503. (1) The department shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the department shall promulgate a rule listing those species of fish, plants, and wildlife that are determined to be endangered or threatened within the state, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) The department shall conduct a review of the state list of endangered and threatened species within not more than 2 years after its effective date and every 2 years thereafter, and may amend the list by appropriate additions or deletions pursuant to Act No. 306 of the Public Acts of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA
Admin Rule: R 299.1021 et seq. of the Michigan Administrative Code.

324.36504 Programs; cooperative agreements.
Sec. 36504. (1) The department may establish programs, including acquisition of land or aquatic habitat, as are considered necessary for the management of endangered or threatened species.

(2) In implementing the programs authorized by this section, the department may enter into cooperative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 36503.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.36505 Prohibitions; exceptions.

Sec. 36505. (1) Except as otherwise provided in this part, a person shall not take, possess, transport, import, export, process, sell, offer for sale, buy, or offer to buy, and a common or contract carrier shall not transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists:

(a) The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 36503 or subsection (3).

(b) The United States list of endangered or threatened native fish and wildlife.

(c) The United States list of endangered or threatened plants.

(d) The United States list of endangered or threatened foreign fish and wildlife.

(2) A species of fish, plant, or wildlife appearing on any of the lists delineated in subsection (1) which enters the state from another state or from a point outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with the terms of a federal permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, or an applicable permit issued under the laws of another state.

(3) The department may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 36503, if it finds any of the following:

(a) The species so closely resembles in appearance, at the point in question, a species which is listed pursuant to section 36503 that

enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species.

(b) The effect of the substantial difficulty in differentiating between a listed and an unlisted species is an additional threat to an endangered or threatened species.

(c) The treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this part.

(4) The department may permit the taking, possession, purchase, sale, transportation, exportation, or shipment of species of fish, plants, or wildlife which appear on the state list of endangered or threatened species compiled pursuant to section 36503 and subsection (3) for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife to ensure their survival.

(5) Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered or threatened species found on the state list compiled pursuant to section 36503 and subsection (3) may be removed, captured, or destroyed, but only as authorized by a permit issued by the department pursuant to part 13. Carnivorous animals found on the state list may be removed, captured, or destroyed by any person in emergency situations involving an immediate threat to human life, but the removal, capture, or destruction shall be reported to the department within 24 hours of the act.

(6) This section does not prohibit any of the following:

(a) The importation of a trophy under a permit issued pursuant to section 10 of the endangered species act of 1973, 16 USC 1539, which is not for resale and which was lawfully taken in a manner permitted by the laws of the state, territory, or country where the trophy was caught, taken, or killed.

(b) The taking of a threatened species when the department has determined that the abundance of the species in the state justifies a controlled harvest not in violation of federal law.

(c) Subject to any permits that may be required by the department, the possession, transfer, transportation, importation, or exportation or the transport or receipt for shipment by a common or contract carrier of a raptor or the captive-bred progeny of a raptor, a raptor egg, or raptor semen acquired in accordance with applicable state and federal laws and regulations which allow raptors, raptor eggs, or raptor semen to be used in falconry or in the captive propagation of raptors for use in falconry.

(d) Subject to any permits that may be required by the department, the selling, offering for sale, buying, or offering to buy a raptor that was captive-bred or semen from a raptor that was captive-bred in accordance with applicable state and federal laws and regulations which allow raptors or raptor semen to be used in falconry or in captive propagation of raptors for use in falconry.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1998, Act 470, Imd. Eff. Jan. 4, 1999 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.36506 Enforcement of part and rules.

Sec. 36506. A law enforcement officer, police officer, sheriff's deputy, or conservation officer shall enforce this part and the rules promulgated under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.36507 Violation; penalty.

Sec. 36507. A person who violates this part or who fails to procure any permit required under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $1,000.00 or less than $100.00, or both.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 128, Imd. Eff. Mar. 13, 1996
Popular Name: Act 451
Popular Name: NREPA

Part 609

RESOURCE INVENTORY

324.60901 Definitions.

Sec. 60901. As used in this part:

(a) “Classification system” means a mechanism to identify the current use of land and any structures on the land.

(b) “Data management system” means a mechanism which relies on a computer to manipulate, store, and retrieve information collected and updated during a resource inventory.

(c) “Inventory” means the land resource and current use inventory.

(d) “Regional planning commission” means a regional planning commission designated by the governor pursuant to executive directive to carry out planning in a multicounty region of the state.

(e) “Technical assistance” means the aid that the department shall provide to municipalities, counties, and other interested groups and individuals, on the use of the land resource and current use inventory and related information for planning and resource management decisions.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60902 Project design study; land resource and current use inventory; technical assistance program; recommendations.

Sec. 60902. (1) The department shall make or have made a project design study. The study shall determine the appropriate operational criteria, computer software and hardware, staffing, available information

resources, data updating methodology, most economical inventory resources, location of data management operations, linkages with other data management systems in the state, data geographic base configuration, data delivery system, and other information necessary to complete the inventory and development of a data management system.

(2) The department shall make or have made a land resource and current use inventory, as provided in sections 60904 and 60905, of all land, public or private, in this state. The land resource and current use inventory shall, if appropriate, rely on any other information and surveys.

(3) The department shall create a technical assistance program for the purpose of providing services to municipalities and counties as provided in section 60903.

(4) The department shall prepare recommendations regarding means to address problems or issues indicated by the inventory.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60903 Technical assistance program; creation and purpose; utilizing programs of regional planning commissions; scope of technical assistance.
Sec. 60903. (1) The department shall create a technical assistance program designed to help municipalities and counties effectively use the inventory. The technical assistance program shall, when feasible, utilize the technical assistance programs of regional planning commissions. The technical assistance shall include all of the following:

(a) The publication and distribution of the inventory as applicable to each municipality and county in the state.

(b) The preparation and distribution of land resource management manuals to assist municipalities and counties, planning and resource management entities, and other federal, state, and local agencies in

updating their planning and resource management programs to incorporate the inventory. Land resource management manuals may also be prepared to assist municipalities and counties in solving problems that confront their planning resource management programs.

(c) The conducting of workshops, in conjunction with local government associations, regarding the inventory.

(d) The provision of a team of experts on the inventory to assist in problem solving by municipalities and counties.

(e) The provision of an inventory information center and library function that municipalities and counties may utilize in their own programs.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60904 Land resource portion of inventory; format; scope of inventory; option to purchase or exchange wetland; exemption from property taxes.
Sec. 60904. (1) The land resource portion of the inventory shall be completed in a format that may be readily integrated into the data management system, and shall provide a base of information to analyze the existing and future productivity of the state's natural resources and provide information to assist in the analysis of the timing, location, and intensity of future development in the state. The format should also include information that will be readily usable and available to assist local governmental units in their land use planning. The inventory may include any of the following:

(a) Geological features, including groundwater features such as depth to groundwater, groundwater recharge zones, and potable aquifers.

(b) Land area with characteristics that pose problems to development, such as an area subject to reasonably predictable hazardous natural phenomenon, which may include flooding, high-risk erosion, or subsidence.

(c) Land area with characteristics that make it suited for agricultural use.

(d) Land area with characteristics that make it suited for silvicultural use.

(e) Metallic and nonmetallic mineral deposits.

(f) Hydrological features, including lakes, rivers and creeks, impoundments, drainage basins, and wetlands.

(g) Land area of wildlife habitat, including each significant breeding area or area used by migratory wildlife.

(h) Topographic contours.

(2) If the department designates an area as wetland, the state may negotiate and contract for an option to purchase or exchange the wetland in order to protect the wetland. The option to purchase or exchange the wetland shall be valid for 5 years. After an option to purchase is negotiated, a person may apply for and receive consideration for an exemption from property taxes levied pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws, for the duration of the option to purchase.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60905 Current use portion of inventory; classification system; scope.

Sec. 60905. The current use portion of the inventory shall be completed using a consistent classification system that can be readily integrated into the data management system, and shall provide the base to analyze the existing use and cover in the state. The current use inventory may include any of the following:

(a) Substantially undeveloped land devoted to the production of plants and animals useful to humanity, including forages and sod crops; grain

and feed crops; dairy and dairy products; livestock, including the breeding and grazing of those animals; fruits of all kinds; vegetables; and other similar uses and activities.

(b) Land used in the production of fiber and other woodland products or that supports trees that are protective of water resources, soils, recreation, or wildlife habitat.

(c) Land that is being mined, drilled, or excavated for metallic and nonmetallic mineral, rock, stone, gravel, clay, soil, or other earth, petroleum, or natural gas resources.

(d) A site, structure, district, or archaeological landmark that is officially included in the national register of historic places or designated as a historic site pursuant to state or federal law.

(e) Urban and developed land, including residential, commercial, industrial, transportation, communication, utilities, and open space uses and including recreational land.

(f) Land owned on behalf of the public, including land managed by federal, state, or local government or school districts.

(g) Land enrolled in part 361.

(h) Land enrolled in part 511.

(i) Land designated for tax abatements, restricted use, or specific use under a public act of this state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60906 Conducting current use portion of inventory; preparation and contents of criteria; circulation of criteria; notice of intent to perform work; assistance, data, and information.

Sec. 60906. (1) The current use portion of the inventory may be conducted by municipalities, counties, or regional planning commissions as provided in subsection (4). A municipality, county, or regional planning commission conducting a portion of the current use inventory shall conduct that portion on a scale, level of detail, format, and classification system prepared by the department.

(2) By December 27, 1980, the department shall prepare criteria for municipality, county, and regional planning commission participation in the current use inventory process. The criteria shall specify the scale, level of detail, format, and classification system to be used in the current use portion of the inventory and shall contain forms and information on the financial reimbursement provisions provided in section 60907.

(3) The criteria prepared under subsection (2) shall be circulated by the department to local government associations and to a municipality, county, or regional planning commission, upon request. By March 27, 1982, a municipality with an established planning commission may submit to the department and to the county board of commissioners of the county in which the municipality is primarily located a notice of intent to perform or cause to be performed the work necessary to complete the current use portion of the inventory. By June 27, 1982, a county with an established planning commission may submit to the department a notice of intent to perform or cause to be performed the work necessary to complete the current use portion of the inventory for each area for which a municipality is not performing the work necessary to complete the current use portion of the inventory. By September 27, 1982, a regional planning commission may submit a notice of intent to the department to perform the work necessary to complete the current use inventory for each area not covered by a municipality or county notice of intent. For each area not covered by a notice of intent under this subsection, the department shall make or cause to be made the current use portion of the inventory.

(4) A municipality, county, or regional planning commission engaged in the preparation of the current use portion of the inventory may make use

of assistance, data, and information made available to it by public or private organizations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60907 Reimbursement for preparation of current use portion of inventory; certification; prorating amount.

Sec. 60907. The state shall reimburse each municipality, county, or regional planning commission engaged in the preparation of the current use portion of the inventory for 75% of the expenditures certified by the department. Certification shall be based upon conformance to the format, scale, and classification system provisions of the contract between the municipality, county, or regional planning commission and the department. If the amount appropriated during any fiscal year is not sufficient to provide the 75% reimbursement, the director of the department of management and budget shall prorate an amount among the eligible municipalities, counties, and regional planning commissions.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60908 Review and updating of land resource and current use portions of inventory.

Sec. 60908. (1) The land resource portion of the inventory shall be reviewed and updated when necessary, but not less than once every 10 years.

(2) The current use portion of the inventory shall be reviewed and updated when necessary, but not less than once each 5 years.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60909 Fees for generating products or rendering services.
Sec. 60909. The department may charge fees for generating products or rendering services based on the information in the inventory. The fees shall not exceed the costs to the department of generating the products or rendering the services. The amount of money expended by the department for generating products or rendering services in a fiscal year shall not exceed the amount appropriated for that fiscal year or the amount of the fees actually received during that fiscal year, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.60910 Controlling or curtailing development of private property; prohibitions.
Sec. 60910. (1) This part shall not be construed to permit the state, the department, or a person to exercise control over private property or to curtail development of private property.

(2) This part shall not:

(a) Constitute a state land use plan.

(b) Be used by any state agency to control the existing and future productivity of the state's natural resources or the timing, location, or intensity of future development in the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

GREAT LAKES OIL DRILLING BAN

324.61505a Drilling permit for well beneath lake bottomlands for exploration or production of oil or gas; condition.
Sec. 61505a. Notwithstanding any other provision of this part or the rules promulgated under this part, beginning on the effective date of this

section, the supervisor shall not issue a permit for drilling, or authorize the drilling of, a well beneath the lake bottomlands of the Great Lakes, the connected bays or harbors of the Great Lakes, or the connecting waterways as defined in section 32301, for the exploration or production of oil or gas unless the applicant holds a lease that was in effect prior to the effective date of the amendatory act that added this section that allows the well to be drilled.

History: Add. 2002, Act 148, Imd. Eff. Apr. 5, 2002
Compiler's Notes: Enrolled House Bill No. 5118 was not signed by the Governor, but, having been presented to him at 3:44 p.m. on March 22, 2002, and not having been returned by him to the House of Representatives within the 14 days prescribed by Const 1963, art IV, sec 33, became law (2002 PA 148) on April 5, 2002, the Legislature having continued in session.
Popular Name: Act 451
Popular Name: NREPA
Popular Name: Supervisor of Wells

SURFACE AND UNDERGROUND MINE RECLAMATION

Subpart 1
GENERAL PROVISIONS

324.63501 Meanings of words and phrases defined in MCL 324.63502 and 324.63503.

Sec. 63501. For the purposes of this part, the words and phrases defined in sections 63502 and 63503 have the meanings ascribed to them in those sections.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63502 Definitions; A to O.

Sec. 63502. (1) “Agricultural land” includes any of the following as determined by the department of natural resources under part 609:

(a) Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, and fiber crops

and is also available for these uses, including cropland, pastureland, rangeland, forestland, or other land, but not urban built-up land or water. Prime farmland has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. Prime farmland is permeable to water and air. Prime farmland is not excessively erodible or saturated with water for a long period of time, and it either does not flood frequently or is protected from flooding.

(b) Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. Unique farmland has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields or both high quality and high yields of a specific crop when treated and managed according to acceptable farming methods. Areas that can be classified as unique farmland include organic soils producing vegetables and specialty crops; high-lying and relatively frost-free fruit sites; and areas of high water table acid soils especially suited to highbush blueberry culture as well as the small areas in the Upper Peninsula copper country that are producing strawberries.

(c) Other farmland is land in addition to prime farmland and unique farmland that has a combination of soils, location, and management characteristics which is producing or can produce in or for a region food, feed, forage, and fiber crops and is land on which agriculture represents the greatest current economic return from the land. Other farmland includes beef cow-calf operations that occur on generally fine-textured, somewhat poorly drained soils well-suited to forage production and grazing. Cropland areas that by their location are especially suited for the production of disease-free seed crops or that offer special opportunities for integrated best management programs could also be considered other farmland. The determination of whether agricultural land is prime farmland, unique farmland, or other farmland shall be made by the

department of natural resources under part 609 or this part, with the concurrence of the department of agriculture and the United States department of agriculture.

(2) “Applicant” means a person applying for a permit from the department to conduct surface coal mining activities or underground coal mining activities pursuant to this part.

(3) “Approximate original contour” means that surface configuration achieved by the backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(4) “Coal” means all forms of coal including lignite. Coal does not include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(5) “Coal exploration operation” means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

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

(7) “Eligible land and water” means all land that was mined for coal or was affected by that mining, wastebanks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status under the standards provided in subparts 3 and 4 prior to August 3, 1977, and for which there is not a continuing reclamation responsibility under state or federal law.

(8) “Historic resource” means a district, site, building, structure, or object of historical, architectural, archeological, or cultural significance that meets any of the following requirements:

(a) Is designated as a national historic landmark pursuant to the historic sites, buildings, and antiquities act, chapter 593, 49 Stat. 666, 16 U.S.C. 461 to 467.

(b) Is listed on the national register of historic places pursuant to the national historic preservation act, Public Law 89-665, 16 U.S.C. 470 to 470a, 470b, and 470c to 470x-6; or the state register of historic sites pursuant to 1955 PA 10, MCL 399.151 to 399.152.

(c) Is recognized under a locally established historic district created pursuant to the local historic districts act, 1970 PA 169, MCL 399.201 to 399.215.

(d) Is eligible for listing, designation, or recognition under subdivisions (a) to (c).

(9) “Imminent danger to the health and safety of the public” means the existence of any condition or practice, or any violation of a permit or other requirement of this part in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a reasonable person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(10) “Local unit of government” means a county, city, township, or village; a board, commission, or authority of a county, city, township, or village; or a soil conservation district.

(11) “Operator” means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any 1 location.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2001, Act 78, Eff. Aug. 6, 2001
Popular Name: Act 451
Popular Name: NREPA

324.63503 Definitions; P to U.
Sec. 63503. (1) “Permit” means a permit issued by the department to conduct surface coal mining and reclamation operations.

(2) “Permit area” means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land is covered by the operator's bond required by section 63529 and is readily identifiable by appropriate markers on the site.

(3) “Permittee” means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities pursuant to this part.

(4) “Reclamation plan” means a plan submitted by an applicant which provides a plan for reclamation of the proposed surface coal mining operations pursuant to section 63518.

(5) “Soil conservation district” means a soil conservation district established and operating pursuant to part 93.

(6) “Surface coal mining and reclamation operations” means surface mining operations and all activities necessary and incident to the reclamation of those operations conducted in this state after August 3, 1977.

(7) “Surface coal mining operations” means:

(a) Activities conducted in this state on the surface of any land in connection with a surface coal mine or subject to the requirements of

section 63532 incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area and any other areas impacted by the surface coal mining operation mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site.

(b) The areas on which activities described in subdivision (a) occur or where those activities disturb the natural land surface, including adjacent land the use of which is incidental to those activities; all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures or facilities; or other property or materials on the surface, resulting from or incident to those activities.

(8) "Surface mining control and reclamation act of 1977" means Public Law 95-87, 91 Stat. 445.

(9) "Title IV of the surface mining control and reclamation act of 1977" means title IV of Public Law 95-87, 30 U.S.C. 1231 to 1243.

(10) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care or the failure to abate any violation of his or her permit or this part due to indifference, lack of diligence, or lack of reasonable care.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63504 Assumption by state of exclusive jurisdiction over regulation of surface coal mining and reclamation operations in state; purpose of part.
Sec. 63504. Pursuant to the authority granted in section 503 of title V of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1253, that allows a state to assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program that has the capability of implementing and enforcing the provisions and purposes of the surface mining control and reclamation act of 1977, this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in this state. It is the purpose of this part to provide a state plan to implement and enforce the purposes provided in section 102 of title I of the surface mining control and reclamation act of 1977, Public Law 95-87, 30 U.S.C. 1202.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63505 Exclusive jurisdiction of department over surface coal mining and reclamation operations in state; construction of part.
Sec. 63505. The department has exclusive jurisdiction over all surface coal mining and reclamation operations in this state. This part shall not be construed as preempting a zoning ordinance enacted by a local unit of government or impairing a land use plan adopted pursuant to a law of this state by a local unit of government.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63506 Powers of department.
Sec. 63506. To implement this part, the department has the following powers:

(a) To promulgate and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this part.

(b) To issue permits pursuant to this part.

(c) To conduct hearings pursuant to this part and the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(d) To issue orders requiring an operator to take actions that are necessary to comply with this part and with rules promulgated under this part.

(e) To issue orders modifying previous orders.

(f) To issue a final order revoking the permit of an operator who has failed to comply with an order of the department requiring the operator to take action required by this part or rules promulgated under this part.

(g) To order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the department finds that the operation or part of the operation creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions.

(h) To enter on and inspect a surface mining operation that is subject to this part to assure compliance with this part.

(i) To conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise.

(j) To prepare and require permittees to prepare reports.

(k) To accept, receive, and administer grants pursuant to section 407(e) of title IV of the surface mining control and reclamation act of 1977 and accept, receive, and administer grants, gifts, loans, or other funds made available from any other source for the purposes of this part.

(l) To take those steps necessary to ensure that the state may participate to the fullest extent practicable in the abandoned land program provided in title IV of the surface mining control and reclamation act of 1977.

(m) To take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in this state under the provisions of this part and the surface mining control and reclamation act of 1977, including, in the event the federal administrative agency disapproves this state's program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the surface mining control and reclamation act of 1977.

(n) To enter into contracts with other state agencies that have pertinent expertise to obtain the professional and technical services necessary to implement this part.

(o) To establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.

(p) To enter into cooperative agreements with the secretary of the United States department of the interior for the regulation of surface coal mining operations on federal land in accordance with the surface mining control and reclamation act of 1977.

(q) To perform any other duties and acts required by and provided for in this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63507 Rules.
Sec. 63507. (1) The department shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this part.

(2) A rule promulgated or a permit issued by the department may differ in its terms and provisions as to particular permit conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary if the action taken is consistent with attainment of the general intent and purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63508 Information submitted to department, other state agency, or local unit of government as public record; confidential information; rules.
Sec. 63508. Except when confidentiality is provided in this part, information submitted to the department, other state agency, or local unit of government pursuant to this part shall be a public record as provided in the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. Information that pertains only to the analysis of the chemical and physical properties of coal, excepting information regarding such mineral or elemental content that is potentially toxic in the environment, or information that pertains to the exact location of archeological sites shall be kept confidential and is not a public record. The department shall promulgate rules establishing a procedure to determine whether information that pertains only to the analysis of the chemical and physical properties of the coal shall be kept confidential.
History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 2
ABANDONED MINE RECLAMATION

324.63509 Participation in abandoned mines reclamation fund established by title IV of surface mining control and reclamation act of 1977; authorization; action; procedures.
Sec. 63509. The department is authorized to take all action necessary to ensure participation to the fullest extent practicable in the abandoned mines reclamation fund established by title IV of the surface mining control and reclamation act of 1977, and to function as the state's agency for that participation relative to coal mining. Pursuant to this part and title IV of the surface mining control and reclamation act of 1977, the department shall establish procedures for the designation of the land and water eligible for reclamation or abatement expenditures; for the submission of reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of this part and title IV of the surface mining control and reclamation act of 1977; and for the administration of all money received for abandoned mine reclamation or related purposes.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63510 State abandoned mine reclamation fund; creation; administration; investment of money; use of interest and earnings; money deposited in fund; carrying over remaining money; expenditures.
Sec. 63510. (1) The state abandoned mine reclamation fund is created in the state treasury and shall be administered by the department. The state treasurer shall direct the investment of money in the fund. The interest and earnings of the fund shall be used exclusively for the purposes specified in subsection (4).

(2) The following money shall be deposited in the fund:

(a) All funds from the application fees imposed under subpart 3, the inspection and reclamation fees imposed under subpart 9, and the civil fines imposed under subpart 8.

(b) All funds made available to the department for the purposes specified in subsection (4) pursuant to title IV of the surface mining control and reclamation act of 1977.

(c) All funds which may be donated to the department for the purposes specified in subsection (4) by any person.

(3) Any money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes specified in subsection (4).

(4) Expenditure of money from the state abandoned mine reclamation fund shall be made as follows:

(a) Money that is deposited in the fund under subsection (2)(b) shall reflect the following priorities in the order stated:

(i) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices.

(ii) The protection of public health, safety, and general welfare from adverse effects of coal mining practices.

(iii) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil; water, excluding channelization; woodland, fish, and wildlife; recreation resources; and agricultural productivity.

(iv) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.

(v) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices.

(vi) The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this part for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(b) Money that is deposited in the fund under subsection (2)(a) or (c) for any of the expenditures authorized in subdivision (a) and for any other purpose of this part including the cost of administering this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63511 Entry on private property by department; purposes; conditions; notice; money expended and benefits accruing to property chargeable against land; mitigating or offsetting claim in action by owner for damages; acquisition by department of land adversely affected by past coal mining practices; sale or transfer of acquired land suitable for development; rules; grant; public hearings.
Sec. 63511. (1) The department may, in the manner provided in this section, enter on private property for the purposes of conducting an investigation, inspection, study, or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(2) The department may enter on property as provided in subsection (3) if all of the following conditions exist:

(a) The land or water resources on the property have been adversely affected by past coal mining practices.

(b) The adverse effects to land or water resources on the property are at a stage where, in the public interest, action should be taken to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The department gives notice by certified mail, return receipt requested, to the record owner or owners of the property requesting permission to enter on the property.

(d) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily identifiable; or the owners of the property will not give permission, after receiving notice under subdivision (c), for the state or local unit of government to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(3) After giving notice by certified mail, return receipt requested, to the record owner or owners of the property; posting notice on the property; and advertising for 4 consecutive weeks in a newspaper of general circulation in the county in which the property is located, the department may enter on property adversely affected by the past coal mining practices and any other property necessary to have access to the property to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in an action brought by the owner of any interest in the property for damages by virtue of the entry. This subsection is not intended to create new rights of action or eliminate existing immunities.

(4) The department may acquire land by purchase, donation, or condemnation that is adversely affected by past coal mining practices if the department determines that acquisition of the land is in the public interest, is necessary to successful reclamation, and either subdivision (a) or (b) applies:

(a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Acquisition of coal refuse disposal sites and all coal refuse on the acquired land will serve the purposes of this section or is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(5) The price paid for land acquired pursuant to this section shall reflect the market value of the land taking into consideration its current use and its condition as adversely affected by past coal mining practices.

(6) If land acquired pursuant to this section is considered suitable for agricultural, industrial, commercial, residential, or recreational development, the state may sell or transfer the land pursuant to rules promulgated by the department and procedures provided by law to ensure that the land is put to proper use consistent with the land use plans of local units of government. If a grant accepted pursuant to section 63506(k) is involved in the acquisition of the land to be sold, the land may be sold only when authorized by the secretary of the United States department of the interior. The department shall hold a public hearing in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, in the county or counties of the state in which land acquired pursuant to this section is located. The hearings shall afford local citizens and local units of government an opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63512 Itemizing money expended to complete project; filing statement of account and appraisal with county clerk; filing of lis pendens with statement of account and appraisal as lien on land; priority; amount; lien not to be filed against certain property; petition for hearing concerning amount of lien; appeal.

Sec. 63512. (1) Within 6 months after the completion of a project to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned property, the department shall itemize the money expended to complete the project and shall file an account of the money expended with the clerk of the county in which the property is located, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The filing of lis pendens with a copy of the statement of account and the appraisal constitutes a lien on the land second in priority only to a lien for delinquent property taxes placed on the property pursuant to section 40 of the general property tax act, Act No. 206 of the Public Acts of 1893, being section 211.40 of the Michigan Compiled Laws. The lien shall not exceed the amount of the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. A lien shall not be filed against the property of a person who was a record owner of the surface rights in the property prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(2) An affected landowner may petition the department within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal shall be conducted under chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63513 Expenditures from state abandoned mine reclamation fund for emergency restoration, reclamation, abatement, control, or prevention of adverse effects; conditions; entry on land where emergency exists as exercise of police power; warrant; action for damages; intent of subsection (2).

Sec. 63513. (1) The department may expend money from the state abandoned mine reclamation fund created by section 63510 for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the department finds that all the following conditions exist:

(a) An emergency exists constituting a danger to the public health, safety, or general welfare.

(b) No other person, state agency, or local unit of government has commenced actions or operations on the eligible land to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(2) The department may enter on any land where the emergency exists and any other land necessary to have access to the land where the emergency exists to take those actions necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare, if the department has obtained a warrant authorizing that entry. Entry pursuant to this subsection is an exercise of the police power and not an act of condemnation or trespass. If the owner of any interest in the property brings an action for damages because of an entry made pursuant to this subsection, the money expended to restore, reclaim, abate, control, or prevent the adverse effects and the benefits accruing to the property entered on is chargeable against the land and shall mitigate or offset any claim in that action. This subsection does not create new rights of action or eliminate existing immunities.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 3
PERMITS

324.63514 Conduct of surface coal mining operation without permit.
Sec. 63514. A person shall not conduct a surface coal mining operation in this state except as authorized by a permit issued by the department pursuant to part 13.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.63515 Term of permits; continuation of plan by successor in interest; termination of permit; extensions of time to commence operations; conditions.
Sec. 63515. (1) Permits issued pursuant to this part are for a term not to exceed 3 years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and to open the operation, and if the application is full and complete for the specified longer term, the department may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage pursuant to subpart 5 as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(2) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within 2 years after commencement of the period for which the permit is issued. However, upon application by the permittee, the department may grant reasonable extensions of time, not to exceed 6 months each, to commence a surface coal mining operation if the permittee demonstrates either of the following:

(a) The extension is necessary because the commencement of the operation has been enjoined by a court of competent jurisdiction.

(b) The extension is necessary because of conditions beyond the control and without the fault or negligence of the permittee.

For a coal lease issued under chapter 85, 41 Stat. 437, 30 U.S.C. 181 to 184, 185 to 188, 189 to 191, 192, 193, 195, 201, 202 to 203, 205 to 208-2, 209, 211 to 214, 223, 224 to 226, 226-2 to 226-3, 228 to 229a, 241, 251, and 261 to 263, commonly known as the mineral lands leasing act of 1920, the department shall not grant extensions of time that extend beyond the period allowed for diligent development under section 7 of chapter 85, 41 Stat. 439, commonly known as the mineral lands leasing act of 1920, 30 U.S.C. 207.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63516 Permit application; contents; submission of certificate of public liability insurance policy to department; policy provisions; maintenance of policy in full force and effect.
Sec. 63516. (1) The permit application shall be submitted to the department and shall contain all of the following:

(a) The names and addresses of the following persons:

(i) The applicant.

(ii) All legal owners of record of the property, surface or mineral, to be mined.

(iii) The holders of record of any leasehold interest in the property to be mined.

(iv) The purchasers of record under a land contract of the property to be mined.

(v) The operator if the operator is a person other than the applicant.

(vi) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable: the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant; the name and address of any person owning of record 10% or more of any class of voting stock of the applicant; and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation within the United States within the 5-year period preceding the date of submission of the application.

(b) The names and addresses of the owners of record of all surface and subsurface areas adjacent to the permit area.

(c) A statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application.

(d) Information concerning ownership and management of the applicant or operator required by the department by rule.

(e) A statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has ever held a federal, state, or local mining permit which in the 5-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved.

(f) A copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site for 4 consecutive weeks, that indicates the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation may be readily located, and a statement that the application is available for public inspection at the office of the county clerk of each county in which the proposed permit area is located.

(g) A description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used in the mining operation.

(h) The anticipated or actual starting and termination dates of each phase of the mining operation and the number of acres of land to be affected by each phase of the mining operation.

(i) An accurate map or plan, to scale determined by the department by rule, filed by the applicant with the department clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his or her legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation.

(j) Identification of the watershed and location of the surface streams, tributaries, groundwaters, and county and intercounty drains into which surface, pit drainage, or other waters from the mining operation will be discharged.

(k) A determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime; quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions; and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability. However, the determination of hydrologic consequences is not required until existing hydrologic information regarding the general area prior to mining is made available from the appropriate federal or state agency, except that the permit shall not be approved until the information is available and is incorporated into the permit application.

(l) The climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, average direction and velocity of prevailing winds, and seasonal temperature ranges.

(m) A statement of the result of test borings or core samplings from the proposed permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic-forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined. The provisions of this subdivision may be waived by the department with respect to any particular application by a written determination by the department that the information is unnecessary.

(n) A soil survey made or obtained according to standards established by the department of agriculture in order to confirm the exact location of agricultural land, if any, within the proposed permit area. The soil survey shall include the exact location of agricultural land enrolled under part 361.

(o) Accurate maps to scale determined by the department by rule clearly showing both of the following:

(i) The land to be affected as of the date of application.

(ii) All types of information set forth on topographical maps of the United States geological survey of a scale of 1:24,000 or 1:25,000 or larger, including all human-made features and significant known archeological sites existing on the date of application.

The map or plan shall, among other things specified by the department, show all boundaries of the land to be affected, the boundary lines and names of present owners of record of all surface areas adjacent to the permit area, and the location of all buildings within 1,000 feet of the permit area.

(p) Cross-section maps or plans of the land to be affected to a scale determined by the department by rule, including the actual area to be mined, prepared by or under the direction of and certified by a qualified registered professional engineer, or professional geologist with assistance from experts in related fields such as land surveying and landscape architecture, showing pertinent elevation and location of test borings or core samplings and depicting the following information: the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the nature and thickness of any coal or rider seam above the coal seam to be mined; the nature of the stratum immediately beneath the coal seam to be mined; all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; existing or previous surface mining limits; the location and extent of any underground mines, including mine openings to the surface; the location of aquifers; the estimated elevation of the water table; the location of spoil, waste, or refuse areas and topsoil preservation areas; the location of all impoundments for waste or erosion control; any settling or water treatment facility; constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; profiles at appropriate cross-sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan; and other information required by the department by rule that is consistent with the purposes of this part.

(q) A reclamation plan that meets the requirements of this part and the requirements of the zoning ordinances enacted by a local unit of government.

(r) A determination of the impact on historic preservation concerns including all of the following:

(i) A statement of available information on whether the proposed permit area is within an area designated unsuitable for surface mining activities due to the potential effect of mining on historic resources or whether the area is under study for a designation of unsuitability in an administrative proceeding.

(ii) A description of the historic resources located within the proposed permit area and adjacent areas. The description shall be based on available information, including data in the possession of state and local archeological, historical, and cultural preservation agencies.

(iii) A map showing the boundaries of each historic resource within the permit area and adjacent areas.

(iv) An evaluation of the potential adverse effect that the proposed surface mining operation will have on historic resources within the proposed permit area and adjacent areas.

(v) A statement indicating whether there are feasible and prudent alternatives to the potential adverse effects on historic resources.

(vi) A statement of the measures proposed to prevent, minimize, or mitigate potential adverse effects upon historic resources located within the proposed permit area, including a proposal for recording or salvaging the resources if adverse effects cannot be avoided.

The determination required by this subdivision shall include the name, address, and employment position of each person that the applicant consulted in collecting information on historic resources.

(s) An agricultural impact statement that includes all the following:

(i) The location and boundaries of the proposed mining operation.

(ii) The number of acres to be affected by the proposed mining operation.

(iii) The nature and type of agricultural operations to be affected by the proposed mining operation.

(iv) The nature and extent of the effect of the proposed mining operation on the agricultural operations, including the number and types of

buildings and other facilities that will be affected by the mining operation.

(v) The anticipated future effect of the proposed mining operation on adjacent agricultural land that will not be immediately affected by the proposed mining operation.

(vi) The anticipated amount of time, in years and months, during which the area affected by the proposed mining operation will be unsuitable for normal agricultural production.

(vii) The anticipated amount of time, in years and months, required to restore the area affected by the proposed mining operation to the level of productivity it had before it was affected by the mining operation.

(viii) The impact of the proposed mining operation on agriculture generally.

(t) Other data and maps as the department may require by rule that are consistent with the purposes of this part.

(2) An applicant for a surface mining and reclamation permit shall submit to the department as part of its application a certificate issued by an insurance company authorized to do business in this state certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which the permit is sought. The policy shall provide for personal injury and property damage protection consistent with the standards established in section 63528 in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63517 Renewal of permit.
Sec. 63517. (1) A permit issued pursuant to this part includes the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and except as provided in subsection (2) the renewal shall be issued.

(2) A permit shall not be renewed if, after a hearing conducted pursuant to section 63523, it is established and the department makes written findings that any of the following conditions exist:

(a) The terms and conditions of the existing permit are not being satisfactorily met by the permittee.

(b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this part and the approved state plan or federal program pursuant to the surface coal mining and reclamation act of 1977.

(c) The renewal requested substantially jeopardizes the operator's continuing responsibility for reclamation established under this part on existing permit areas.

(d) The operator has not provided evidence that the performance bond in effect for the operation or any additional bond the department might require pursuant to section 63529 will continue in full force and effect for the renewal requested in the application.

(e) Additional revised or updated information required by the department by rule has not been provided by the permittee.

(3) Before the renewal of a permit, the department shall provide notice to the appropriate persons, local units of government, and interested parties.

(4) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application that addresses new land

areas is subject to the full standards applicable to a new application under this part.

(5) A permit renewal shall be for a term not to exceed the period of the existing permit established by this part. Application for permit renewal shall be made at least 120 days before the expiration of the existing permit.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63518 Reclamation plan; contents.

Sec. 63518. The reclamation plan required to be submitted pursuant to this part as part of a permit application shall include details necessary to demonstrate that reclamation required by this part can be accomplished, and shall include all of the following:

(a) Identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought.

(b) The condition of the land to be covered by the permit prior to any surface coal mining, including:

(i) The uses existing at the time of the application and, if the land has a history of previous mining, the uses that preceded any mining.

(ii) The capability of the land, prior to any surface coal mining, to support a variety of uses, giving consideration to soil and foundation characteristics, topography, and vegetative cover and, if applicable, a soil survey prepared pursuant to section 63516(1)(n).

(iii) The productivity of the land prior to mining, based on the average yield of food, fiber, forage, or wood products consistent with productivity of similar lands in this state under best management practices.

(c) The use proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to applicable land use policies and plans. However, if the use made of the land before mining is agricultural and the use proposed to be made of the land following reclamation is other than that agricultural use, the permit shall not be approved by the department without the approval of the legislative body of each local unit of government in which land to be reclaimed is located.

(d) A detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use.

(e) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment to be used. A plan for the control of surface water drainage and of water accumulation; a plan, if appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation; and a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in section 63527(2)(g) for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in that section.

(f) The actions to be taken to maximize the utilization and conservation of the solid fuel resource being recovered so that mining and any activities related to mining of the land in the future can be minimized.

(g) An estimated timetable for the accomplishment of each major step in the reclamation plan.

(h) The actions to be taken to make the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs of local units of government.

(i) The actions to be taken to comply with applicable air and water quality laws of this state or the United States, rules and regulations of this state or the United States, or local ordinances and with applicable health and safety standards.

(j) The action to be taken to develop the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions.

(k) The results of test borings that the applicant has made at the proposed permit area or other equivalent information and data in a form satisfactory to the department, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment.

(l) An itemized list of land, interests in land, or options on those interests held by the applicant or pending bids by the applicant on interests in land adjacent to the proposed permit area.

(m) A detailed description of the actions to be taken during the mining and reclamation process to assure the protection of all of the following:

(i) The quality of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process and the rights of present users to that water.

(ii) The quantity of surface and groundwater systems, both on-site and off-site, from adverse effects of the mining and reclamation process or to provide alternative sources of water where the protection of quantity cannot be assured.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63519 Blasting plan; submission by permit applicant.
Sec. 63519. Each applicant for a surface coal mining and reclamation permit shall submit to the department as a part of its application a blasting plan that outlines the procedures and standards by which the operator will meet the requirements of section 63527(2)(o).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63520 Filing copy of application with county and township clerks; exception; information obtained by department available to public with county clerk; confidentiality.
Sec. 63520. (1) An applicant for a surface coal mining and reclamation permit shall file a copy of the application with the county clerk of each county in which the mining is proposed to occur and with the township clerk of each township in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam.

(2) Except when confidentiality is provided for in this part, a record, report, inspection materials, or other information obtained by the department shall be available to the public with the county clerk of each county in which the mining is proposed to occur. The department shall transmit a record, report, inspection material, or other information to each county clerk within 10 days after it is received by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63521 Application fee.
Sec. 63521. An application for a surface coal mining and reclamation permit shall be accompanied by an initial application fee. The initial application fee is $100.00.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63522 Determination of probable hydrologic consequences and statement of boring or sampling results; performance; cost.
Sec. 63522. If the department finds that the probable total annual production at all locations of a surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by section 63516, on the written request of the operator, shall be performed by a qualified governmental agency or private consultant designated by the department, and the cost of the preparation of the determination and statement shall be assumed by the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63523 Application for permit or renewal; advertisement of ownership, location, and boundaries of land affected; notification of local units of government; written comments; notice to department of history, arts, and libraries; determination; filing objections to proposed application for permit; request for hearing; action by department.
Sec. 63523. (1) When an application for a surface coal mining and reclamation permit or renewal of an existing permit is submitted, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation for 4 consecutive weeks. The department shall notify local units of government in the vicinity of the proposed mining and reclamation area of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse or township office in which a copy of the proposed surface coal mining and reclamation plan may be inspected. A local unit of government may submit written comments within a period established by the department on the mining applications with respect to the effect of the operation proposed by the applicant on the environment that is within its area of responsibility. The comments shall immediately be transmitted to the

applicant by the department and shall be made available to the public at the same location as the mining application.

(2) In addition to the notice required in subsection (1), the department shall notify the department of history, arts, and libraries of the operator's intention to conduct a surface mining operation and shall provide the department of history, arts, and libraries with a copy of the permit application. Based on the information required pursuant to section 63516(1)(r), the department of history, arts, and libraries shall determine whether or not the proposed surface mining operation will adversely affect a historic resource. The department of history, arts, and libraries may file written objection to the proposed surface mining operation pursuant to subsection (3).

(3) A person having an interest that is or may be adversely affected by the operation proposed in the application and any federal or state government agency or local unit of government is entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the department not later than 30 days after the last publication of the notice required by subsection (1). Those objections shall immediately be transmitted to the applicant by the department and shall be made available to the public.

(4) Within 45 days after the last publication of the notice provided in subsection (1), the applicant or any person with an interest that is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the expiration of the time allowed for submitting the request.

(5) An action taken by the department with respect to a permit application shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2001, Act 78, Eff. Aug. 6, 2001
Popular Name: Act 451
Popular Name: NREPA

324.63524 Application for permit or revision of permit; notice; burden; requirements for approval; filing schedule listing notices of violations; issuance of permit; mining on agricultural land; consultation; finding.

Sec. 63524. (1) The applicant for a permit or revision of a permit has the burden of establishing that his or her application is in compliance with all the requirements of this part. Within 3 days after the granting of a permit, but before the permit is issued, the department shall notify the county clerk in each county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(2) An application for a permit or revision of a permit shall not be approved unless the department finds, in writing, that all the following requirements have been met:

(a) The application is accurate and complete and complies with all of the requirements of this part.

(b) The applicant has demonstrated that reclamation as required by this part can be accomplished under the reclamation plan contained in the application.

(c) An assessment of the probable cumulative impact of all anticipated surface coal mining inside and outside the permit area on the hydrologic balance, including quantitative and qualitative analyses, has been made by the department, and the proposed operation has been designed to prevent material damage to the hydrologic balance inside and outside the permit area.

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this part and is not within an area under study for this designation in an administrative proceeding commenced pursuant to this part, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, the applicant has made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(e) If the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the department either the written consent of the surface owner to the extraction of coal by surface mining methods or a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods. However, if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law, except that this part does not authorize the department to adjudicate property rights disputes.

(f) If the department of history, arts, and libraries determines that the proposed surface mining operation will adversely affect a historic resource, the application is approved jointly by the department, by the federal, state, or local agency with jurisdiction over the historic resource, and by the department of history, arts, and libraries.

(3) The applicant shall file, with the application, a schedule listing all notices of violations of this part or other law of this state and any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the 3-year period prior to the date of application. The schedule shall include the final resolution of notice of the violation. If the schedule or other information available to the department indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this part or other laws referred to in this subsection, the permit shall not be issued until the applicant submits affidavits that the violation has been corrected or is in the process of being corrected to the satisfaction of the department or the agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant. A permit shall not be issued to an applicant after a finding by the department, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of violations of this part of such nature and duration with such resulting pollution, impairment, or destruction to the environment as to indicate an intent not to comply with this part.

(4) If the area proposed to be mined contains agricultural land, the department shall consult with the director of the department of agriculture and the secretary of the United States department of agriculture and shall not grant a permit to mine on agricultural land unless the department finds in writing that the operator has the technological capability to restore the mined area and any other areas impacted by the surface coal mining operation within a reasonable time to equivalent or higher levels of yield as nonmined agricultural land in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2001, Act 78, Eff. Aug. 6, 2001 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.63525 Application for revision of permit; standards; transfer, assignment, or sale of rights; review of outstanding permits; revision or modification of permit provisions; conducting action regarding permit pursuant to MCL 24.271 to 24.292.
Sec. 63525. (1) During the term of a permit, the permittee may submit to the department an application for a revision of the permit, including a revised reclamation plan. An application for a revision of a permit shall not be approved unless the department finds that reclamation as required by this part can be accomplished under the revised reclamation plan. An application for a revision is subject to part 13, except that the department shall establish standards for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

(2) A transfer, assignment, or sale of the rights granted under a permit issued pursuant to this part shall not be made without the written approval of the department.

(3) The department shall, within a time limit prescribed by rule, review outstanding permits. The department may require revision or

modification of the permit provisions during the terms of the permit based on a change in technology or a change in circumstances.

(4) All action taken by the department under this section regarding the granting, modification, denial, or revision of a permit shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.63526 Construction of subpart.

Sec. 63526. This subpart does not exempt a permittee from obtaining any other permit, license, or permission to engage in any activity regulated by this part that is required by any other law of this state, any rule promulgated under a law of this state, or a zoning ordinance enacted by a local unit of government.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 4
ENVIRONMENTAL PERFORMANCE STANDARDS

324.63527 Performance standards.

Sec. 63527. (1) A permit issued under this part to conduct surface coal mining operations shall require that the operations meet the performance standards provided in subsection (2).

(2) Except as otherwise provided in this part, all surface coal mining and reclamation operations shall require the operator to do all of the following:

(a) Conduct surface coal mining operations in a manner that maximizes the utilization and conservation of the solid fuel resource being

recovered to prevent reaffecting the land in the future through subsequent surface coal mining.

(b) Restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses if priority is given to restoration of agricultural land to agricultural uses, if that use does not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and if the declared proposed land use in the permit application following reclamation is not inconsistent with applicable land use policies and plans, does not involve unreasonable delay in implementation, and is and is not in violation of a law of this state or the United States or a local ordinance.

(c) Backfill; compact, where advisable to ensure stability or to prevent leaching of toxic materials; and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this part. However, for surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits is large relative to the volume of the overburden and if the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In addition, in surface coal mining, where the volume of overburden is large relative to the thickness of the coal deposit and if the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original

contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In all cases, the overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with a plan for revegetation developed in cooperation with each soil conservation district affected by the surface coal mining operation and the requirements of this part.

(d) Stabilize and protect all surface areas, including spoil piles, affected by the surface coal mining and reclamation operation and effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer and replace it on the backfill area. Except that, if the topsoil is not utilized immediately, the operator shall be required to segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick-growing plant or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic materials, and is in a usable condition for sustaining vegetation when restored during reclamation. However, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements imposed in this subpart and subpart 3, or if other strata can be shown to be more suitable for vegetation requirements imposed in this subpart and subpart 3, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation.

(f) Restore the topsoil or the available subsoil that is best able to support vegetation.

(g) If agricultural land is to be mined and reclaimed, the specifications for soil removal, storage, replacement, and reconstruction shall be established by the department of agriculture in consultation with the

secretary of the United States department of agriculture, and the operator is, at a minimum, required to do all of the following:

(i) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity. If the A horizon of the natural soil is not utilized immediately, it shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(ii) Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil. If the B and C horizons of the natural soil are not utilized immediately, they shall be stockpiled separately from other spoil and provided protection from wind and water erosion or contamination by other acid or toxic material.

(iii) Replace and regrade the root zone material described in subparagraph (ii) with proper compaction and uniform depth over the regraded spoil material.

(iv) Redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (i).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities but only when all of the following are adequately demonstrated:

(i) The size of the impoundment is adequate for its intended purposes.

(ii) The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with

that of structures constructed under the watershed protection and flood prevention act, chapter 656, 68 Stat. 666.

(iii) The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established pursuant to applicable federal and state law.

(iv) The level of water will be stable.

(v) Final grading will provide safety and access for proposed water users.

(vi) The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(vii) The impoundment is consistent with the laws of this state or the United States; rules and regulations of this state or the United States; or local ordinance.

(i) Conduct an augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage, except where the department determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety. The department may prohibit augering under standards established by rule if necessary to maximize the utilization, recoverability, or conservation of solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by preventing or removing water from contact with toxic-producing deposits; treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or casing, sealing, or otherwise managing bore holes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater.

(ii) Conducting surface coal mining operations to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, except that contributions shall not be in excess of requirements set by applicable state or federal law.

(iii) Constructing any siltation structures pursuant to subparagraph (ii) prior to commencement of surface coal mining operations. A siltation structure shall be certified by a qualified registered engineer and shall be constructed as designed and approved in the reclamation plan.

(iv) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site in a manner approved by the department.

(v) Restoring recharge capacity of the mined area to approximate premining conditions.

(vi) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(vii) Other actions as the department may prescribe.

(k) Stabilize all waste piles in designated areas with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavation through construction in compacted layers including the use of incombustible and impervious materials, if necessary, and assure that the final contour of

the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this part.

(l) Refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent breakthroughs and to protect the health and safety of miners and other persons. However, the department shall allow an operator to mine near, through, or partially through an abandoned underground mine or closer than 500 feet of an active underground mine if the nature, timing, and sequencing of specific surface mine activities with specific underground mine activities are jointly approved by the federal and state agencies and local units of government concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to rules promulgated by the department, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as a dam or embankment.

(n) Ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried, compacted, or otherwise disposed of to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion of those materials.

(o) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the department. Rules promulgated by the department shall require the permittee to do all of the following:

(i) Publish the schedule of the planned blasting in a newspaper of general circulation in the vicinity, mailing a copy of the proposed blasting

schedule to every resident living within 1/2 mile of the proposed blasting site, and providing daily notice in the vicinity prior to any blasting.

(ii) Maintain for a period of at least 3 years and make available for public inspection on request during normal business hours a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.

(iii) Limit the type of explosives and detonating equipment and the size, timing, and frequency of blasts based upon the physical conditions of the site to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area.

(iv) Have all blasting operations conducted pursuant to this part conducted by trained and competent individuals certified by the department.

(v) Require the applicant or permittee to conduct a preblasting survey of a structure or dwelling upon the request of a resident or owner of a structure or dwelling within 1/2 mile of the permit area and to submit the survey to the department and a copy of the survey to the resident or owner making the request. The area covered by the survey shall be determined by the department and the survey shall include provisions and shall be conducted pursuant to standards established by rules promulgated by the department.

(p) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations. However, if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the department may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as

practicable to permit underground mining operations prior to reclamation if all the following conditions are met:

(i) The department finds in writing that:

(A) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations.

(B) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface.

(C) The plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and permits necessary for the underground mining operations have been issued by the appropriate authority.

(D) The areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations.

(E) Significant adverse environmental damage, either on site or off site, will not result from the delay in completion of reclamation as required by this part.

(F) Provisions for the off-site storage of spoil will comply with subdivision (v).

(ii) The department has promulgated specific rules to govern the granting of the variances in accordance with this subsection.

(iii) The variance granted will be reviewed annually by the department.

(iv) The liability under the bond filed by the applicant with the department pursuant to section 63529(2) is for the duration of the underground mining operations and until the requirements of sections 63527(2) and 63528 have been fully complied with.

(q) Ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion, siltation, pollution of water, and damage to fish or wildlife, the habitat of fish or wildlife, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to significantly alter or degrade the normal flow of water.

(s) Establish on regraded areas and all other land affected, in cooperation with each soil conservation district affected by the surface coal mining operation, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in the extent of cover to the natural vegetation of the area. However, introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

(t) Assume the responsibility for successful revegetation as required by subdivision (s) for a period of 5 years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with subdivision (s). However, in those areas or regions of the state where the annual average precipitation is 26 inches or less, the operator's assumption of responsibility and liability will extend for a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work. If the department approves long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation commences at the date of initial planting for the long-term intensive agricultural postmining land use, except that if the department issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan, the department may grant exception to the provisions of subdivision (s).

(u) Protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil

material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(i) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way as to assure mass stability and to prevent mass movement.

(ii) The areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placement.

(iii) Appropriate surface and internal drainage systems and diversion ditches are used to prevent spoil erosion and movement.

(iv) The disposal area does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains to prevent filtration of the water into the spoil pile.

(v) If placed on a slope, the spoil is placed on the most moderate slope and is placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement.

(vi) If the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed.

(vii) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(viii) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards.

(ix) All other provisions of this part are met.

(w) Meet other criteria necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and, if practicable, achieve enhancement of those resources.

(y) Provide for an undisturbed natural barrier to be retained in place as a barrier to slides and erosion beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the department determines necessary.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 5
BONDING

324.63528 Certificate of public liability insurance; maintenance of policy in full force and effect; rules.

Sec. 63528. (1) An applicant for a permit shall submit to the department, as part of each permit application, a certificate that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

(2) The department shall promulgate rules establishing standards for adequate public liability insurance coverage consistent with section 63516(2).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63529 Performance bond; form, coverage, and amount; liability; execution by applicant and corporate surety; election to deposit cash or assets as security; acceptance of bond without separate surety; adjustment of bond or deposit amount and terms of acceptance; rules.

Sec. 63529. (1) After a surface coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant shall file with the department, on a form prescribed and furnished by the department, a bond for performance payable to the state and conditioned on faithful performance of all requirements of this part and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. Before succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall be determined by the department and shall reflect the reclamation requirements of the approved permit and the probable difficulty of the reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the reclamation had to be performed by the department in the event of forfeiture, and the bond for the entire area under 1 permit shall not be less than $10,000.00.

(2) Liability under the bond is for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. Except as provided in subsection (3), the bond shall be executed by the applicant and a corporate surety licensed to do business in this state.

(3) The applicant may elect to deposit cash or the following types of assets as security for the performance of the applicant's obligation under the bond:

(a) Obligations or securities of, or fully guaranteed as to principal and interest by, the United States or any of the agencies of the United States, or for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest.

(b) Obligations of a state of the United States, or an agency or authority of a state for which the full faith and credit of the state is pledged to provide payment of principal and interest.

(c) Obligations of this state or an agency or authority of this state for which specific revenues are pledged to provide payment of principal and interest.

(d) Negotiable certificates of deposit of a state or national bank.

(4) The cash deposit or market value of the assets shall be equal to or greater than the amount of the bond required for the bonded area.

(5) The department may accept the bond of the applicant without separate surety if the applicant demonstrates to the satisfaction of the department the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to bond the amount.

(6) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the department from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(7) The department shall promulgate rules establishing standards for adequate bond coverage consistent with this section.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63530 Total or partial release of performance bond or deposit; application; notice; publication; contents; inspection and evaluation

of reclamation work; notification of decision; reclamation schedule; disapproval of application; notifying county clerk of filed application; written objections; public hearings; notice.
Sec. 63530. (1) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after submission of an application for bond or deposit release to the department, the permittee shall submit a copy of the notice to be published by the department for 4 consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The notice is part of the bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjacent property owners and local units of government notifying them of the application to seek release from the bond.

(2) Within 30 days after the applicant complies with subsection (1), the department shall conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The department shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit based on the criteria in subsection (3) within 60 days from the filing of the request, if a public hearing is not held, and, if a public hearing is held, within 30 days after the hearing.

(3) The department may release the bond or deposit in whole or in part if the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this part according to the following schedule:

(a) If the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60% of the bond or collateral for the applicable permit area.

(b) If revegetation has been established on the regraded mined lands in accordance with the reclamation plan, the department may release an additional portion of the bond or deposit. In determining the amount of the bond or deposit to be released after successful revegetation has been established, the department shall retain the amount of the bond or deposit that is sufficient for a third party to establish revegetation and for the period specified for permittee responsibility in section 63527(2)(t). No part of the bond or deposit shall be released under this subdivision if the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of section 63527(2)(j) or until soil productivity for agricultural land has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 63516(1)(n). If a silt dam is to be retained as a permanent impoundment pursuant to section 63527(2)(h), the portion of bond may be released under this subdivision if provisions for sound future maintenance have been made with the department.

(c) If the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in section 63527(2)(t). However, at least 25% of the bond or deposit shall be retained by the department until all reclamation requirements of this part are fully met.

(4) If the department disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the permittee, in writing, stating the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing opportunity for a public hearing.

(5) When an application for total or partial bond or deposit release is filed with the department, the department shall notify the county clerk of each county in which the surface coal mining operation is located by certified mail within 10 days after the application for the release of all or a portion of the bond or deposit is filed.

(6) A person with a legal interest or other interest that might be adversely affected by release of the bond or deposit or a federal or state agency or local unit of government is entitled to file written objections to the proposed release from bond or deposit with the department within 30 days after the last publication of the notice provided in subsection (1). If written objections are filed, the department shall conduct a public hearing on the objections and inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation within 30 days. Notice of the date, time, and location of the public hearings shall be published by the department in a newspaper of general circulation in the locality for 2 consecutive weeks.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63531 Coal exploration operations; rules; notice of intent to explore; violation of section or rules; penalties; maximum amount of coal removable pursuant to exploration permit.
Sec. 63531. (1) Coal exploration operations that significantly disturb the natural land surface shall be conducted in accordance with rules promulgated by the department. The rules shall include, at a minimum, the requirement that prior to conducting the exploration a person must file with the department notice of intent to explore. The notice of the intent to explore shall include a description of the exploration area; the period of proposed exploration; provisions for reclamation in accordance with the performance standards in section 63527 of all lands disturbed in exploration, including excavations, roads, and drill holes; and the removal of necessary facilities and equipment.

(2) A person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules promulgated under this section is subject to the penalties provided in section 63537.

(3) An operator shall not remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 6
UNDERGROUND MINING

324.63532 Surface effects of underground mining; rules.
Sec. 63532. The department shall promulgate rules applicable to the surface effects of underground mining that are consistent with the requirements of the surface mining control and reclamation act of 1977, and regulations adopted pursuant to that act by the secretary of interior of the United States relative to coal mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63533 Permit requirements; suspension of underground coal mining; imminent danger; applicability of subparts 3, 4, 5, 7, and 8 to surface operations and surface impacts incident to underground coal mine; modifications; rules.
Sec. 63533. (1) A permit issued pursuant to this part relating to underground coal mining shall require the operator to do all of the following:

(a) Adopt measures consistent with technology currently available to prevent subsidence causing material damage to the extent technologically and economically feasible; maximize mine stability; and

maintain the value and reasonably foreseeable use of such surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. This subsection does not prohibit the standard method of room and pillar mining.

(b) Seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(d) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials if necessary; assure that the leachate will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law; and assure that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to this section.

(e) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes and used either temporarily or permanently as dams or embankments.

(f) Establish, on regraded areas and all other lands affected, a diverse and permanent vegetative cover that is capable of self-regeneration and plant succession and that is at least equal in extent of cover to the natural vegetation of the area.

(g) Protect off-site areas from damages that may result from underground mining operations.

(h) Eliminate fire hazards and eliminate conditions that constitute a hazard to health and safety of the public.

(i) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity of water in surface groundwater systems both during and after coal mining operations and during reclamation by meeting both of the following requirements:

(i) Avoiding acid or other toxic mine drainage by such measures as the following:

(A) Preventing or removing water from contact with toxic producing deposits.

(B) Treating drainage to reduce toxic content that adversely affects downstream water upon being released to watercourses.

(C) Casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering surface and groundwaters.

(ii) Conducting surface coal mining operations so as to prevent, to the extent possible using technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall such contributions be in excess of requirements set by applicable state or federal law; and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines.

(j) With respect to other surface impacts not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other

areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section 63527 for those effects that result from surface coal mining operations, except that the department shall make modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground coal mining.

(k) To the extent possible using technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable.

(l) Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(2) To protect the stability of the land, the department shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if the department finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(3) Subparts 3, 4, 5, 7, and 8 are applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. The department shall promulgate rules to make those modifications.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 7
INSPECTIONS AND MONITORING

324.63534 Conducting inspections and requiring monitoring and reporting of surface coal mining and reclamation operations; taking necessary actions to administer part and meet program requirements; right of entry and access to records; notice and report of violation; removal or disturbance of strata serving as aquifer; specifications; rules; inspection requirements.
Sec. 63534. (1) The department shall conduct inspections and require monitoring and reporting of surface coal mining and reclamation operations, and shall take all actions necessary to administer, enforce, and evaluate the administration of this part and to meet the state program requirements of the surface mining control and reclamation act of 1977, and for those purposes, the department or an authorized representative of the department, without advance notice and on presentation of appropriate credentials, has a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this part or the rules promulgated under this part.

(2) Each inspector, on detection of each alleged violation of any requirement of this part, shall give written notice to the operator of the violation and shall report the violation, in writing, to the department. The notice of violation shall include a warning that the violation may result in a fine or penalty under subpart 8.

(3) If a surface coal mining and reclamation operation removes or disturbs strata that serve as an aquifer that significantly ensures the hydrologic balance of water use either on or off the mining site, the department shall specify:

(a) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence.

(b) Monitoring sites to record level, amount, and samples of groundwater and aquifers that are affected or potentially affected by the mining and also directly below the lowermost, deepest coal seam to be mined.

(c) Records of well logs and boreholes data to be maintained.

(d) Monitoring sites to record precipitation.

(4) The department shall promulgate rules that provide for informing the operator of an alleged violation detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this part and the rules promulgated under this part.

(5) Inspections by the department shall comply with all of the following requirements:

(a) Occur on an irregular basis averaging not less than 1 partial inspection per month and 1 complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit.

(b) Occur without prior notice to the permittee or agents or employees of the permittee except for necessary on-site meetings with the permittee.

(c) Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63535 Sign.

Sec. 63535. Each permittee shall conspicuously maintain at the entrances or visible areas of access to the surface coal mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63536 Information obtained under article available to public with county clerk.

Sec. 63536. Copies of any records, reports, inspection materials, or information obtained under this subpart by the department shall be made available to the public with the county clerk of each county in the area of mining within 10 days after they are received by the department so that they are conveniently available to residents in the areas of mining.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 8
FINES AND PENALTIES

324.63537 Fines and imprisonment.

Sec. 63537. (1) The department may impose an administrative fine against a permittee or other person who violates a permit condition or a provision of this part. If the department issues a cease and desist order with respect to a violation, an administrative fine shall be assessed. An administrative fine shall not exceed $5,000.00 for each violation, except that each day a violation continues may be considered a separate violation. In determining the amount of the administrative fine, the department shall consider the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any pollution, impairment, or destruction to the environment and any hazard to the health or safety of the public; whether the permittee or person was indifferent or lacked diligence or reasonable care; and the demonstrated good faith of the permittee or person charged in attempting to achieve compliance after notification of the violation.

(2) An administrative fine shall be assessed only after the person charged with a violation described under subsection (1) has been given an opportunity for a public hearing. A hearing conducted under this section

shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The department shall inform the permittee and any other person charged within 30 days after the issuance of a notice or order charging that a violation of this part has occurred of the proposed amount of the administrative fine. The person charged with the violation then has 30 days to pay the proposed fine in full or, if the person wishes to contest either the amount of the fine or the fact of the violation, forward the proposed amount to the department for placement in an escrow account. If, through administrative or judicial review of the proposed fine, it is determined that a violation did not occur or that the amount of the fine should be reduced, the department, within 30 days, shall remit the appropriate amount to the person with interest at 12% per year. Failure to forward the money to the department within 30 days after the issuance of the notice or order will result in a waiver of all legal rights to contest the violation or the amount of the fine.

(4) An administrative fine imposed under this part may be recovered in a civil action brought by the attorney general at the request of the department.

(5) A person who willfully and knowingly violates a condition of a permit issued pursuant to this part or fails or refuses to comply with an order issued under this part, or an order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2) or section 63541, shall be punished by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both.

(6) A permittee or person who fails to correct a violation for which a notice or order has been issued under subsection (1) within the period permitted for its correction, which period shall not end until the entry of a final order by the department, in the case of any review proceedings initiated by the permittee in which the department orders the suspension of the abatement requirements of the notice or order after determining

that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil fine of not less than $750.00 for each day during which the failure or violation continues.

(7) If a corporate permittee or person violates a condition of a permit issued pursuant to a state program under section 63524 or fails or refuses to comply with any order issued under section 63539, or any order incorporated in a final decision issued by the department under this part, except an order incorporated in a decision issued under subsection (2), then a director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal is subject to the same fines and imprisonment that may be imposed on a person under subsections (1) and (5).

(8) A person who knowingly makes a false statement, representation, or certification, or who knowingly fails to make a statement, representation, or certification in an application, record, report, or other document filed or required to be maintained pursuant to a state program or this part or any order of decision issued by the department under this part, shall be punished by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63538 Commencement of civil action; notice of intent to commence civil action; rule; notice of violation; effect of action by state; intervention by department or federal regulatory agency; costs of litigation; filing of security if temporary restraining order or preliminary injunction sought; construction of section.
Sec. 63538. (1) Except as provided in subsections (2) and (3), a person having an interest that is or may be adversely affected by an operation not in compliance with a permit or this part may commence a civil action

in circuit court or federal district court, whichever has jurisdiction, on his or her own behalf to compel compliance against any of the following:

(a) The department or other state agency if there is alleged a failure of the department or other state agency to perform any act or duty under this part that is not discretionary with the department or other state regulatory authority.

(b) Any governmental instrumentality or agency of the United States that is alleged to be in violation of this part or of any rule, order, or permit issued pursuant to this part or any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this part.

(2) An action shall not be commenced under subsection (1)(a) until 20 days after the person intending to bring the action has given notice in writing of the intent to commence a civil action to the department or other state regulatory authority in the manner as the department shall by rule prescribe, except that the action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3) An action shall not be commenced under subsection (1)(b) until 20 days after the person intending to bring the action has given notice in writing of the violation to the department and to any alleged violator. However, if this state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with the provisions of this part, or any rule, order, or permit issued pursuant to this part, an action shall not be commenced pursuant to subsection (1)(b). In a civil action brought under this section, the department or federal regulatory agency, if not a party, may intervene as a matter of right.

(4) The circuit court, in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees to a party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(5) This section shall not be construed to restrict any right that a person or class of persons has under any statute or common law to seek enforcement of this part and the rules promulgated under this part, or to seek any other relief, including relief against the department.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63539 Notices and orders; application for review; investigation; public hearing; findings of fact; written decision; temporary relief from notice or order; conditions; requirements; suspension or revocation of permit; order to show cause; costs and expenses; civil action instituted by attorney general; certified mail.
Sec. 63539. (1) If the department determines, on the basis of an inspection, that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this part or a permit condition required by this part and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the condition, practice, or violation. The cessation order shall remain in effect until the department determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the department pursuant to subsection (8). If the department finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the pollution, impairment, or destruction to land, air, or water resources, the department shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take those actions the department considers necessary to abate the imminent danger or the pollution, impairment, or destruction.

(2) If the department determines, on the basis of an inspection, that a permittee is in violation of a requirement of this part or a permit

condition required by this part, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause pollution, impairment, or destruction to land, air, or water resources, the department shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended for good cause shown, and on written finding of the department, the department finds that the violation has not been abated, it shall immediately order a cessation of surface coal mining operations or the portion of surface coal mining operations relevant to the violation. The cessation order shall remain in effect until the department determines that the violation has been abated or until modified, vacated, or terminated by the department under subsection (9). In the order of cessation issued by the department under this subsection, the department shall specify the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(3) A permittee issued notice or order by the department pursuant to subsections (1) and (2), or any person having an interest that is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the department for review of the notice or order within 30 days of issuance of the notice or order or within 30 days of its modification, vacation, or termination. On receipt of the application, the department shall conduct an investigation. The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest that is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. A hearing conducted under this subsection shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws.

(4) On receiving the report of the investigation, the department shall make findings of fact and shall issue a written decision incorporating in the decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. If the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to subsection (1) or (2), the department shall issue the written decision within 30 days of the receipt of the application for review unless temporary relief has been granted by the department under subsection (5).

(5) Pending completion of the investigation and hearing required by this section, the applicant may file with the department a written request that the department grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The department shall issue an order or decision granting or denying the relief, except that if the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under subsection (3) or (4), the order or decision on the request shall be issued within 5 days of its receipt. The department may grant the relief, under conditions it may prescribe, if all of the following requirements are met:

(a) A hearing has been held in the locality of the permit area on the request for temporary relief in which interested parties were given an opportunity to be heard.

(b) The applicant shows that there is a substantial likelihood that the findings of the department will be favorable to the applicant.

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(6) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the department shall hold a public hearing after giving written notice of the time, place,

and date of the hearing. The hearing shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws. If the department revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the department, or the department shall declare as forfeited the performance bonds for the operation.

(7) If an order is issued under this section, or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the department to have been reasonably incurred by the person for or in connection with his or her participation in the proceedings, may be assessed against either party as the department considers proper, or as the court, for costs and attorneys' fees resulting from judicial review, considers proper.

(8) If the department has reason to believe, on the basis of an inspection, that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed, and if the department or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this part or any permit conditions, or that the violations are willfully caused by the permittee, the department shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, to be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, and the department shall inform all interested parties of the hearing. If the permittee fails to show cause why the permit should not be suspended or revoked, the department shall promptly suspend or revoke the permit.

(9) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable

description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or an agent of the permittee by the department. A notice or order issued pursuant to this section may be modified, vacated, or terminated by the department. A notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be conducted during the course of the public hearing.

(10) The department may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee does any of the following:

(a) Violates or fails or refuses to comply with an order or decision issued by the department under this part.

(b) Interferes with, hinders, or delays the department or its authorized representative in carrying out the provisions of this section.

(c) Refuses to admit to the mine an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(d) Refuses to permit inspection of the mine by an authorized representative of the department, if the authorized representative presented the documents required by this part for proper entry.

(e) Refuses to furnish information or a report requested by the department under the department's rules.

(f) Refuses to permit access to and copying of records the department determines reasonably necessary to carry out this part.

(11) All notices or orders required by this subpart shall be sent by certified mail, return receipt requested.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63540 Financial interest of department employee in coal mining operation prohibited; violation; penalty.
Sec. 63540. An employee of the department performing any function or duty under this part shall not have a direct or indirect financial interest in an underground or surface coal mining operation. A person who knowingly violates this subsection shall, on conviction, be punished by imprisonment for not more than 1 year, or a fine of not more than $2,500.00, or both.
History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63541 Prohibited acts; violation; penalty.
Sec. 63541. Except as permitted by a law of this state or the United States, a person shall not willfully resist, prevent, impede, or interfere with the department or any of its agents in the performance of duties pursuant to this part. A person who violates this section shall be punished by imprisonment for not more than 1 year, or a fine of not more than $5,000.00, or both.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 9
INSPECTION AND RECLAMATION FEE

324.63542 Inspection and reclamation fee; amount; rule; quarterly reports; contents; notice of fee due; payment and disposition of fees.
Sec. 63542. (1) For the purposes of inspections and monitoring, and the administration and enforcement of this part, an operator is assessed an inspection and reclamation fee of not more than 25 cents per ton of coal

mined, as determined by the department. The department shall establish, by rule, criteria for determining the amount of the inspection and reclamation fee. In making the determination of the amount of the inspection and reclamation fee, the department shall take into account funds made available to the department pursuant to the surface mining control and reclamation act of 1977, and funds from any other source for the purposes specified in this subsection. The total inspection and reclamation fees assessed annually shall not exceed the total amount appropriated to the department for the purposes specified in this subsection.

(2) An operator shall file quarterly reports with the department on a calendar year basis. The report shall include all of the following:

(a) The location of the mining operation and the areas mined during the quarter.

(b) A description of the progress of restoration and reclamation activities of the operator for the preceding quarter.

(c) The number of tons of coal mined during the quarter.

(3) Based on the information reported pursuant to subsection (2)(c), the department shall send the operator written notice of the amount of the fee due for the quarter. The operator shall pay the fee to the department within 30 days after receipt of the notice.

(4) The department shall deposit the inspection and reclamation fee in the state abandoned mine reclamation fund created by section 63510.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63543 Failure to submit quarterly report as grounds for revocation of permit; penalty; unpaid fee and penalty as debt; confidentiality of fee and reports; disclosure.

Sec. 63543. (1) Failure to submit a quarterly report constitutes grounds for revocation of a permit. An action taken by the department under this subsection shall be conducted pursuant to chapters 4 and 5 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.292 of the Michigan Compiled Laws.

(2) A penalty equal to 12% of the amount due, or $1,000.00, whichever is greater, shall be assessed against the operator for a fee not properly or promptly paid pursuant to section 63542. An unpaid fee and penalty shall constitute a debt and become the basis of a civil action against the operator to compel the payment of the debt.

(3) The inspection and reclamation fee and quarterly reports required by this subpart shall be confidential and shall not be subject to the disclosure requirements of the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, except that disclosure may be made with the written consent of the operator filing the fee and report or pursuant to a court order.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63544 Prohibited acts; penalty.

Sec. 63544. Any person, corporate officer, agent, or director, on behalf of an operator, who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification regarding a report required in this subpart, shall be punished by imprisonment for not more than 1 year, or a fine of not more than $10,000.00, or both.
History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subpart 10
MISCELLANEOUS PROVISIONS

324.63545 Designating areas unsuitable for surface coal mining; rules; determination; petition by interested person; public hearing; written decision; statement; certain surface coal mining operation prohibited; consultation.
Sec. 63545. (1) The department shall promulgate rules establishing a process for designating areas unsuitable for surface coal mining. The rules shall include all of the following:

(a) Surface coal mining land review.

(b) Development of a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations.

(c) Development, by rule, of a method for implementing land use planning decisions concerning surface coal mining operations.

(d) Development, by rule, of proper notice provisions and opportunity for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.

(e) Procedures for determining whether an area proposed for surface coal mining contains historic resources. These rules shall be developed with the concurrence of the department of history, arts, and libraries and the department of natural resources.

(2) On a petition submitted pursuant to subsection (3), the department shall designate an area as unsuitable for all or certain types of surface coal mining operations if the department determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible. A surface area may be designated unsuitable for certain types of surface coal mining operations if those operations do any of the following:

(a) Are incompatible with existing state or local land use plans or programs.

(b) Affect fragile land or historic resources resulting in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems.

(c) Affect renewable resource land, including aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.

(d) Affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, substantially endangering life and property.

(e) Affect agricultural land by diminishing the productivity of the land after reclamation to less than the productivity before the site was mined.

(f) Adversely affect an agricultural operation, including planting, harvesting, transportation, processing, or other activity included in the agricultural impact statement required by section 63516(1)(s).

(3) Determinations of the unsuitability of land for surface coal mining shall be integrated with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section do not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to former 1982 PA 303, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(4) A person having an interest that is or may be adversely affected has the right to petition the department to have an area designated as unsuitable for surface coal mining operations or to have that designation terminated. The petition shall contain allegations of facts with supporting evidence. Within 30 days after receipt of the petition, the department shall hold a public hearing in the locality of the affected area. After a

person having an interest that is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within 60 days after the hearing, the department shall issue and furnish to the petitioner and any other party to the hearing a written decision with reasons for the decision. In the event that all the parties stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(5) Before designating land areas as unsuitable for surface coal mining operations, the department shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(6) After October 12, 1982, and subject to valid existing rights, surface coal mining operations, except those that existed on August 3, 1977, shall not be permitted that do any of the following:

(a) Adversely affect a publicly owned park or historic resource unless approved jointly by the department and the federal, state, or local agency with jurisdiction over the park or historic resource and by the department of history, arts, and libraries.

(b) Are within 100 feet of the outside right-of-way line of a public road, except where mine access roads or haulage roads join the right-of-way lines and except that the department may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) Are within 300 feet of an occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school, church, community, or institutional building, or public park, or within 300 feet of a cemetery.

(7) The department shall designate areas protected by part 351 as unsuitable for surface coal mining.

(8) In administering this section, the department shall consult with the department of natural resources.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2001, Act 78, Eff. Aug. 6, 2001
Popular Name: Act 451
Popular Name: NREPA

324.63546 Government agency, unit, or instrumentality proposed to engage in surface coal mining operations; compliance with part.
Sec. 63546. An agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this part shall comply with all provisions of this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63547 Part inapplicable to certain activities.
Sec. 63547. This part does not apply to any of the following:

(a) The extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under rules established by the department.

(b) The extraction of coal incidental to the extraction of other minerals if the amount of coal does not exceed 50 tons or 16-2/3% of the total tonnage of other minerals removed annually for purposes of commercial use or sale, whichever is less.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63548 Departures from environmental protection performance standards; authorization.
Sec. 63548. To encourage advances in mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the department may, with approval by the secretary of the United States department of the interior, authorize departures in individual cases and on an experimental basis from the environmental protection performance standards of this part. These departures may be authorized if the experimental practices are potentially at least as environmentally protective, during and after mining operations, as those required by this part; if the mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and if the experimental practices do not reduce the protection afforded public health and safety below that provided by this part.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.63549 Right to enforce or protect interest in natural resource affected by operation; replacement of water supply.
Sec. 63549. (1) This part shall not be construed as affecting the right of any person to enforce or protect, under applicable law, his or her interest in water or any other natural resource affected by a surface coal mining operation.

(2) The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

Subchapter 5
PEAT EXTRACTION FROM STATE OWNED LANDS

Part 641
PEAT EXTRACTION FROM STATE OWNED LANDS

324.64101 "Peat" defined.
Sec. 64101. As used in this part, "peat" means a deposit of unconsolidated, naturally occurring soil material consisting of decomposed and partially decomposed mosses, sedges, trees, and other wetland plants, having 12% or greater organic carbon content on a dry weight basis.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64102 Contracts for taking of peat from state-owned lands.
Sec. 64102. Subject to the requirements of this part, the department may make contracts with persons for the taking of peat from state owned lands upon terms consistent with this part, if not less than 10% of the surface area of all eligible and potentially leasable parcels of state owned land containing peat is set aside and preserved in its original natural state as a unique, irreplaceable natural resource of significant historical value.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64103 Inventory and preliminary evaluation; classification of peat lands; public notice; public comments; public hearings; reclassification of lands.
Sec. 64103. (1) Beginning immediately after July 9, 1984, the department shall conduct an inventory of state owned land to determine the surface areas of peat present on those lands and to make a preliminary evaluation of the nature of the peat lands and the relationship of the peat resource to the surrounding wetlands and watershed. The

preliminary evaluation shall consist of an analysis of the following data obtained from aerial photographs, a field check of surface features, and any information currently available:

(a) The importance of the peat land for flood and storm control by the hydrologic absorption and storage capacity of the peat land.

(b) The importance of the peat land for wildlife habitat including migratory waterfowl and rare, threatened, or endangered species.

(c) The presence of rare, threatened, or endangered plant species.

(d) The importance of the peat land for its natural pollution treatment capacity.

(e) The importance of the peat land for erosion control as a sedimentation area filtering basin.

(f) The potential impact on water quality for adjacent fish habitat and nursery grounds.

(g) The presence of historical or archeological features in or adjacent to the peat lands.

(h) The importance of the peat land for recreational, environmental, ecological, and educational purposes and any other purpose not covered in subdivisions (a) through (g).

(2) Based upon the inventory and preliminary evaluation described in subsection (1), the department shall classify the peat lands as either potentially leasable or not leasable according to the following:

(a) If the preliminary evaluation shows that a significant adverse impact is not likely to occur if the peat land is leased and the peat is taken, the peat land shall be classified as potentially leasable. A significant adverse impact may include an impact limited to the peat land.

(b) A peat land not classified as potentially leasable under subdivision (a) shall be classified as not leasable.

(3) The department shall provide a public notice of the completion of the inventory and classification required by subsections (1) and (2) including, but not limited to, publication in the agenda of the commission. The department shall accept public comment on the inventory and classifications for not less than 60 days from the date of notice. The department shall consider all pertinent public comments before finalizing the inventory and classifications. Public hearings may be held on the inventory and classification at the department's discretion. The department may reclassify lands upon receipt of further information if the public notice and the opportunity for public comment described in this subsection are provided.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64104 Nomination of parcel; fee; direct lease contract.
Sec. 64104. (1) Except as provided in subsection (4), contracting for the taking of peat from state owned lands shall be initiated by the nomination of a parcel of land as provided in this section.

(2) Upon completion of the inventory and classification described in section 64103, a private party or the department may nominate a parcel classified as leasable for the taking of peat.

(3) A nomination by a private party shall be accompanied by a fee established by the department. The fee established shall be a nominal sum to assist in defraying the cost to the state of holding public auctions as described in section 64105. The fee shall be deposited in the fund created in section 64108.

(4) The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable under section 64103 upon obtaining from the direct lease applicant the same information described in section 64105(4) and upon consideration of the direct lease

contract in the same manner as required by this part for a contract for the taking of peat from a nominated parcel. The department may enter into a direct lease contract for the taking of peat from state owned land classified as leasable only under either of the following circumstances:

(a) For the completion of an extraction operation area.

(b) For the consolidation of fractional interests owned or controlled by the applicant for the direct lease contract.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64105 Public auction; exclusive opportunity to pursue contract; information required from highest bidder.
Sec. 64105. (1) On the basis of the inventory and the classification described in section 64103, the department shall determine whether to offer at a public auction the exclusive opportunity to pursue a contract for the taking of peat from a nominated parcel.

(2) The exclusive opportunity to pursue a contract for the taking of peat from a specified parcel of state owned land shall be awarded to the highest bidder at a public auction by sealed or oral bid.

(3) An exclusive opportunity to pursue a contract awarded under this section guarantees that, if the department decides to enter into a contract for the taking of peat from the nominated parcel as provided in section 64106, a contract shall be entered into with the highest bidder.

(4) Within 2 years after being awarded an exclusive opportunity to pursue a contract, the highest bidder shall provide to the department the following information:

(a) The quantity and quality of the peat that the bidder proposes to take from the nominated parcel.

(b) The capacity of the production facility that the bidder proposes to operate on the parcel.

(c) The date on which the bidder projects that the taking of peat will commence and the projected duration of the activity.

(d) An environmental assessment of the impact of the taking of the peat, including an analysis of the factors described in section 64106(2).

(e) Any other information the department determines to be reasonably necessary for the department to make the determination described in section 64106(2).

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64106 Public hearing; determination; criteria; statement of reasons.

Sec. 64106. (1) After the submission of the information required by section 64105(4), and after review and evaluation of that information by the department, the department shall hold a public hearing to hear comments from the public on whether the department should enter into a contract for the taking of peat from a nominated parcel. This hearing may be consolidated with other legally required hearings related to the taking of peat from the nominated parcel.

(2) After completion of the public hearing required by subsection (1), the department shall decide whether to enter into a contract with the highest bidder based upon a determination that the taking of the peat from the parcel of nominated land would be in the public interest and would not unacceptably disrupt or destroy the aquatic or other resources of the peat land or the surrounding area. In making this determination, the department shall balance the benefit that reasonably may be expected to accrue from the taking of the peat against the reasonably foreseeable detriment of the taking, and, to that end, shall consider the following criteria:

(a) The relative extent of the public and private need for the taking of the peat.

(b) The availability of feasible and prudent alternative locations and methods for attaining the expected benefits of the taking of the peat.

(c) The extent and permanence of the beneficial or detrimental effects which the taking of the peat may have on the public and private uses to which the area is suited.

(d) The probable impact of the taking of peat in relation to the cumulative effect created by other existing and anticipated activities in the watershed where the peat is located.

(e) The probable impact of the taking of the peat on recognized historic, cultural, scenic, ecological, educational, or recreational values, and on the public health, or fish or wildlife.

(f) The size of the peat surface area in relation to the size of the parcel of state owned land.

(g) The impact of the taking of the peat on subsurface water resources, recharging groundwater supplies and adjacent watersheds, and surface water bodies.

(h) The economic value, both public and private, of the taking of peat to the general area.

(3) The department shall state its reasons for deciding to enter or not to enter into a contract with the highest bidder for the taking of peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64107 Terms of contract.

Sec. 64107. A contract entered into under this part for the taking of peat from state owned lands shall contain the following terms:

(a) A requirement that the lessee obtain worker's compensation insurance, liability insurance, and any other insurance reasonably required by the department.

(b) A requirement that the lessee hold the department harmless against all claims, demands, or judgments for loss, damage, death, or injury arising out of the lessee's activities or operations.

(c) A requirement that the lessee obtain and maintain public liability insurance in amounts reasonably required by the department.

(d) A prohibition against assignment of the contract or rights under the contract without the written approval of the department.

(e) A requirement that the lessee pay all taxes and assessments.

(f) A requirement that the lessee maintain the premises in a manner that safeguards the public health and safety.

(g) A provision that the term of the lease not exceed 10 years, with extension of that period in the discretion of the department.

(h) A requirement that the lessee pay rentals and minimum royalties established on a per acre basis or production royalties established by the department.

(i) A requirement that the lessee file a performance bond, an escrow account, or both, conditioned on the faithful performance of the agreements in the lease, including any agreements relating to the reclamation.

(j) A provision setting forth the department's rights as lessor.

(k) A provision setting forth the lessee's rights.

(l) A provision regarding the department's rights in the event of the default of the lessee.

(m) A requirement that the lessee's rights under the lease are conditioned on operation in accordance with the extraction and reclamation plan as approved by the department.

(n) A requirement that the lessee have an extraction and reclamation plan, subject to the approval of the department, that ensures, to the extent practicable, the extraction operations do not have significant adverse impacts on water quality, air quality, wildlife, or fishing resources of the state; that waste areas and product storage and conditioning areas are located, designed, and utilized to minimize aesthetic unattractiveness and fire hazards and to promote reclamation; that extraction is conducted in a manner that will prevent or mitigate hazardous conditions that will result from acidic drainage and blowing dust; and that the parcel is reclaimed in an acceptable manner given the following factors: the original state, condition, and appearance of the land including suitability for original flora and fauna, the uses of adjacent land, the necessary disruption caused by extraction operations, reclamation techniques, the public trust in the natural resources, and applicable statutes and ordinances.

(o) A requirement that the lessee have a plan for monitoring groundwater changes and surface water quality and flow rates.

(p) Any other term reasonably required by the department to protect the state's interest in the land, to protect the surrounding environment, or to assure the optimum economic return to the state.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64108 Peat resource conservation and development fund; creation; deposits.

Sec. 64108. (1) The peat resource conservation and development fund is created in the state treasury.

(2) Subject to subsections (3) and (4), the following shall be deposited in the peat resource conservation and development fund:

(a) Money received by the state under contracts for the taking of peat.

(b) The fees imposed under this part.

(3) Money received by the state under contracts for taking of peat from state owned lands acquired with game and fish protection funds shall be deposited in the game and fish protection account of the Michigan conservation and recreation legacy fund provided for in section 2010.

(4) If the money in the fund exceeds $250,000.00 at the end of a state fiscal year, the excess shall be deposited in the Michigan natural resources trust fund created in section 35 of article IX of the state constitution of 1963 and provided for in section 1902 or as otherwise provided by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006
Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides:"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."
Popular Name: Act 451
Popular Name: NREPA

324.64109 Expenditures; purposes.
Sec. 64109. The department shall expend the money in the fund and the interest and earnings on the money in the fund for the following purposes:

(a) To administer a peat resource conservation, development, and regulatory program consistent with this part.

(b) To perform the inventory of state lands described in section 64103, to fund further study of the state owned lands classified as not leasable under section 64103, and to provide for the reclassification of parcels consistent with the provisions of section 64103 based on the development of information unavailable during the classification required by section 64103(2).

(c) To fund research necessary for the further development of appropriate techniques for environmental monitoring of peat extraction sites, for development and protection of the state's peat resources, and for reclamation of lands following the extraction of peat.

(d) To pay for the costs to the state of personnel services, printing, postage, advertising, contractual services, and the rental of facilities associated with the offering of state owned lands for the purpose of taking peat.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64110 Applicability of MCL 324.64103 to 324.64106; responsibility of meeting legal requirements.

Sec. 64110. The requirements of sections 64103 through 64106 do not apply to proposals for the taking of peat from state owned lands that have been the subject of department action prior to July 9, 1984. This provision does not relieve the department or any of the entities listed in section 64102 from the responsibility of meeting legal requirements applicable to the leasing of state lands for peat development that might otherwise be imposed by law.

History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.64111 Rules.

Sec. 64111. The department may promulgate rules for the implementation of this part.
History: Add. 1995, Act 57, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

TRAILWAYS
Part 721

MICHIGAN TRAILWAYS

324.72101 Definitions.
Sec. 72101. As used in this part:

(a) "Advisory council" means the Michigan trailways advisory council created in section 72110.

(b) "Council" means a Michigan trailway management council established pursuant to section 72106.

(c) "Fund" means the Michigan trailways fund created in section 72109.

(d) "Governmental agency" means the federal government, a county, city, village, or township, or a combination of any of these entities.

(e) "Michigan trailway" means a trailway designated by the commission pursuant to section 72103.

(f) "Rail-trail" means a former railroad bed that is in public ownership and used as a trailway.

(g) "Trailway" means a land corridor that features a broad trail capable of accommodating a variety of public recreation uses.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1997, Act 129, Imd. Eff. Nov. 5, 1997
Popular Name: Act 451
Popular Name: NREPA

324.72102 Legislative findings and declaration.
Sec. 72102. The legislature finds and declares that a statewide system of trailways will provide for public enjoyment, health, and fitness; encourage constructive leisure-time activities; protect open space, cultural and historical resources, and habitat for wildlife and plants;

enhance the local and state economies; link communities, parks, and natural resources; create opportunities for rural-urban exchange, agricultural education, and the marketing of farm products; and preserve corridors for possible future use for other public purposes. Therefore, the planning, acquisition, development, operation, and maintenance of Michigan trailways is in the best interest of the state and is declared to be a public purpose.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72103 Designation as trailway; public hearing; establishing and changing permitted uses; revocation of designation.
Sec. 72103. (1) Upon petition by any person or on its own motion, the commission may designate a trailway in this state as a "Michigan trailway". The petition or motion shall propose permitted uses of the trailway. The commission shall not designate a trailway as a Michigan trailway unless it meets, or will meet when completed, all of the following requirements:

(a) The land on which the trailway is located is owned by the state or a governmental agency, or otherwise is under the long-term control of the state or a governmental agency through a lease, easement, or other arrangement. If the land is owned by a governmental agency, the commission shall obtain the consent of the governmental agency before designating the land as part of a Michigan trailway.

(b) The design and maintenance of the trailway and its related facilities meet generally accepted standards of public safety.

(c) The trailway meets appropriate standards for its designated recreation uses.

(d) The trailway is available for designated recreation uses on a nondiscriminatory basis.

(e) The trailway is a multiuse trail suitable for use by pedestrians, by people with disabilities, and by other users, as appropriate.

(f) The trailway is, or has potential to be, a segment of a statewide network of trailways, or it attracts a substantial share of its users from beyond the local area.

(g) The trailway is marked with an official Michigan trailway sign and logo at major access points.

(h) The trailway is not directly attached to a roadway, except at roadway crossings.

(i) Where feasible, the trailway offers adequate support facilities for the public, including parking, sanitary facilities, and emergency telephones, that are accessible to people with disabilities and are at reasonable frequency along the trailway.

(j) Potential negative impacts of trailway development on owners or residents of adjacent property are minimized through all of the following:

(i) Adequate enforcement of trailway rules and regulations.

(ii) Continuation of access for trailway crossings for agricultural and other purposes.

(iii) Construction and maintenance of fencing, where necessary, by the owner or operator of the trailway.

(iv) Other means as considered appropriate by the commission.

(k) Other conditions required by the commission.

(2) The commission shall not designate a trailway a Michigan trailway under subsection (1) unless a public hearing has been held in the vicinity of the proposed Michigan trailway to take testimony and gather public

opinion on the proposed designation including, but not limited to, the proposed uses of the trailway and whether or not motorized uses are appropriate for the trailway. The public hearing shall be held at a location and at a time calculated to attract a fair representation of opinions on the designation. A transcript or a summary of the testimony at the public hearing shall be forwarded to the commission.

(3) At the time a Michigan trailway is designated under subsection (1), the commission shall, in consultation with the governmental agencies in which the trailway is located, establish uses to be permitted on the trailway. In establishing permitted uses, the commission shall consider all of the following:

(a) The safety and enjoyment of trailway users.

(b) Impacts on residents, landowners, and businesses adjacent to the trailway.

(c) Applicable local ordinances.

(4) A change in the permitted uses of a Michigan trailway established under subsection (3) relating to whether or not a motorized use is allowed on the trailway shall not be made without approval of the commission after a public hearing held in the same manner as provided in subsection (2).

(5) The commission may revoke a Michigan trailway designation if it determines that a trailway fails to meet the requirements of this section. Before revoking a Michigan trailway designation, the commission shall provide notice to all entities involved in the management of the trailway. If the trailway is brought into compliance with this section within 90 days after providing this notice, the commission shall not revoke the designation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72104 Designation as trailway connector.
Sec. 72104. (1) Upon petition by any person or on its own motion, the commission may designate a trailway, bicycle path, sidewalk, road, or other suitable route that does not meet the requirements of this part for a Michigan trailway as a “Michigan trailway connector” if the connector meets all of the following:

(a) The connector meets appropriate safety standards and appropriate design standards for its designated uses.

(b) The connector connects directly to a Michigan trailway.

(c) The public agency having jurisdiction over the connector has consented in writing to the designation.

(d) The connector is marked with an official Michigan trailway connector sign and logo at major access points.

(2) An aquatic corridor capable of accommodating watercraft that connects to a Michigan trailway may be designated as a Michigan trailway connector if it meets the requirements of subsection (1)(a) to (d).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72105 Operating and maintaining trailway; agreement; provisions.
Sec. 72105. The department may operate and maintain a Michigan trailway that is located on state owned land or may enter into an agreement with a council or 1 or more governmental agencies to provide for the operation and maintenance of the Michigan trailway. An agreement entered into under this subsection may include provisions for any of the following:

(a) Construction, maintenance, and operation of the trailway.

(b) Enforcement of trailway rules and regulations including permitted uses of the trailway.

(c) Other provisions consistent with this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72105a Adopt-a-trail program.
Sec. 72105a. (1) The department shall establish an “adopt-a-trail” program that will allow volunteer groups to assist in maintaining and enhancing Michigan trailways and rail-trails.

(2) Subject to subsection (3), volunteer groups in the adopt-a-trail program may adopt any available Michigan trailway or rail-trail or Michigan trailway or rail-trail segment and may choose any 1 or more of the following volunteer activities:

(a) Spring cleanups.

(b) Environmental activities.

(c) Accessibility projects.

(d) Special events.

(e) Trailway maintenance and development.

(f) Public information and assistance.

(g) Training.

(3) The department shall designate the activities to be performed by a volunteer group in the adopt-a-trail program. The department may provide for more than 1 volunteer group to adopt a Michigan trailway or rail-trail or Michigan trailway or rail-trail segment.

(4) A volunteer group that wishes to participate in the adopt-a-trail program shall submit an application to the department on a form provided by the department. Additionally, volunteer groups shall agree to the following:

(a) Volunteer groups shall participate in the program for at least a 2-year period.

(b) Volunteer groups shall consist of at least 6 people who are 18 years of age or older, unless the volunteer group is a school or scout organization, in which case the volunteers may be under 18 years of age.

(c) Volunteer groups shall contribute a total of at least 400 service hours over a 2-year period.

(d) Volunteer groups shall comply with other reasonable requirements of the department.

(5) A state park manager or a district forest manager may issue to volunteers who are actively working on adopt-a-trail projects that last more than 1 day free camping permits if campsites are available. A state park manager or a district forest manager may waive state park entry fees for volunteers entering state parks to work on adopt-a-trail projects.

(6) While a volunteer is working on an adopt-a-trail project, the volunteer has the same immunity from civil liability as a department employee and shall be treated in the same manner as an employee under section 8 of 1964 PA 170, MCL 691.1408.

(7) The department shall design and erect near the entrance of each Michigan trailway or rail-trail in the adopt-a-trail program or along the trailway an adopt-a-trail program sign with the name of the volunteer group's sponsoring organization listed for each volunteer group that has contributed at least 100 service hours by volunteers.

History: Add. 1997, Act 129, Imd. Eff. Nov. 5, 1997
Popular Name: Act 451
Popular Name: NREPA

324.72106 Michigan trailway management council; establishment; purpose; adopting operating procedures and electing officers; powers; dissolution.

Sec. 72106. (1) Two or more governmental agencies may establish a Michigan trailway management council for the development and management of a Michigan trailway pursuant to the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being section 124.501 to 124.512 of the Michigan Compiled Laws.

(2) Upon formation, a council shall adopt operating procedures and shall elect officers as the council considers appropriate.

(3) A council may do 1 or more of the following as authorized in an interlocal agreement entered into pursuant to Act No. 7 of the Public Acts of the Extra Session of 1967:

(a) Operate and maintain that portion of 1 or more Michigan trailways that is owned or under the control of the governmental agencies establishing the council.

(b) Pursuant to an agreement under section 72105, operate and maintain that portion of 1 or more Michigan trailways that is located on state owned land.

(c) Coordinate the enforcement of trailway rules and regulations and other applicable laws and ordinances, including permitted uses of the trailway on trailways owned or under the control of the governmental agencies establishing the council or, pursuant to an agreement under section 72105, trailways that are located on state owned land.

(d) Receive any grant made from the fund or other funding related to that portion of a Michigan trailway within its jurisdiction.

(e) Acquire or hold real property for the purpose of operating a Michigan trailway.

(f) Perform other functions consistent with this part.

(4) A council may be dissolved by the governmental agencies that participated in creating the council. However, if a council has entered into an agreement with the department under section 72105, the agreement shall specify how the council may be dissolved.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72107 Closure during pesticide application.

Sec. 72107. In agricultural areas, a Michigan trailway may be temporarily closed by the entity operating the trailway to allow pesticide application on lands adjoining the trailway. The entity operating the Michigan trailway shall post the closure of the trailway or arrange with a landowner or other person for the posting of signs and the closure of the trailway during pesticide application and appropriate reentry periods.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72108 Commission; powers.

Sec. 72108. (1) The commission may do any of the following:

(a) Grant easements or, pursuant to part 13, use permits or lease land owned by the state that is being used for a Michigan trailway for a use that is compatible with the use of the Michigan trailway.

(b) Enter into contracts for concessions along a state owned Michigan trailway.

(c) Lease land adjacent to a state owned Michigan trailway for the operation of concessions.

(2) If the commission approves of the acquisition of land by the department, the commission may state that the specified land is acquired for use as a Michigan trailway. Following acquisition of land that the commission states is acquired for use as a Michigan trailway, any

revenue derived from that land pursuant to subsection (1), except as otherwise provided by law, shall be deposited into the fund.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: NREPA

324.72109 Michigan trailways fund.
Sec. 72109. (1) The Michigan trailways fund is created within the state treasury.

(2) Except as otherwise provided by law, the state treasurer may receive money or other assets from any of the following for deposit into the fund:

(a) Fees collected from users of trailways on state forest lands.

(b) Payments to the state for easements, use permits, leases, or other use of state owned Michigan trailway property.

(c) Payments to the state for concessions operated by private vendors on state owned property located on or adjacent to a Michigan trailway.

(d) Federal funds.

(e) Gifts or bequests.

(f) State appropriations.

(g) Money or assets from other sources as provided by law.

(3) The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(5) Money in the fund may be expended for any of the following purposes:

(a) The expenses of the department in operating and maintaining the Michigan trailway system and enforcing Michigan trailway rules and regulations.

(b) Grants to or contracts with councils or governmental agencies to operate and maintain segments of Michigan trailways and to enforce Michigan trailway rules and regulations.

(c) Funding Michigan trailway construction and improvements.

(d) Acquisition of land or rights in land.

(e) Publications and promotions of the Michigan trailways system.

(6) In determining the expenditure of money in the fund, the department shall consider all of the following:

(a) The need for funding for each of the purposes listed in subsection (5).

(b) The estimated cost of Michigan trailway management for each governmental agency that manages a Michigan trailway, based on previous costs, trailway mileage, level of use, and other relevant factors.

(c) The need of each governmental agency that manages a Michigan trailway for financial assistance in managing that trailway, and the amount of money from the fund received by that agency in the past.

(d) The amount of revenue accruing to the fund that is generated from each Michigan trailway.

(e) Other factors considered appropriate by the department.

(7) The department shall submit a report to the legislature on or before December 1 of each year describing the use of money appropriated from the fund in the previous fiscal year.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72110 Michigan trailways advisory council; creation; appointment and terms of members; vacancy; removal; meetings; quorum; conduct of business; writings; compensation and expenses; duties.
Sec. 72110. (1) The Michigan trailways advisory council is created within the department of natural resources.

(2) The advisory council shall consist of the following members appointed by the commission:

(a) One individual who is involved with the establishment or operation of a multiple use trailway.

(b) Two individuals who represent Michigan trailway user groups.

(c) One local government official from a governmental agency in which a multiple use trailway is located.

(d) One member of the general public.

(3) The members first appointed to the commission shall be appointed within 90 days after April 21, 1993.

(4) Members of the advisory council shall serve for terms of 4 years, or until a successor is appointed, whichever is later, except that of the members first appointed, 2 shall serve for 1 year, 1 shall serve for 2 years, and 1 shall serve for 3 years.

(5) If a vacancy occurs on the advisory council, the commission shall make an appointment for the unexpired term in the same manner as the original appointment.

(6) The commission may remove a member of the advisory council for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(7) The first meeting of the advisory council shall be called by the commission. At the first meeting the advisory council shall elect from among its members a chairperson and other officers as it considers necessary or appropriate. After the first meeting, the advisory council shall meet at least annually or more frequently at the call of the chairperson or if requested by 3 or more members.

(8) A majority of the members of the advisory council constitutes a quorum for the transaction of business at a meeting of the advisory council. A majority of the members present and serving is required for official action of the advisory council.

(9) The business the advisory council may perform shall be conducted at a public meeting of the advisory council held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(10) A writing prepared, owned, used, in possession of, or retained by the advisory council in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(11) Members of the advisory council shall serve without compensation. However, members of the advisory council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the advisory council.

(12) The advisory council shall do both of the following:

(a) Make recommendations to the commission and the department on the expenditure of money in the fund.

(b) Advise the commission and the department on the implementation of this act and the establishment and operation of Michigan trailways.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72111 State agencies; duties.

Sec. 72111. All state agencies shall cooperate with the commission and the department in the implementation of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72112 Rules.

Sec. 72112. The commission may promulgate rules as it considers necessary to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.72113 Michigan heritage water trail program.

Sec. 72113. (1) The Great Lakes center for maritime studies at western Michigan university, in conjunction with the department, the department of history, arts, and libraries, and the Michigan 4-H youth conservation council, shall develop a plan for a statewide recognition program to be known as the “Michigan heritage water trail program”. This program shall be designed to do all of the following:

(a) Establish a method for designating significant water corridors in the state as Michigan heritage water trails.

(b) Provide recognition for the historical, cultural, recreational, and natural resource significance of Michigan heritage water trails.

(c) Establish methods for local units of government to participate in programs that complement the designation of Michigan heritage water trails.

(d) Assure that private property rights along Michigan heritage water trails are not disturbed or disrupted, or restricted by the state or local units of government.

(2) Within 1 year after the effective date of the amendatory act that added this section, the center for maritime studies at western Michigan university, in conjunction with the department, the department of history, arts, and libraries, and the Michigan 4-H youth conservation council, shall submit a copy of the plan developed under subsection (1) to the standing committees of the legislature with jurisdiction primarily pertaining to natural resources and the environment.

History: Add. 2002, Act 454, Imd. Eff. June 21, 2002

Part 793

HARBORS, CHANNELS, AND OTHER NAVIGATIONAL FACILITIES

324.79301 "Political subdivision" defined.

Sec. 79301. As used in this part, "political subdivision" means any local unit of government or port district of this state and any other governmental agency or subdivision, public corporation, authority, or district in this state, which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate harbors, channels, and other navigational facilities. Whenever used in this part, the term political subdivision includes any combination of political subdivisions acting jointly.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.79302 Political subdivision; powers.
Sec. 79302. A political subdivision may do 1 or more of the following:

(a) Adopt and amend all necessary rules, regulations, and ordinances for the management, government, and use of any waterways, harbors, channels, or other navigational facilities under its control, either within or outside of its territorial limits; employ harbor guards, police, or a harbormaster with full police powers; establish penalties for the violation of the rules, regulations, and ordinances; and enforce those penalties.

(b) Adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of harbors, channels, connecting waterways, or other navigational facilities within the political subdivision or its political jurisdiction, which rules shall be consistent with and conform to, as nearly as possible, the laws of this state.

(c) Vest authority for the maintenance, operation, and regulation thereof in an officer, board, or body of the political subdivision by ordinances or resolution which shall prescribe the duties and powers of the officers, boards, or body.

(d) Employ a regular harbormaster for the harbors, channels, connecting waterways, or navigational facilities under its control; or, in cases where a harbor board or body is established, the harbormaster may be employed by the board or body.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: NREPA

324.79303 Political subdivisions; joint action.
Sec. 79303. All powers, rights, and authority granted to any political subdivision in this part may be exercised and enjoyed by 2 or more political subdivisions, or by this state through its appropriate agencies and 1 or more such political subdivisions acting jointly, either within or outside of the territorial limits of either of them, and contracts may be entered with each political subdivision for the purposes of implementing this part and authorizing joint action.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451

Subchapter 5
WATERCRAFT AND MARINE SAFETY

Part 801

MARINE SAFETY

324.80101 Definitions; A to C.
Sec. 80101. As used in this part:

(a) "Airboat" means a motorboat that is propelled, wholly or in part, by a propeller projecting above the water surface.

(b) "Anchored rafts" means all types of nonpowered rafts used for recreational purposes that are anchored seasonally on waters of this state.

(c) "Associated equipment" means any of the following that are not radio equipment:

(i) An original system, part, or component of a boat at the time that boat was manufactured, or a similar part or component manufactured or sold for replacement.

(ii) Repair or improvement of an original or replacement system, part, or component.

(iii) An accessory or equipment for, or appurtenance to, a boat.

(iv) A marine safety article, accessory, or equipment intended for use by a person on board a boat.

(d) "Boat" means a vessel.

(e) "Boat livery" means a business that holds a vessel for renting, leasing, or chartering.

(f) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(g) "Conviction" means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt, or a probate court disposition on a violation of this part, regardless of whether the penalty is rebated or suspended.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 547, Imd. Eff. Jan. 3, 2005
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80102 Definitions; D to L.
Sec. 80102. As used in this part:

(a) “Dealer” means a person and an authorized representative of that person who annually purchases from a manufacturer, or who is engaged in selling or manufacturing, 6 or more vessels that require certificates of number under this part.

(b) “Identification document” means any of the following:

(i) A valid Michigan operator's or chauffeur's license.

(ii) A valid driver's or chauffeur's license issued by an agency, department, or bureau of the United States or another state.

(iii) An official identification card issued by an agency, department, or bureau of the United States, this state, or another state.

(iv) An official identification card issued by a political subdivision of this state or another state.

(c) “Issuing authority” means the United States coast guard or a state that has a numbering system approved by the United States coast guard.

(d) “Law of another state” means a law or ordinance enacted by another state or by a local unit of government in another state.

(e) “Lifeboat” means a small boat designated and used solely for lifesaving purposes, and does not include a dinghy, tender, speedboat, or other type of craft that is not carried aboard a vessel for lifesaving purposes.

(f) “Long-term incapacitating injury” means an injury that causes serious impairment of a body function.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80103 Definitions; M to O.
Sec. 80103. As used in this part:

(a) “Manufacturer” means a person engaged in any of the following:

(i) The manufacture, construction, or assembly of boats or associated equipment.

(ii) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.

(iii) The importation of a boat or associated equipment into the state for sale.

(b) “Marine law” means this part, a local ordinance adopted in conformity with this part, or a rule promulgated under this part.

(c) “Marine safety act” means former Act No. 303 of the Public Acts of 1967.

(d) “Marine safety program” means marine law enforcement, search and rescue operations, water safety education, recovery of drowned bodies, and boat livery inspections.

(e) “Michigan vehicle code” means Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(f) “Motorboat” means a vessel propelled wholly or in part by machinery.

(g) “Operate” means to be in control of a vessel while the vessel is under way and is not secured in some manner such as being docked or at anchor.

(h) “Operator” means the person who is in control or in charge of a vessel while that vessel is underway.

(i) “Owner” means a person who claims or is entitled to lawful possession of a vessel by virtue of that person's legal title or equitable interest in a vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80104 Definitions.
Sec. 80104. As used in this part:

(a) "Highly restricted personal information" means an individual's photograph or image, social security number, digitized signature, and medical and disability information.

(b) "Passenger" means a person carried on board a vessel other than any of the following:

(i) The owner or his or her representative.

(ii) The operator.

(c) "Peace officer" means any of the following:

(i) A sheriff.

(ii) A sheriff's deputy.

(iii) A deputy who is authorized by a sheriff to enforce this part and who has satisfactorily completed at least 40 hours of law enforcement training, including training specific to this part.

(iv) A village or township marshal.

(v) An officer of the police department of any municipality.

(vi) An officer of the Michigan state police.

(vii) The director and conservation officers employed by the department.

(d) "Personal information" means information that identifies an individual, including an individual's driver identification number, name, address not including zip code, and telephone number, but does not include information on watercraft operation and equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally-related information.

(e) "Personal watercraft" means a vessel that meets all of the following requirements:

(i) Uses a motor-driven propeller or an internal combustion engine powering a water jet pump as its primary source of propulsion.

(ii) Is designed without an open load carrying area that would retain water.

(iii) Is designed to be operated by 1 or more persons positioned on, rather than within, the confines of the hull.

(f) "Political subdivision" means any county, metropolitan authority, municipality, or combination of those entities in this state. Whenever a body of water is located in more than 1 political subdivision, all of the subdivisions shall act individually in order to comply with this part, except that if the problem is confined to a specific area of the body of water, only the political subdivision in which the problem waters lie shall act.

(g) "Port" means left, and reference is to the port side of a vessel or to the left side of the vessel.

(h) "Probate court or family division disposition" means the entry of a probate court order of disposition or family division order of disposition for a child found to be within the provisions of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(i) "Prosecuting attorney", except as the context requires otherwise, means the attorney general, the prosecuting attorney of a county, or the attorney representing a political subdivision of government.

(j) "Regatta", "boat race", "marine parade", "tournament", or "exhibition" means an organized water event of limited duration that is conducted according to a prearranged schedule.

(k) "Slow—no wake speed" means a very slow speed whereby the wake or wash created by the vessel would be minimal.

(l) "Starboard" means right, and reference is to the starboard side of a vessel or to the right side of the vessel.

(m) "State aid" means payment made by the state to a county for the conduct of a marine safety program.

(n) "Undocumented vessel" means a vessel that does not have, and is not required to have, a valid marine document issued by the United States coast guard or federal agency successor to the United States coast guard.

(o) "Uniform inspection decal" means an adhesive-backed sticker created by the department that is color-coded to indicate the year that it expires and is attached to a vessel in the manner prescribed for decals in section 80122 when a peace officer inspects and determines that the vessel complies with this part.

(p) "Use" means operate, navigate, or employ.

(q) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

(r) "Waters of this state" means any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state.

(s) "Waterways account" means the waterways account of the Michigan conservation and recreation legacy fund provided for in section 2035.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006
Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides:"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80105 Application of part.

Sec. 80105. (1) This part applies to vessels and associated equipment used, to be used, or carried in vessels used on waters subject to the jurisdiction of this state.

(2) This part, except where expressly indicated otherwise, does not apply to any of the following:

(a) Foreign vessels temporarily using waters subject to state jurisdiction.

(b) Military or public vessels of the United States, except recreational-type public vessels.

(c) A vessel whose owner is a state or political subdivision of a state, other than this state and its political subdivisions, that is used principally for governmental purposes and that is clearly identifiable as such.

(d) A ship's lifeboat.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80106 Administration of part; advisory representative.
Sec. 80106. The department shall be responsible for administration of this part except as otherwise provided in this part. The Michigan sheriffs' association shall designate an advisory representative to the department who shall transmit information, advice, and recommendations relative to county marine activities and assist in the coordination of state and county marine safety programs.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80107 Review of boating accidents, safety education programs, and policies.
Sec. 80107. The department shall review boating accidents on Michigan waters and study the development of marine safety education programs and other policies of state government relating to marine safety and shall consider changes to department policies and programs.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451

Popular Name: Marine Safety Act
Popular Name: NREPA

324.80108 Regulations of waterborne vehicles; exclusive diving, fishing, swimming or water ski areas; special local regulations.

Sec. 80108. The department may regulate the operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on the waters of this state. Where special regulations are determined necessary, the department may establish vessel speed limits; prohibit the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances; restrict the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances by day and hour; establish and designate areas restricted solely to boating, skin or scuba diving, fishing, swimming, or water skiing; and prescribe any other regulations relating to the use or operation of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances that will assure compatible use of state waters and best protect the public safety. The department shall prescribe special local regulations in such a manner as to make the regulations uniform with other special local regulations established on other waters of this state insofar as is reasonably possible.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80108[1] Lists of information; sale prohibited.

Sec. 80108. The department or any other state department or agency that maintains or collects lists of information as part of its duties or responsibilities under this act shall not sell any lists of information maintained or collected for the purpose of surveys, marketing, and solicitations.

History: Add. 2000, Act 194, Eff. Jan. 1, 2001
Compiler's Notes: Section 80108, as added by Act 194 of 2000, was compiled as MCL 324.80108[1] to distinguish it from another section 80108, deriving from Act 58 of 1995 and pertaining to regulation of waterborne vehicles.
Popular Name: Act 451

Popular Name: Marine Safety Act
Popular Name: NREPA

324.80108a Operation of airboat within certain distance of residence; limitation; exceptions.

Sec. 80108a. (1) A person shall not operate an airboat on the waters of this state within 450 feet of a residence between the hours of 11 p.m. and 6 a.m. at a speed in excess of the minimum speed required to maintain forward movement.

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

(a) The operation of an airboat in an emergency when necessary to protect public safety.

(b) The operation of an airboat so as to free the airboat when it has run aground.

(c) The operation of an airboat for a governmental purpose if the airboat is clearly marked and identified as being used for a governmental purpose.

History: Add. 2008, Act 152, Imd. Eff. June 5, 2008
Compiler's Notes: Former MCL 324.80108a, which pertained to operation of airboat within certain distance of residence, was repealed by Act 547 of 2004, Eff. May 1, 2007.
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80109 Rules; subsection (1) inapplicable to special local rules.

Sec. 80109. (1) Except as provided in subsection (2), the department shall promulgate rules authorized by this part. The department shall publish the approved rules in a convenient form.

(2) Subsection (1) shall not apply to special local rules adopted pursuant to sections 80110 and 80111.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

****** 324.80110 THIS SECTION IS REPEALED BY ACT 237 OF 2006 EFFECTIVE JUNE 26, 2009 ******

324.80110 Special rules for vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances; investigations and inquiries; preliminary report; notice of public hearing; presentation of views by interested persons; determination by department; proposal for local ordinance; appeal; "water body" defined.
Sec. 80110. (1) The department may initiate investigations and inquiries into the need for special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of this state to assure compatibility of uses and to protect public safety. If the department receives a resolution pursuant to section 80112, the department shall initiate an investigation and inquiry under this subsection.

(2) The department's investigation and inquiry under subsection (1) into whether special rules are needed on a particular water body shall include a consideration of all of the following:

(a) Whether the activities subject to the proposed special rules pose any issues of safety to life or property.

(b) The profile of the water body, including local jurisdiction, size, geographic location, and amount of vessel traffic.

(c) The current and historical depth of the water body, including whether there is an established lake level for the water body.

(d) Whether any identifiable special problems or conditions exist on the water body for the activities subject to the proposed special rules, such as

rocks, pier heads, swimming areas, public access sites, shallow waters, and submerged obstacles.

(e) Whether the proposed special rules would unreasonably interfere with normal navigational traffic.

(f) Whether user conflicts exist on the water body.

(g) Complaints received by local law enforcement agencies regarding activities on the water body.

(h) The status of any accidents that have occurred on the water body.

(i) Historical uses of the water body and potential future uses of the water body.

(j) Whether the water body is public or private.

(k) Whether existing law adequately regulates the activities subject to the proposed special rules.

(3) Following completion of the department's investigation and inquiry, the department shall prepare a preliminary report that includes the department's evaluation of the items listed in subsection (2) and the department's preliminary recommendation as to whether special rules are needed for the water body.

(4) Upon preparation of the preliminary report, the department shall provide a copy of the preliminary report to the local political subdivision that has waters subject to its jurisdiction for which the proposed special rules are being considered and shall schedule a public hearing in the vicinity of the water body to gather public input on the preliminary report and the need for special rules. Notice of the public hearing shall be made in a newspaper of general circulation in the area where the water body is located, not less than 10 calendar days before the hearing. At the public hearing, interested persons shall be afforded an opportunity to

present their views on the preliminary report and the need for special rules, either orally or in writing.

(5) Within 90 days following the public hearing under subsection (4), if the department determines that there is a need for special rules for the water body, the department shall propose a local ordinance or appropriate changes to a local ordinance. If the department determines that there is not a need for special rules, the department shall notify the political subdivision that has waters subject to its jurisdiction and shall provide the specific reasons for its determination.

(6) A determination by the department that there is not a need for special rules for a water body may be appealed to the commission by the political subdivision that has waters subject to its jurisdiction. The commission shall make the final agency decision on the need for special rules for a water body.

(7) As used in this section, "water body" includes all or a portion of a water body.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 237, Imd. Eff. June 26, 2006
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80111 Proposed local ordinance; submission to governing body; approval or disapproval; enactment; enforcement.
Sec. 80111. A local ordinance proposed pursuant to section 80110 shall be submitted to the governing body of the political subdivision in which the water body subject to the proposed special rules is located. Within 60 calendar days, the governing body shall inform the department that it approves or disapproves of the proposed local ordinance. If the required information is not received within the time specified, the department shall consider the proposed local ordinance disapproved by the governing body. If the governing body disapproves the proposed local ordinance, or if the 60-day period has elapsed without a reply having been received from the governing body, no further action shall be taken.

If the governing body approves the proposed local ordinance, the local ordinance shall be enacted identical in all respects to the local ordinance proposed by the department. After the local ordinance is enacted, the local ordinance shall be enforced as provided for in section 80113.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 237, Imd. Eff. June 26, 2006
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80112 Special local ordinances; request for assistance; form; receipt of resolution by department.
Sec. 80112. Local political subdivisions that believe that special local ordinances of the type authorized by this part are needed on waters subject to their jurisdiction shall inform the department and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision following a public hearing on the resolution. Upon receipt of a resolution under this section, the department shall proceed as required by sections 80110 and 80111.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2006, Act 237, Imd. Eff. June 26, 2006
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80113 Enforcement of local ordinances; existing rules; enactment of statutory provisions as ordinance.
Sec. 80113. (1) State, county, and local peace officers shall enforce local ordinances enacted in accordance with this part.

(2) All rules establishing special local watercraft controls promulgated under former 1967 PA 303 before March 17, 1986 shall remain in effect unless rescinded pursuant to sections 80108, 80110, 80111, and 80112.

(3) Local political subdivisions may enact as an ordinance any or all of sections 80101 to 80104, 80122 to 80124, 80126, 80140, 80141, 80144 to 80153, 80155, 80164, 80165, and 80166 to 80173.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2000, Act 215, Imd. Eff. June 27, 2000
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA
Admin Rule: R 281.700.1 et seq. of the Michigan Administrative Code.

324.80114 Rules; violation; fine.

Sec. 80114. (1) The department may promulgate rules to establish performance or other safety standards relating to boat construction or the installation, use, or carriage of associated equipment.

(2) In order that a boat operator may pass unhindered from jurisdiction to jurisdiction, rules authorized by this section shall be identical to federal regulations for enforcement purposes. However, rules requiring the carrying or using of marine safety articles to meet uniquely hazardous conditions or circumstances within this state may be promulgated, if the rules for the safety articles are approved by the United States coast guard.

(3) A person who violates a rule promulgated to implement this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80114a Prohibition against operation of motorized vessel; exemption; marine exemption certificate; physician's attestation.

Sec. 80114a. (1) A marine law that prohibits the operation of a motorized vessel on a portion of the waterways of this state shall not be enforced against an individual who meets all of the following qualifications:

(a) The individual has a disability that prevents him or her from rowing or paddling a vessel.

(b) The individual has in his or her possession a marine exemption certificate.

(c) The individual is operating a noncommercial vessel at slow—no wake speed using an electric motor that is rated at 100 pounds of thrust or less.

(2) This section does not exempt an individual from compliance with any other marine law.

(3) An individual may obtain a marine exemption certificate from either the department or a sheriff's department by presenting a physician's attestation that the physician has examined the individual and determined that the individual has a disability that prevents him or her from rowing or paddling a vessel.

(4) The department shall develop and make available for use as prescribed in this section a physician's attestation form and a marine exemption certificate.

History: Add. 2008, Act 119, Imd. Eff. Apr. 29, 2008
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80115 Disposition of revenues; credit to waterways account; appropriation; fees.
Sec. 80115. (1) The revenue received under this part shall be deposited in the state treasury. The revenue division, department of treasury, shall annually present to the department an accurate total of all the revenues collected, and shall then, except as provided in section 80124b, credit the revenues collected to the waterways account to be used as follows:

(a) 17.5% to implement part 781.

(b) 33.5% to implement part 791.

(c) 49% for water safety education programs and for the administration and enforcement of this part, including state aid to counties, and for no other purpose.

(2) Fees provided for in section 80124 shall not be appropriated for the inspection of vessels that carry passengers for hire and are regulated under part 445.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 292, Imd. Eff. Jan. 8, 2004 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006
Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides:"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80116 Boating safety program; compliance with rules; federal financial assistance.
Sec. 80116. The department shall do all things necessary to conduct a comprehensive boating safety program as provided in chapter 131 of part I of subtitle II of title 46 of the United States Code, 46 U.S.C. 13101 to 13110; to comply with rules promulgated under that act by the secretary of the department in which the coast guard is operating; and to accept federal financial assistance as provided in that act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80117 Marine safety program; state aid; formula; limitation on determination; use; statement of expenditures.
Sec. 80117. (1) Each county of the state is entitled to receive state aid as provided in this part. A county board of commissioners desiring to

conduct a marine safety program shall submit to the department by December 31 of each year an estimate of authorized expenditures for the following calendar year, in the form and containing the information the department requires. The department shall review the entire request and may approve the county request for state aid. The department shall annually survey the marine safety program of each county to assist in determining the amount of state aid to be allocated to a county for its marine safety program. In making its annual determination of the amount of state aid to be allocated to a county, the department shall develop and employ a formula which shall include such factors as:

(a) The number of students to be trained in boating safety in any United States coast guard auxiliary, United States power squadron, or department-sponsored marine safety classes.

(b) The number of boat user days.

(c) The number of livery boats.

(d) Program effectiveness measured by comparing the existing rate of compliance with current statutes to the acceptable rate of compliance determined by the department.

(e) The number and type of boat access areas requiring a county marine safety program.

(f) The water area of the county.

(2) A determination of the amount of state aid allocated to a county under this part shall not be based, wholly or in part, upon the number of vessels within that county that are stopped or inspected under section 80166.

(3) State aid allocated to a county under this part shall be used exclusively for the conduct of the county marine safety program as provided by this part and rules promulgated under this part. Within 90 days after the close of each calendar year, a county board of

commissioners shall submit to the department a statement of authorized expenditures actually incurred, in the form and containing the information that the department requires. A county that provides the department with statements or supplements to statements subsequent to the 90-day period is not eligible for state aid under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80118 Allocation of state aid to counties.

Sec. 80118. The amount of state aid to be allocated to a county pursuant to this part shall be determined by the department in the manner the department determines is appropriate. The department shall review the county's statement of authorized expenditures actually incurred and if satisfied shall provide state aid in an amount not to exceed 3/4 of the county's estimated authorized expenditures for the past calendar year. If the county's authorized expenditures actually incurred for the past calendar year exceed the county's estimated authorized expenditures for that calendar year, the department, if it considers it to be in the best interests of the state and adequate funds have been appropriated by the legislature for state aid to counties, may provide state aid in excess of 3/4 of the county's estimated authorized expenditures for that calendar year, but not in excess of 3/4 of the county's authorized expenditures actually incurred. If the amount appropriated by the legislature for state aid to counties is insufficient to pay the full amount to which the counties are entitled, the department shall reduce the allocations proportionate to the shortfall of revenue among all state and local programs for which waterways account money was appropriated.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006
Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides:"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."
Popular Name: Act 451

Popular Name: Marine Safety Act
Popular Name: NREPA

324.80119 Marine safety program; audits of county records; refunds to state.

Sec. 80119. Annually the department of the treasury shall audit the county records pertaining to the marine safety program to assure the proper disposition of this money in accordance with this part and rules promulgated under this part. If the audit reveals that a refund of state aid money is due to the state, the county treasurer, within 30 days of the completion of the audit, shall send to the department the amount of the refund due to the state, which the department shall return to the waterways account to be used for the purpose described in section 80115(1)(c).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006
Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides:"Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80120 Marine safety program; cooperation with county sheriffs; records; reports.

Sec. 80120. The department and the county sheriffs shall cooperate in the conduct of the marine safety program. The county sheriffs shall maintain records and submit reports in a form and containing information as the department may require.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80121 Rules.

Sec. 80121. The department may promulgate rules as may be necessary to implement this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80122 Conditions to operation of vessels; violation; fine.
Sec. 80122. (1) Except as otherwise provided in this part, a person shall not operate or give permission for the operation of a vessel of any length on the waters of this state unless the fees prescribed in section 80124 for the vessel are paid, the certificate of number assigned to the vessel is on board and is in full force and effect, and, except for the following, the identifying number and decal are displayed on each side of the forward half of the vessel in accordance with this part and the rules promulgated by the department under this part:

(a) A decal and identifying numbers for a wooden hull and historic vessel as that term is defined in section 80124 may be displayed in the manner described in section 80126(2).

(b) A decal for an inflatable boat may be displayed on the transom of the boat.

(2) If a vessel is actually numbered in another state of principal use in accordance with a federally approved numbering system, it is in compliance with the numbering requirements of this state while it is temporarily being used in this state. This subsection applies to a vessel for which a valid temporary certificate is issued to the vessel's owner by the issuing authority of the state in which the vessel is principally used.

(3) If a vessel is removed to this state as the new state of principal use, a number awarded by any other issuing authority is valid for not more than 60 days before numbering is required by this state.

(4) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80123 Exemption.

Sec. 80123. (1) The owner of a vessel is not required to pay a fee and a vessel is not required to be numbered and to display a decal under this part if the vessel is 1 or more of the following:

(a) Used temporarily on the waters of this state and the owner and the vessel are from a country other than the United States.

(b) A vessel that is owned by the United States, used in the public service for purposes other than recreation, and clearly identifiable as such a vessel.

(c) A vessel's lifeboat.

(d) An all-terrain vehicle not used as a vessel.

(e) A raft, sailboard, surfboard, or swim float.

(f) A vessel 16 feet or less, propelled by hand either with oars or paddles, and not used for rental or other commercial purposes.

(g) A nonmotorized canoe or kayak not used for rental or other commercial purposes.

(2) The owner of a vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard shall comply with this part, including the payment of fees as provided in this part. However, the vessel shall not be required to display numbers under this part.

(3) This part does not prohibit the numbering of an undocumented vessel pursuant to this part upon request by the owner, even though the vessel is exempt from the numbering requirements of this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80124 Application for certificate of number; certificate of title; 15-day temporary permit; fee; "the length of vessel" defined; tax exemption; issuance; delinquent fee or tax; penalty; retention of certificate of number on shore; contents of lease or rental agreement; painting or attaching number; assigning block of numbers; federally documented vessel; decal; issuance of original certificate of number, numbering renewal decal, or other renewal device; numbering system; registration; issuance of certificate of number; historic vessel; refund to owner of nonmotorized canoe or kayak; refund and computation of fee.

Sec. 80124. (1) Except as otherwise provided in this section, the owner of a vessel required to be numbered and to display a decal shall file an application for a certificate of number with the secretary of state. The secretary of state shall prescribe and furnish certificate of title application forms. If a vessel requiring a certificate of title under part 803 is sold by a dealer, that dealer shall combine the application for a certificate of number that is signed by the vessel owner with the application for a certificate of title. The dealer shall obtain the certificate of number in the name of the owner. The owner of the vessel shall sign the application. A person shall not file an application for a certificate of number that contains false information. A dealer who fails to submit an application as required by this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.

(2) A dealer who submits an application for a certificate of number as provided in subsection (1) may issue to the owner of the vessel a 15-day temporary permit, on forms prescribed by the secretary of state, for the use of the vessel while the certificate of number is being issued.

(3) A dealer may issue a 15-day permit, on a form prescribed by the secretary of state, for the use of a vessel purchased in this state and delivered to the purchaser for removal to a place outside of this state, if the purchaser certifies by his or her signature that the vessel will be registered and primarily used and stored outside of this state and will not be returned to this state by the purchaser for use or storage. A certificate of number shall not be issued for a vessel holding a permit under this subsection.

(4) A 15-day temporary permit issued under subsection (2) or (3) shall not be renewed or extended.

(5) A person shall operate or permit the operation of a vessel for which a 15-day temporary permit has been issued under this section only if the temporary permit is valid and displayed on the vessel as prescribed by rule promulgated by the department under this part.

(6) Except as otherwise provided in this section, an applicant shall pay the following fee at the time of application:

(a) A 15-day temporary permit issued under
subsection (3)....................................... $ 10.00
(b) Nonpowered vessels, other than nonmotorized
canoes or kayaks, except as provided in section 80123.. 9.00
(c) Nonmotorized canoes or kayaks except as
provided in section 80123............................. 5.00
(d) Motorboats less than 12 feet in length........ 14.00
(e) Motorboats 12 feet or over but less than
16 feet in length..................................... 17.00
(f) Motorboats 16 feet or over but less than
21 feet in length..................................... 42.00
(g) Motorboats 21 feet or over but less than
28 feet in length..................................... 115.00
(h) Motorboats 28 feet or over but less than

35 feet in length..................................... 168.00
(i) Motorboats 35 feet or over but less than
42 feet in length..................................... 244.00
(j) Motorboats 42 feet or over but less than
50 feet in length..................................... 280.00
(k) Motorboats 50 feet in length or over.......... 448.00
(l) Pontoon vessels regardless of size............ 23.00
(m) Motorized canoes regardless of size........... 14.00
(n) Vessels licensed under part 473............... 15.00
(o) Vessels carrying passengers for hire that
are in compliance with part 445, or under federal law;
and vessels carrying passengers and freight or freight
only and owned within this state or hailing from a
port within this state................................. 45.00

(7) As used in this section, "the length of a vessel" means the distance from end to end over the deck, excluding the longitudinal upward or downward curve of the deck, fore and aft. A pontoon boat shall be measured by the length of its deck, fore and aft.

(8) Payment of the fee specified in this section exempts the vessel from the tax imposed under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(9) Upon receipt of an initial application for a certificate of number in approved form and payment of the required fee, the secretary of state shall enter the information upon the official records and issue to the applicant a certificate of number containing the number awarded to the vessel, the name and address of the owner, and other information that the secretary of state determines necessary. The secretary of state shall issue a certificate of number that is pocket size and legible. Except as provided in subsection (13), a person operating a vessel shall present that vessel's certificate of number to a peace officer upon the peace officer's request.

(10) If a check or draft payable to the secretary of state under this part is not paid on its first presentation, the fee or tax is delinquent as of the date the draft or check was tendered. The person tendering the check or draft remains liable for the payment of each fee or tax and a penalty.

(11) Upon determining that a fee or tax required by this part has not been paid and remains unpaid after reasonable notice and demand, the secretary of state may suspend a certificate of number.

(12) If a person who tenders a check or draft described in subsection (10) fails to pay a fee or tax within 15 days after the secretary of state gives him or her notice that the check or draft described in subsection (10) was not paid on its first presentation, the secretary of state shall assess and collect a penalty of $5.00 or 20% of the check or draft, whichever is larger, in addition to the fee or tax.

(13) The owner or authorized agent of the owner of a vessel less than 26 feet in length that is leased or rented to a person for noncommercial use for not more than 24 hours may retain, at the place from which the vessel departs or returns to the possession of the owner or the owner's representative, the certificate of number for that vessel if a copy of the lease or rental agreement is on the vessel. Upon the demand of a peace officer, the operator shall produce for inspection either the certificate of number or a copy of the lease or rental agreement for that vessel. The lease or rental agreement shall contain each of the following:

(a) The vessel number that appears on the certificate of number.

(b) The period of time for which the vessel is leased or rented.

(c) The signature of the vessel's owner or that person's authorized agent.

(d) The signature of the person leasing or renting the vessel.

(14) Upon receipt of a certificate of number for a vessel, the owner of that vessel shall paint on or attach in a permanent manner to each side of the forward half of the vessel the number identified in the certificate of

number, in the manner prescribed by rules promulgated by the department. The secretary of state shall assign to the owner of vessels for rent or lease a block of numbers sufficient to number consecutively all of that owner's rental or lease vessels. The owner shall maintain the numbers in a legible condition. A vessel documented by the United States coast guard or a federal agency that is the successor to the United States coast guard is not required to display numbers under this part but shall display a decal indicating payment of the fee prescribed in subsection (6), and shall otherwise be in compliance with this part. This subsection does not apply to a nonpowered vessel 12 feet or less in length.

(15) Upon receipt of an application for a certificate of number in an approved form and payment of the fee required by this part, the secretary of state shall issue a decal that is color-coded and dated to identify the year of its expiration, and that indicates that the vessel is numbered in compliance with this part. The department shall promulgate a rule or rules to establish the manner in which the decal is to be displayed. A person who operates a vessel in violation of a rule promulgated to implement this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(16) A decal is valid for a 3-year period that begins on April 1 and expires on March 31 of the third year. An original certificate of number may be issued up to 90 days before April 1. A numbering renewal decal or other renewal device may be issued up to 90 days before the expiration of a certificate.

(17) Upon receipt of a request for renewal of a decal and payment of the fee prescribed in subsection (6), the secretary of state shall issue to the applicant a decal as provided in subsection (15). A person who operates a vessel for which no decal was issued as required under this section or for which a decal has expired is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(18) The numbering system adopted under this part shall be in accordance with the standard system of numbering established by the

secretary of the department in which the United States coast guard operates.

(19) An agency of this state, a political subdivision of this state, or a state supported college or university of this state that owns a vessel that is required to be numbered under this part shall register that vessel and upon payment of either of the following shall receive from the secretary of state a certificate of number for that vessel:

(a) A fee of $3.00 for a vessel that is not used for recreational, commercial, or rental purposes.

(b) The fee required under subsection (6) for a vessel that is used for recreational, commercial, or rental purposes.

(20) The secretary of state shall, upon receipt of payment of the fee required under subsection (19), issue a certificate of number for each vessel subject to subsection (19).

(21) A vessel that is 30 years of age or older and not used other than in club activities, exhibitions, tours, parades, and other similar activities is a historic vessel. The secretary of state shall make available to the public application forms for certificates of number for historic vessels and, upon receipt of a completed application form and fee, shall number a historic vessel as a historic vessel. The fee for the numbering of a historic vessel is 1/3 of the otherwise applicable fee specified in subsection (6).

(22) Upon application to the secretary of state, the owner of a nonmotorized canoe or kayak who registered that vessel under former 1967 PA 303 between January 1, 1989 and April 17, 1990 shall receive a refund of a portion of the registration fee equal to the difference in the amount that owner paid and the fee amount provided in subsection (6)(c).

(23) The secretary of state shall refund to the owner of a vessel registered under this part or former 1967 PA 303 all of the registration

fee paid for that vessel under this section or section 33 of former 1967 PA 303 if all of the following conditions are met during the period for which the registration fee was paid:

(a) The owner transfers or assigns title or interest in the registered vessel before placing the decal issued under subsection (15) on the vessel.

(b) The owner surrenders the unused decal to the secretary of state within 30 days after the date of transfer or assignment.

(24) The secretary of state shall refund to the surviving spouse of a deceased vessel owner the registration fee paid under this part, prorated on a monthly basis, upon receipt of the decal issued under subsection (15) or evidence satisfactory to the secretary of state that the decal issued under subsection (15) has been destroyed or voided.

(25) If the secretary of state computes a fee under this part that results in a figure other than a whole dollar amount, the secretary of state shall round the figure to the nearest whole dollar.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80124a Great Lakes protection specialty watercraft decal.
Sec. 80124a. (1) Subject to subsection (4), the secretary of state shall make available for purchase an annual Great Lakes protection specialty watercraft decal. The Great Lakes protection specialty watercraft decal shall be designed by the secretary of state and shall depict some aspect of the Great Lakes or of Great Lakes water quality.

(2) The Great Lakes protection specialty watercraft decal shall be sold for $35.00. Revenues from the sale of Great Lakes specialty watercraft decals shall be expended as provided for in section 80124b.

(3) The secretary of state may establish the appropriate placement of Great Lakes protection specialty watercraft decals on watercraft so as not to create confusion for law enforcement officers with decals required under section 80124.

(4) The secretary of state shall discontinue sales of Great Lakes protection specialty watercraft decals under subsection (1) if the secretary of state is unable to sell at least 2,000 decals in the 2-year period ending September 30, 2006 and at least 500 decals in each fiscal year thereafter.

History: Add. 2003, Act 293, Imd. Eff. Jan. 8, 2004 ;-- Am. 2005, Act 271, Imd. Eff. Dec. 19, 2005
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80124b Great Lakes protection specialty watercraft decal; use of money received from sale; definitions.
Sec. 80124b. (1) Money received by the secretary of state from the sale of each Great Lakes protection specialty watercraft decal under section 80124a shall be used as follows:

(a) $10.00 shall be retained by the secretary of state for use in creating and distributing the decal.

(b) $25.00 shall be forwarded to the state treasurer for deposit into the Michigan Great Lakes protection fund to be used for research on aquatic nuisance species, for public education of the threat of aquatic nuisance species, and for efforts to eradicate aquatic nuisance species from the Great Lakes and other waters of the state.

(2) As used in this section:

(a) “Aquatic nuisance species” means that term as it is defined in section 3101.

(b) “Michigan Great Lakes protection fund” means the Michigan Great Lakes protection fund created in section 32905.

History: Add. 2003, Act 294, Imd. Eff. Jan. 8, 2004
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80125 Notice of destruction, abandonment, or sale of vessel; transfer of vessel; change of address; surrender of certificate; cancellation of certificate and reassignment of number; certificate for replacement vessel; refund; recording new address and returning certificates; application for transfer of certificate; fees; duration of certificate; duplicate certificate.

Sec. 80125. (1) The owner of a vessel shall notify the secretary of state within 15 days if the vessel is destroyed, abandoned, or sold; if an interest in the vessel is transferred, either wholly or in part, to another person; or if the owner's address no longer conforms to the address appearing on the certificate of number. The notice shall consist of a surrender of the certificate of number, on which the proper information shall be noted on a place to be provided on the certificate. When the surrender of the certificate is due to the vessel being destroyed or abandoned, the secretary of state shall cancel the certificate and enter that fact in the secretary of state's records, and the number may be reassigned.

(2) The owner of a destroyed vessel, upon proper application, may receive a new certificate of number, valid for the remainder of the numbering period, for a replacement vessel, if all of the following conditions are met:

(a) The replacement vessel is owned by the same person who owned the destroyed vessel.

(b) The owner of the replacement vessel pays additional fees, if required under section 80124, due to the change in vessel size or classification.

(c) Payment of a $2.00 application fee.

(3) If the fees required for the replacement vessel under section 80124 are less than the fees that were required for the destroyed vessel, the owner of the vessel shall not receive a refund.

(4) If the surrender of the certificate of number is due to a change of the owner's address, the new address shall be recorded by the secretary of state and a certificate of number bearing that information shall be returned to the owner.

(5) The transferee of a vessel registered under this part, within 15 days after acquisition of the vessel, shall make application to the secretary of state for transfer to the transferee of the certificate of number issued to the vessel. The transferee shall provide his or her name, address, and the number of the vessel and pay to the secretary of state a transfer fee of $2.00. The registration fee for the certificate of number shall be 2/3 the fee provided in section 80124 if the transferred certificate of number would have remained valid for 1 year or less. The registration fee for the certificate of number shall be 1/3 the fee provided in section 80124 if the transferred certificate of number would have remained valid for more than 1 year but less than 2 years. An additional registration fee shall not be assessed if the transferred registration would have remained valid for 2 or more years. Unless the application is made and the fee paid within 15 days after acquisition of the vessel, the vessel shall be considered to be without certificate of number and a person shall not operate the vessel until a certificate is issued. Upon receipt of the application and appropriate fees, the secretary of state shall transfer the certificate of number issued for the vessel to the new owner. The certificate of number shall be valid for a 3-year period.

(6) If a certificate of number is lost, mutilated, or illegible, the owner of the vessel shall obtain a duplicate of the certificate upon application and payment of a fee of $2.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80126 Dealer certificates of number and dealer decals.
Sec. 80126. (1) A dealer shall apply for and obtain from the secretary of state dealer certificates of number and dealer decals for each vessel of the dealer that is tested, demonstrated, or otherwise operated. Upon receipt of an application in a form approved by the secretary of state and payment of $30.00 for each set of dealer certificates of number and dealer decals, the secretary of state shall issue to the applicant the dealer certificates of number and dealer decals. A single dealer certificate of number and dealer decal issued pursuant to this section may be used on only 1 vessel at a time.

(2) The operator of a vessel governed by this section shall do each of the following:

(a) Maintain the dealer certificate of number on board the vessel.

(b) Upon demand of a peace officer, display the dealer certificate of number.

(c) Permanently or temporarily display the identifying number and dealer decal on the vessel in accordance with rules promulgated by the department under this part.

(3) A person shall not operate a vessel numbered under this section unless the dealer is on board the vessel or the operator has the written authorization of the dealer to operate the vessel. A person shall not use a vessel numbered under this section for commercial purposes that include the rental of the vessel or the carrying of passengers for hire on the vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80127 Payment of fee by credit card or check.
Sec. 80127. The secretary of state may accept payment by a credit card or check in lieu of cash of a fee required under this part. The secretary of

state shall determine which major credit cards may be utilized, provided, however, that the fee received shall not be less than 100% of the applicable fee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80128 Secretary of state; certificate of number.

Sec. 80128. The secretary of state may award any certificate of number directly or may authorize any person to act as his or her agent for the awarding of a certificate of number.
History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80129 Maintenance of records; availability to the public.

Sec. 80129. Records maintained under this part, other than those declared to be confidential by law or which are restricted by law from disclosure to the public, shall be available to the public pursuant to procedures prescribed in this part and in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80130 Commercial lookup service; disposition of fees; computerized central file; purpose; creation; maintenance; providing records to nongovernmental person or entity; fee; admissibility in evidence.

Sec. 80130. (1) The secretary of state may provide a commercial lookup service of records maintained under this part. For each individual record looked up, the secretary of state shall charge a fee specified annually by the legislature, or if none, a market-based price established by the

secretary of state. The secretary of state shall process a commercial lookup request only if the request is in a form or format prescribed by the secretary of state. Fees collected under this subsection on and after October 1, 2005 shall be credited to the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b.

(2) In order to provide an individual, historical boating record, the secretary of state shall create and maintain a computerized central file that includes the information contained on application forms received under this part and the name of each person who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part. The computerized central file shall be interfaced with the law enforcement information network as provided in the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(3) The secretary of state shall not provide an entire computerized central or other file of records maintained under this part to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

(4) A certified copy of an order, record, or paper maintained under this part is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997 ;-- Am. 2005, Act 174, Imd. Eff. Oct. 12, 2005
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80130a Disclosure of information prohibited; exceptions.
Sec. 80130a. (1) Except as provided in this section and section 80130c, personal information in a record maintained under this part shall not be disclosed, unless the person requesting the information furnishes proof of identity considered satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose

identified in this section or in section 80130c. Notwithstanding this section, highly restricted personal information shall be used and disclosed only as expressly permitted by law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, Public Law 85-506, 15 U.S.C. 1231 to 1232 and 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, 106 Stat. 3384, the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and all federal regulations promulgated to implement these federal laws.

(3) Personal information in a record maintained under this act may be disclosed to any person by the secretary of state as follows:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions.

(b) For use in connection with matters of watercraft and operator safety or watercraft theft; watercraft emissions; watercraft product alterations, recalls, or advisories; performance monitoring of watercraft; watercraft research activities including survey research; and the removal of nonowner records from the original records of watercraft manufacturers.

(c) For use in the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no

longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court, administrative agency, or self-regulatory body.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded watercraft.

(h) For use by any licensed private security guard agency or alarm system contractor licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, or a private detective or private investigator licensed under the private detective license act of 1965, 1965 PA 285, MCL 338.821 to 338.851, for any purpose permitted under this section.

(i) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. “News medium” includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(j) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997 ;-- Am. 2000, Act 194, Eff. Jan. 1, 2001
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80130b Resale or redisclosure of personal information; maintenance of records; duration; availability for inspection.

Sec. 80130b. (1) An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 80130a. An authorized recipient of an individual record or records under section 81114a may resell or redisclose personal information for any purpose.

(2) Any authorized recipient who resells or rediscloses personal information shall be required by the secretary of state to maintain for a period of not less than 5 years records as to the information obtained and the permitted use for which it was obtained, and to make such records available for inspection by the secretary of state, upon request.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80130c Furnishing list of information to federal, state, or local governmental agency; contract for sale of list of information; insertion of safeguard in agreement or contract; resale or redisclosure of information; disclosure of list based on watercraft operations or sanctions to nongovernmental agency.

Sec. 80130c. (1) Upon request, the secretary of state may furnish a list of information from the records of the department maintained under this part to a federal, state, or local governmental agency for use in carrying

out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Unless otherwise prohibited by law, the secretary of state may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this subsection if the cost of preparation exceeds $25.00, and use the revenues received from the service to defray necessary expenses. If the secretary of state sells a list of information under this subsection to a member of the state legislature, the secretary of state shall charge the same fee as the fee for the sale of information under subsection (2) unless the list of information is requested by the member of the legislature to carry out a legislative function. The secretary of state may require the requesting agency to furnish 1 or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this subsection.

(2) The secretary of state may contract for the sale of lists of records maintained under this part in bulk, in addition to those lists distributed at cost or at no cost under this section, for purposes defined in section 80130a(3). The secretary of state shall require each purchaser of information in bulk to execute a written purchase contract. The secretary of state shall fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale shall be used by the secretary of state to defray the costs of list preparation and for other necessary or related expenses.

(3) The secretary of state or any other state agency shall not sell or furnish any list of information under subsection (2) for the purpose of surveys, marketing, and solicitations. The secretary of state shall ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under this part.

(4) The secretary of state may insert any safeguard the secretary considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under this section, to ensure that the information furnished or sold is used only for a

permissible use and that the rights of individuals and of the secretary of state are protected.

(5) An authorized recipient of personal information disclosed under this section who resells or rediscloses the information for any of the permissible purposes described in section 80130a(3) shall do both of the following:

(a) Make and keep for a period of not less than 5 years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(b) Allow a representative of the secretary of state, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(6) The secretary of state shall not disclose a list based on watercraft operation or sanctions to a nongovernmental agency, including an individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997 ;-- Am. 2000, Act 194, Eff. Jan. 1, 2001
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80130d Prohibited conduct; violations as felony; penalties.
Sec. 80130d. (1) A person who makes a false representation or false certification to obtain personal information under this part, or who uses personal information for a purpose other than a permissible purpose identified in section 80130a or 80130c, is guilty of a felony.

(2) A person who is convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not less than 2 years or more than 7 years, or by a fine of not less than $1,500.00 or more than $7,000.00, or both.

(3) A person who is convicted of a third or subsequent violation of this section is guilty of a felony punishable by imprisonment for not less than 5 years or more than 15 years, or by a fine of not less than $5,000.00 or more than $15,000.00, or both.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80131 Violation of part or ordinance; record of charge or citation; forwarding abstracts or report to secretary of state; statement; certification; noncompliance; public inspection; basis for issuing order; transmitting and entering order of reversal; modifying requirements.
Sec. 80131. (1) Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with or cited for a violation of this part or of a local ordinance corresponding to this part regulating the operation of vessels.

(2) Within 14 days after a conviction, forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating this part or a local ordinance corresponding to this part regulating the operation of vessels, except as provided in subsection (11), the municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the record of the court for the case. The abstract shall be certified to be true and correct by signature, stamp, or facsimile signature by the person required to prepare the abstract. If a city or village department, bureau, or person is authorized to accept a payment of money as a settlement for a violation of a local ordinance corresponding to this part, the city or village department, bureau, or person shall send a full report of each case in which a person pays any amount of money to the city or village department, bureau, or person to the secretary of state upon a form prescribed by the secretary of state.

(3) The abstract or report required under this section shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name, address, and date of birth of the person charged or cited.

(b) The date and nature of the violation.

(c) The type of vessel operated at the time of the violation.

(d) The date of the conviction, finding, forfeiture, judgment, or determination.

(e) Whether bail was forfeited.

(f) Any order issued by the court pursuant to this part.

(g) Other information considered necessary to the secretary of state.

(4) As used in subsections (5) to (7), “felony in which a vessel was used” means a felony during the commission of which the person operated a vessel and while operating the vessel presented real or potential harm to persons or property and 1 or more of the following circumstances existed:

(a) The vessel was used as an instrument of the felony.

(b) The vessel was used to transport a victim of the felony.

(c) The vessel was used to flee the scene of the felony.

(d) The vessel was necessary for the commission of the felony.

(5) If a person is charged with a felony in which a vessel was used, the prosecuting attorney shall include the following statement on the complaint and information filed in district or circuit court:

"You are charged with the commission of a felony in which a vessel was used. If you are convicted and the judge finds that the conviction is for a felony in which a vessel was used, as defined in section 80131 of the natural resources and environmental protection act, the secretary of state will order you not to operate a vessel on the waters of this state.".

(6) If a child is accused of an act the nature of which constitutes a felony in which a vessel was used, the prosecuting attorney or juvenile court shall include the following statement on the petition filed in the probate court:

"You are accused of an act the nature of which constitutes a felony in which a vessel was used. If the accusation is found to be true and the judge or referee finds that the nature of the act constitutes a felony in which a vessel was used, as defined in section 80131 of the natural resources and environmental protection act, the secretary of state will order you not to operate a vessel on the waters of this state.".

(7) If the judge or juvenile court referee determines as part of the sentence or disposition that the felony for which the defendant was convicted or adjudicated and with respect to which notice was given pursuant to subsection (5) or (6) is a felony in which a vessel was used, the clerk of the court shall forward an abstract of the court record of that conviction or adjudication to the secretary of state.

(8) Every person required to forward abstracts to the secretary of state under this section shall certify for the period from January 1 through June 30 and for the period from July 1 through December 31 that all abstracts required to be forwarded during the period have been forwarded. The certification shall be filed with the secretary of state not later than 28 days after the end of the period covered by the certification. The certification shall be made upon a form furnished by the secretary of state and shall include all of the following:

(a) The name and title of the person required to forward abstracts.

(b) The court for which the certification is filed.

(c) The time period covered by the certification.

(d) The following statement:

"I certify that all abstracts required by section 80131 of the natural resources and environmental protection act for the period __________ through __________ have been forwarded to the secretary of state.".

(e) Other information the secretary of state considers necessary.

(f) The signature of the person required to forward abstracts.

(9) The failure, refusal, or neglect of a person to comply with this section constitutes misconduct in office and is grounds for removal from office.

(10) Except as provided in subsection (11), the secretary of state shall keep all abstracts received under this section at the secretary of state's main office, and the abstracts shall be open for public inspection during the office's usual business hours. The secretary of state shall enter each abstract upon the boating record of the person to whom it pertains and shall record the information in a manner that makes the information available to peace officers through the law enforcement information network.

(11) The court shall not submit, and the secretary of state shall discard and not enter on the boating record, an abstract for a conviction or civil infraction determination for a violation of this part that could not be the basis for the secretary of state's issuance of an order not to operate a vessel on the waters of this state. The secretary of state shall discard and not enter on the boating record an abstract for a bond forfeiture that occurred outside this state.

(12) The secretary of state shall inform the court of the violations of this part that are used by the secretary of state as the basis for issuance of an order not to operate a vessel on the waters of this state.

(13) If a conviction or civil infraction determination is reversed upon appeal, the court shall transmit a copy of the order of reversal to the secretary of state, and the secretary of state shall enter the order in the proper book or index in connection with the record of the conviction or civil infraction determination.

(14) The secretary of state may permit a city or village department, bureau, person, or court to modify the requirement as to the time and manner of reporting a conviction, civil infraction determination, or settlement to the secretary of state if the modification will increase the economy and efficiency of collecting and utilizing the records. If the permitted abstract of court record reporting a conviction, civil infraction determination, or settlement originates as a part of the written notice to appear, authorized in section 80168, the form of the written notice and report shall be as prescribed by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80132 Applicability of MCL 324.80134 and 324.80135; applicability of section.

Sec. 80132. (1) Sections 80134 and 80135 apply to a vessel operated on waters subject to the jurisdiction of this state when the vessel is either of the following:

(a) Operated by its operator for recreational purposes.

(b) Required to be numbered in this state.

(2) This section does not apply to a vessel required to have a certificate of inspection under chapter I of title 46 of the Code of Federal Regulations.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451

Popular Name: Marine Safety Act
Popular Name: NREPA

324.80133 Casualty involving vessel; assistance to injured persons.
Sec. 80133. (1) The operator of a vessel involved in a collision, accident, or other casualty, and the operator of any other vessel, to the extent that he or she can do so without serious danger to his or her own vessel, crew, and passengers, shall render reasonable assistance to a person affected by the collision, accident, or other casualty, including the transporting of the injured person to a physician or surgeon for medical or surgical treatment, if it is apparent that treatment is necessary or when requested by the injured person.

(2) A person who complies with subsection (1), or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of the person assisted, is not liable for civil damages as a result of the rendering of assistance, or for an act or omission in providing or arranging towage, medical treatment, or other assistance, if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80134 Casualties involving vessels; exchange of identification.
Sec. 80134. In the case of collision, accident, or other casualty involving a vessel, the operator shall stop his or her vessel and give his or her name and address and identification of his or her vessel, and the name and address of the owner of the vessel if he or she is not the operator, to the operator or occupants of any other vessel involved or to the owner or his or her agents of any property damaged by the accident.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80134a Accident involving serious impairment of body function or death; remaining at scene of accident; violation as felony; "serious impairment of a body function" defined.
Sec. 80134a. (1) The operator of a vessel who knows or who has reason to believe that he or she has been involved in an accident resulting in serious impairment of a body function or death of a person shall immediately stop his or her vessel at the scene of the accident and shall remain there until the requirements of sections 80133 and 80134 are fulfilled.

(2) Except as provided in subsection (3), a person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or by a fine of not more than $5,000.00, or both.

(3) A person who violates subsection (1) following an accident caused by that person that results in the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(4) As used in this section, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

History: Add. 2003, Act 231, Eff. Apr. 1, 2004
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80135 Casualty involving vessel; report.
Sec. 80135. (1) In the case of collision, accident, or other casualty involving a vessel, the operator shall report the collision, accident, or other casualty to the nearest peace officer, state police post, or the sheriff of the county in which the collision, accident, or other casualty occurred.

(2) A report of a collision, accident, or other casualty involving a vessel that is made to a peace officer other than the sheriff of the county in which the collision, accident, or other casualty occurred shall be reported

without delay by the peace officer to the sheriff of the county in which the collision, accident, or other casualty occurred.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80136 Peace officer receiving report or investigating casualty involving vessel; report to department and county sheriff; form and contents.

Sec. 80136. A peace officer receiving a report or investigating the collision, accident, or other casualty involving a vessel shall prepare and submit within 15 days a complete report thereof to the department and the sheriff of the county where the collision, accident, or other casualty involving a vessel occurred, in a form and containing such information as the department may require.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80137 Casualty reports involving vessel; use; fee; copies; admissibility in court.

Sec. 80137. All collision, accident, or other casualty reports involving a vessel shall be without prejudice and shall be for the information of the department. Any person upon the payment of $2.00 to the department shall be furnished a copy of the report. The report required in section 80136 is not admissible in a court.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80138 Transmission of information for analytical or statistical purposes.

Sec. 80138. In accordance with a request by an authorized official or agency of the United States or by the department, information compiled or otherwise available to the secretary of state and the department under this part shall be transmitted to the official or agency of the United States or to the department for analytical and statistical purposes.
History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80139 Rules.

Sec. 80139. The department shall promulgate rules to establish a state vessel collision, accident, or other casualty reporting system in conformity with that established by the United States coast guard.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA
Admin Rule: R 281.1221 et seq. of the Michigan Administrative Code.

324.80140 Educational programs; establishment; youthful boat operators training program; certificates of completion; information to be included in program.

Sec. 80140. (1) In order to protect the public interest in the prudent and equitable use of the waters of this state and to enhance the enjoyment of pleasure boating and other recreational water sports on the waters of the state, the department shall establish and pursue comprehensive educational programs designed to advance boating and general water safety.

(2) The department shall put into effect a program to train youthful boat operators and shall issue a boating safety certificate to those who satisfactorily complete the program. For the purpose of giving the courses of instruction and awarding boating safety certificates, the department may designate as its agent any person it considers qualified

to act in this capacity. A charge shall not be made for any instruction given or for the award of boating safety certificates.

(3) The department shall include in its educational programs under this section all of the following:

(a) Information on proper marine fueling techniques.

(b) Information on the problems that marine fuel spillage may cause to water bodies.

(c) Information on how and where to report a marine fuel spill.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 95, Imd. Eff. May 7, 2004
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80141 Operation of motorboats by children.
Sec. 80141. (1) Except as otherwise provided in subsection (4), a person less than 12 years of age shall not operate a motorboat on the waters of this state unless all of the following conditions are met:

(a) He or she is under the direct supervision of a person on board the motorboat who is 16 years of age or older.

(b) The motorboat he or she operates is powered by a motor or motors totaling no more than 35 horsepower.

(2) Except as otherwise provided in subsection (4), a person 12 through 15 years of age may operate a motorboat on the waters of this state only if that person complies with either of the following:

(a) He or she is accompanied by at least 1 person 16 years of age or older.

(b) He or she is in possession of a boating safety certificate issued after he or she has satisfactorily completed a department approved course in boating safety.

(3) A person 12 through 15 years of age operating a motorboat pursuant to subsection (2)(b) shall present the boating safety certificate issued to him or her upon the demand of any peace officer.

(4) This section does not apply to the operation of a motorboat that is powered by a motor or motors totaling no more than 6 horsepower.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80142 Wearing of personal flotation device by child required; exception; "charter boat" and "class C vessel" defined; violation; fine.
Sec. 80142. (1) Except as provided in subsection (3), a person shall not operate a vessel on the waters of this state unless each person in an open deck area on board the vessel who is less than 6 years of age is wearing a type I or type II personal flotation device as described in R 281.1234 of the Michigan administrative code.

(2) A parent or guardian of a child less than 6 years of age who accompanies that child on board a vessel that is not a charter boat described in subsection (3) shall ensure that the child is wearing a personal flotation device that complies with this section.

(3) This section does not apply to a charter boat bearing either of the following:

(a) A valid certificate of inspection issued by the United States coast guard that verifies the charter boat's compliance with subchapter H or subchapter T of the code of federal regulations, 46 C.F.R. 70.01-1 to 80.40 and 175.01-1 to 185.30-30.

(b) A valid certificate of inspection issued by the department for a class C vessel that is greater than 45 feet in length.

(4) As used in this section, “charter boat” and “class C vessel” mean those terms as defined in section 44501.

(5) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80143 Repealed. 1998, Act 263, Eff. Mar. 23, 1999.

Compiler's Notes: The repealed section pertained to requirements for operation of personal watercraft.
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80144 Operation of vessels; rules; violation; fine.

Sec. 80144. (1) When vessels are being operated in such a manner as to make collision imminent or likely, the following apply:

(a) When 2 vessels are approaching each other head-on, or nearly so, the operator of each shall cause his or her vessel to pass on the port side of the other.

(b) When overtaking a vessel proceeding in the same direction, the operator of the overtaking vessel, unless it is not feasible to do so, shall pass on the port side of the vessel ahead.

(c) When 2 vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when 1 vessel is overtaking another, the operator of the vessel that has the other on his or

her own port side shall hold his or her course and speed, and the operator of the vessel that has the other on his or her own starboard side shall give way to the other by directing his or her course to starboard so as to cross the stern of the other vessel or, if necessary to do so, shall slacken his or her speed, stop, or reverse.

(d) When a motorboat and a vessel under sail are proceeding in a manner that involves a risk of collision, the operator of the motorboat shall give way to the vessel under sail.

(e) When a motorboat and a vessel not propelled by sail or mechanical means are proceeding in a manner that involves risk of collision, the operator of the motorboat shall give way to the other vessel.

(f) When, by any of the rules provided in this section, the operator of a vessel is required to give way to the other, the operator of the other vessel shall maintain his or her direction and speed.

(2) This section does not relieve the operator of a vessel otherwise privileged by this section from the duty to operate with due regard for the safety of all persons using the waters of this state.

(3) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80145 Operation of vessels; speed; interference with use of waters by others; violation; fine.

Sec. 80145. A person operating or propelling a vessel upon the waters of this state shall operate it in a careful and prudent manner and at such a rate of speed so as not to endanger unreasonably the life or property of any person. A person shall not operate any vessel at a rate of speed

greater than will permit him or her, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. A person shall not operate a vessel in a manner so as to interfere unreasonably with the lawful use by others of any waters. A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80146 Maximum or unlimited motorboat speed; rules; maximum motorboat speed where limits not established; exceptions; resolution requesting reduction in maximum speed limit; conditions requiring slow—no wake speed or minimum speed; violation; fine; exceptions; waiver.
Sec. 80146. (1) The department may promulgate rules to establish maximum motorboat speed limits or to allow unlimited motorboat speed on the waters of this state.

(2) On waters of this state for which a motorboat speed limit is not established under subsection (1), on any waters for which the department has not established an unlimited motorboat speed limit, or on any waters for which stricter speed restrictions are not established pursuant to an act, a maximum speed limit of 55 miles per hour is established, except in an emergency and except for authorized peace and conservation officers when engaged in official duties. The maximum speed limit of 55 miles per hour does not apply to the Great Lakes and Lake St. Clair, except for an area within 1 mile of the shoreline measured at a right angle from the shoreline. Upon receipt of a resolution by the governing body of a local unit of government having jurisdiction over waters of this state requesting a reduction in the maximum speed limit on those waters, the department, pursuant to sections 80108 to 80113, may establish a maximum speed limit not to exceed 40 miles per hour on those waters.

(3) A person shall not operate a motorboat on the waters of this state at a speed greater than slow—no wake speed or the minimum speed necessary for the motorboat to maintain forward movement when within 100 feet of the shoreline where the water depth is less than 3 feet, as determined by vertical measurement, except in navigable channels not otherwise posted.

(4) A person who violates subsection (2) or (3) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00, unless 1 of the following conditions exists:

(a) The requirements of this section have been waived as described under subsection (5).

(b) The person violates this section in a manner that constitutes reckless operation of a motorboat as described in section 80147.

(5) The department may waive the requirements of this section and section 80156 for marine events authorized by the department under section 80164.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80147 Reckless operation of vessels; penalty.
Sec. 80147. (1) If a person carelessly and heedlessly operates a vessel upon the waters of this state in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a vessel and is subject to the penalties described in subsection (3).

(2) If a person, while being towed on water skis, a water sled, a surfboard, or a similar contrivance upon the waters of this state, carelessly and heedlessly navigates, steers, or controls himself or herself

in disregard of the rights or safety of others or without due caution and circumspection and in a manner that endangers or is likely to endanger a person or property, then that person is guilty of reckless operation of the contrivance that he or she controls is subject to the penalties described in subsection (3).

(3) Upon a person's conviction under this section, the court may issue an order prohibiting that person from operating a vessel on the waters of this state for a period of not more than 2 years. Upon a person's subsequent conviction under this section, the court shall order that person to participate in and complete a marine safety educational program approved by the department. An order issued pursuant to this subsection is in addition to any other penalty authorized under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80148 Operating motorboat at more than slow—no wake speed; prohibitions; exceptions.
Sec. 80148. (1) Subject to the exceptions described in subsection (2), a person shall not operate a motorboat at more than slow—no wake speed if any of the following circumstances exist:

(a) A person is located on or in the bow of the motorboat, and that motorboat is not manufactured to provide bow seating.

(b) A person or a portion of a person's body extends beyond the exterior port or starboard walls of the hull of the motorboat.

(2) This section does not apply to either of the following:

(a) A person engaged in the operation of a sailboat that is not being powered by a motor.

(b) A person on board a vessel who is attempting to anchor, moor, dock, or otherwise secure the vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80149 Operation of vessels in counter-clockwise fashion; distance between persons being towed and other objects; exception; violation as misdemeanor; violation as civil infraction; fine.
Sec. 80149. (1) A person operating a vessel on the waters of this state in areas not marked by well defined channels, canals, rivers, or stream courses shall operate the vessels in a counter-clockwise fashion to the extent that it is reasonably possible. These persons and persons being towed on water skis or on a water sled, kite, surfboard, or similar contrivance shall maintain a distance of 100 feet from any dock, raft, buoyed or occupied bathing area, or vessel moored or at anchor, except when the vessel is proceeding at a slow—no wake speed or when water skiers are being picked up or dropped off, if that operation is otherwise conducted with due regard to the safety of persons and property and in accordance with the laws of this state. Except as otherwise provided in subsection (2), a person who violates this section is guilty of a misdemeanor.

(2) A person who violates this section while on any of the following bodies of water in this state is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00:

(a) The Great Lakes.

(b) Lake St. Clair.

(c) The St. Clair river.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80150 Operation of vessels; prohibited in certain areas.
Sec. 80150. A person shall not operate a vessel on any of the waters of this state within a lawfully authorized restricted area clearly marked by buoys, beacons, or other distinguishing devices as being prohibited to vessels.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80151 Towing of persons; prohibited time; violation; fine.
Sec. 80151. (1) A person operating a vessel shall not have in tow or otherwise be assisting in the propulsion of a person on water skis or on a water sled, surfboard, or other similar contrivance during the period of 1 hour after sunset to 1 hour prior to sunrise.

(2) A person shall not permit himself or herself to be towed on water skis or on a water sled, surfboard, or similar contrivance in violation of this part.

(3) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80152 Towing or assisting persons; exceptions; standards; rules; certification; information to be provided; specification of bodies of water for use in practice.
Sec. 80152. (1) Except as otherwise provided in this section, a person shall not operate a vessel on the waters of this state if he or she is towing or otherwise assisting a person on water skis or on a water sled, aquaplane, surfboard, or other similar contrivance unless a person capable of communicating to the vessel operator the condition and needs

of the person being towed or assisted is on board the vessel and positioned to observe the person being towed or assisted.

(2) Subsection (1) does not apply to vessels used by duly constituted ski schools in the giving of instructions or to vessels used in sanctioned ski tournaments, competitions, expositions, or trials. Vessels described in this subsection shall be equipped with a 170-degree wide-angle rearview mirror affixed in a manner that will permit the operator to observe the progress of the person being towed.

(3) This section does not apply to motorboats less than 16 feet in length actually operated by the person being towed and so constructed as to be incapable of carrying the operator in or on the motorboat.

(4) Subsection (1) does not apply to a vessel operator who is towing a person preparing for a specific water ski tournament if all of the following conditions are met:

(a) The vessel operator is certified as provided in subsection (5).

(b) The person being towed is certified as provided in subsection (6).

(c) Towing is conducted so that, on average, not more than 1 vessel approaches within 300 feet of the towing vessel during any 5-minute period.

(d) The vessel is equipped with all of the following:

(i) A center-mounted tow pylon.

(ii) A large clear rearview mirror capable of allowing the vessel operator to distinguish hand signals at a distance of 75 feet.

(iii) Markings that identify the vessel as a vessel that is being operated in conformance with this subsection.

(5) The department shall adopt standards for water ski tournament boat operation established by U.S.A. water ski in “Trained Boat Driver Program”, April 1997, and by the American water ski association in “Drivers' Policy Manual”. However, the department may promulgate rules providing for alternative standards under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall certify each individual who satisfies the standards described in this subsection as a tournament water ski vessel operator and issue proof of that certification to the individual.

(6) The department shall adopt standards for tournament water skiers established by the Michigan water ski association in “Guidelines for Training Permit Eligibility”, proposed revision 125 of 1996. However, the department may promulgate rules providing for alternative standards under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall certify each individual who satisfies the standards described in this subsection as a tournament water skier and issue proof of that certification to the individual.

(7) The Michigan water ski association shall provide annually to the department and the Michigan sheriffs association both of the following:

(a) A list of the individuals whom the organization considers qualified for tournament water skiing.

(b) The names of not more than 3 bodies of water on which each of those individuals may be authorized to practice for tournament water skiing.

(8) The department shall specify the body or bodies of water upon which a water skier may practice upon each certificate issued under subsection (6).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1999, Act 19, Imd. Eff. Apr. 30, 1999
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80153 Vessels; use of portions unintended for occupancy prohibited; exceptions.
Sec. 80153. Any occupant or operator of any vessel under way on the waters of this state shall not sit, stand, or walk upon any portion of the vessel not specially designed for that purpose, except when immediately necessary for the safe and reasonable navigation or operation of the vessel.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80154 Interference with operation of vessel by nonoccupant.
Sec. 80154. A person not in a boat shall not intentionally rock, tip, jostle, or otherwise interfere with the operation of any vessel, except under supervised training.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80155 Divers; marking point of submergence; distance from diver's flag.
Sec. 80155. Any person diving or submerging in any of the waters of this state with the aid of a diving suit or other mechanical diving device shall place a buoy or boat in the water at or near the point of submergence. The buoy or boat shall bear a red flag not less than 14 inches by 16 inches with a 3-1/2 inch white stripe running from 1 upper corner to a diagonal lower corner. The flag shall be in place only while actual diving operations are in progress. A vessel shall not be operated within 200 feet of a buoyed diver's flag unless it is involved in tendering the diving operation. A person diving shall stay within a surface area of 100 feet of the diver's flag.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451

Popular Name: Marine Safety Act
Popular Name: NREPA

324.80156 Motorboat; muffler or underwater exhaust system required; maximum sound levels; test and maximum decibel levels; new motorboat to comply with prescribed sound levels; exceptions; “dB(A)” defined; violation as misdemeanor; penalty.

Sec. 80156. (1) Subject to subsection (2), a person shall not operate a motorboat on the waters of this state unless the motorboat is equipped and maintained with an effective muffler or underwater exhaust system that does not produce sound levels in excess of 90 dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005 or a sound level in excess of 75 dB(A) when subjected to a shoreline sound level measurement procedure as described by SAE J1970. The operator of a motorboat shall present the motorboat for a sound level test as prescribed by SAE J2005 upon the request of a peace officer. If a motorboat is equipped with more than 1 motor or engine, the test shall be performed with all motors or engines operating. To determine whether a person is violating this subsection, a peace officer may measure sound levels pursuant to procedures prescribed in SAE J1970, issued 1991-92.

(2) The department may by rule establish a motorboat sound level test and set a maximum decibel level or levels permitted for motorboat operation that replace the tests and maximum decibel levels permitted under subsection (1). If a test and maximum decibel level or levels are established pursuant to this subsection, all of the following apply:

(a) A person shall not operate a motorboat on the waters of this state if the motorboat produces sound levels that exceed the maximum decibel level or levels established under this subsection.

(b) The operator of a motorboat shall present the motorboat for the sound level test established pursuant to this subsection upon the request of a peace officer.

(c) A motorboat equipped with more than 1 motor or engine shall be tested with all motors or engines operating.

(3) A person shall not manufacture, sell, or offer for sale a motorboat for use on the waters of this state unless that motorboat is equipped and maintained with an effective muffler or underwater exhaust system that complies with the applicable sound levels permitted under subsection (1) or (2).

(4) Subsections (1) and (2) do not apply to any of the following:

(a) A motorboat tuning up or testing for or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate unit of government.

(b) A motorboat being operated by a boat or marine engine manufacturer for the purpose of testing or development.

(c) A motorboat that qualifies as an historic vessel.

(5) As used in this section, "dB(A)" means decibels on the "A" scale on a sound meter having characteristics of a general purpose sound meter as defined by American national standards institute S1.4-1983.

(6) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days and a fine of not less than $100.00 or more than $500.00. Additionally, before putting the motorboat back in use, a person who violates this section is required to install an effective muffler or underwater exhaust system that meets the requirements of this section on the motorboat in violation at his or her expense.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 274, Imd. Eff. June 17, 1996
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80157 Liability of vessel owner for negligent operation; presumption of consent to use.

Sec. 80157. The owner of a vessel is liable for any injury occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the statutes of this state, or in the failure to observe such ordinary care in the operation as the rules of the common law require. The owner is not liable unless the vessel is being used with his or her expressed or implied consent. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80158 Responsibility of vessel owner for damage caused by vessel wake.

Sec. 80158. The owner of any vessel operated upon the waters of this state is personally responsible for any damage to life or property resulting from a wake or swell created by the negligent operation or propulsion of the vessel, if the vessel is being operated with his or her consent.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80159 Buoys or beacons; permit for placement; application; revocation; removal.

Sec. 80159. A person shall not place a beacon or buoy, other than a mooring buoy, in the waters of this state except as authorized by a permit issued by the department pursuant to part 13. The department may issue a permit for the placing of buoys or beacons in the waters of this state to mark obstruction to navigation, to designate bathing areas, to designate vessel anchorages, or for any other purpose if it will promote safety or navigation. An application for a permit shall contain information required by the department. If buoys or beacons are placed in the waters

of this state without a permit having been issued, the department may order their removal. If, in the judgment of the department, buoys or beacons authorized by the department are found to be improperly placed, the reason for their placement no longer exists, or the buoys or beacons do not conform to the uniform system of marking established by state regulation, the department may revoke the permit authorizing their placement and may order their removal. Revocation of permits and orders of removal shall be by written notice to the person placing the buoys or beacons or to the person to whom the permit was issued at his or her last known address, directing the removal within a specified time. The person to whom the notice is directed shall remove the buoys or beacons in accordance with the instructions. If the person fails to remove the buoys or beacons within the specified time, the department may cause their removal, and the cost and expense of the removal shall be charged against the person authorized to place the buoys or beacons or, where authorization has not been granted, the person placing such buoys or beacons and shall be recoverable through any court of competent jurisdiction.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80160 Buoys or beacons; uniform marking system.
Sec. 80160. The department shall establish a uniform waterway marking system for the marking of all buoys and beacons authorized by this part to be placed in the waters of this state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80161 Buoys or beacons; compliance with federal law or regulations; permits.
Sec. 80161. Sections 80159 and 80160 do not exempt any person from compliance with applicable federal law or regulation, and sections 80159

and 80160 do not require the securing of a state revocable permit if a permit therefor has been obtained from an authorized agency of the United States.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80162 Buoys or beacons; use as moorings; moving, removal or damaging.
Sec. 80162. A person shall not moor or fasten a vessel to a lawfully placed buoy or beacon, except mooring buoys, or willfully move, remove, or damage such a buoy or beacon.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80163 Anchored rafts; order for removal as navigation hazard.
Sec. 80163. Whenever, in the opinion of the department, an anchored raft presents a hazard to navigation, the department may order its relocation or removal.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80164 Regattas; rules; permit; authorization; applications.
Sec. 80164. The department may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions, or trials for those events, on any waters of this state. The department shall promulgate and may amend rules concerning the conduct of such marine events. Whenever a regatta, motorboat or other boat race, marine parade, tournament, or exhibition, or trials for those events, is proposed to be held, the person in charge of the event, at least 30 days prior to the event, shall file an application with the department

for permission to hold the regatta, motorboat or other boat race, marine parade, tournament, exhibition, or trials. The application shall set forth the date, time, and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament, or exhibition, and it shall not be conducted without the written authorization of the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80165 Regattas, races, or trials; compliance with federal law or regulation; permit; waiver.
Sec. 80165. Section 80164 does not exempt a person from compliance with an applicable federal law or regulation, and it shall not be construed to require the securing of a state permit if a permit for an event, exhibition, or trial described in section 80164 has been obtained from an authorized agency of the United States. The department in its permit may waive the provisions of sections 80122, 80144, 80146, 80149, 80151, 80152, and 80156, as well as the registration provisions of the laws of this state, and any of the rules promulgated by the department under this part, to the extent that they apply to vessels participating in races, regattas, or trials sanctioned by the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80166 Peace officers; stopping of vessels; duty of operator; reasonable suspicion; furnishing false information as misdemeanor; arrests without warrant.
Sec. 80166. (1) Upon the direction of a peace officer acting in the lawful performance of his or her duty, the operator of a vessel moving on the waters of this state shall immediately bring the vessel to a stop or maneuver it in a manner that permits the peace officer to come beside the vessel. The operator of the vessel shall do the following upon the request of the peace officer:

(a) Provide his or her correct name and address.

(b) Exhibit the certificate of number awarded for the vessel.

(c) If the vessel does not bear a decal described in section 80166a or an equivalent decal issued by or on behalf of another state, submit to a reasonable inspection of the vessel and to a reasonable inspection and test of the equipment of the vessel.

(2) Except for inspection of a vessel to determine the number and adequacy of personal flotation devices on that vessel, a peace officer shall not stop and inspect a vessel bearing the decal described in section 80166a or an equivalent decal issued by or on behalf of another state during the period the decal remains in effect unless that peace officer has a reasonable suspicion that the vessel or the vessel's operator is in violation of a marine law.

(3) A person who is detained for a violation of this part or of a local ordinance substantially corresponding to a provision of this part and who furnishes a peace officer false, forged, fictitious, or misleading verbal or written information identifying the person as another person is guilty of a misdemeanor.

(4) A peace officer who observes a marine law violation may immediately arrest the person without a warrant or issue to the person a written or verbal warning.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2002, Act 636, Imd. Eff. Dec. 23, 2002
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80166a Agreement with United States coast guard.
Sec. 80166a. (1) The department may enter into an agreement with the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by the United States coast guard or the United States coast guard auxiliary to provide for vessel safety checks of a

vessel and its equipment. An agreement entered into under this subsection shall not preclude the department, or any peace officer within his or her jurisdiction, from performing an inspection of a vessel or the vessel's equipment for enforcement purposes or courtesy purposes.

(2) An agreement entered into under this section shall specify that the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by the United States coast guard or the United States coast guard auxiliary shall provide the department with a sufficient number of vessel safety check decals for conservation officers and those counties that participate in the marine safety program. In addition to any other information that is included on a vessel safety check decal, each vessel safety check decal shall bear the likeness of the state seal of Michigan. The vessel safety check decal shall display the year in which the decal was issued and during which it is valid.

(3) Upon the completion of an inspection of a vessel or the vessel's equipment by a peace officer, the United States coast guard, the United States coast guard auxiliary, or an organization sponsored by the United States coast guard or the United States coast guard auxiliary, the peace officer or person performing the inspection shall affix to the vessel the vessel safety check decal provided for in this section.

History: Add. 2002, Act 636, Imd. Eff. Dec. 23, 2002
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80167 Arrest without warrant; cases in which arrested person arraigned by magistrate or judge.

Sec. 80167. If a person is arrested without a warrant for any of the following, the arrested person shall, without unreasonable delay, be arraigned by a magistrate or judge who is within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense, and who is nearest or most accessible with reference to the place where the arrest is made:

(a) The person is arrested upon a charge of negligent homicide.

(b) The person is arrested under section 80176(1), (3), (4), or (5), or a local ordinance substantially corresponding to section 80176(1) or (3).

(c) The person is arrested under section 80147 or a local ordinance substantially corresponding to section 80147. If in the existing circumstances it does not appear that releasing the person pending the issuance of a warrant will constitute a public menace, the arresting officer may proceed as provided by section 80168.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80168 Arrest without warrant; notice to appear in court; time; place; appearance; acceptance of pleas.
Sec. 80168. (1) When a person is arrested without a warrant for a violation of this part punishable as a misdemeanor, or of a provision of any local ordinance or rule established in conformity with this part, under conditions not referred to in section 80167, the arresting officer shall prepare in duplicate a written notice to appear in court containing the name and address of the person, the offense charged, and the time and place when and where the person shall appear in court. If the arrested person so demands, he or she shall be arraigned by a magistrate or a district court judge as provided in section 80167 in lieu of being given the notice.

(2) The time specified in the notice to appear shall be within a reasonable time after the arrest unless the person arrested demands an earlier hearing.

(3) The place specified in the notice to appear shall be before a magistrate or a district court judge who is within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.

(4) Appearance may be made in person, by representation, or by mail. When appearance is made by representation or mail, the magistrate or

the district court judge may accept the plea of guilty or not guilty for purposes of arraignment, with the same effect as though the person personally appeared before him or her. The magistrate or the district court judge, by giving notice 5 days prior to the date of appearance, may require appearance in person at the time and place designated in the notice.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80169 Arrest without warrant; nonresidents; recognizance; receipt and summons; failure to appear; deposit of money; report; embezzlement.

Sec. 80169. (1) If a person not a resident of this state is arrested without a warrant for a violation of this part under conditions not referred to under section 80167, the officer making the arrest, upon demand of the arrested person, shall immediately take the person for arraignment by a magistrate or a district court judge in the vicinity to answer to the complaint made against him or her. If a magistrate or a district court judge is not available or an immediate trial cannot be had, the person arrested may recognize to the officer for his or her appearance by leaving with him or her not more than $200.00.

(2) The officer making the arrest shall give a receipt to the person arrested for the money deposited with him or her under subsection (1), together with a written summons as provided in section 80168.

(3) If the offender fails to appear as required, the deposit shall be forfeited as in other cases of default in bail, in addition to any other penalty provided in this part.

(4) Not more than 48 hours after taking a deposit under this section, the officer shall deposit the money with the magistrate or the district court judge named in the notice to appear, together with a report stating the facts relating to the arrest. Failure to make the report and deposit the money is embezzlement of public money.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80170 Violation by officer, magistrate, or district court judge as misconduct in office; removal from office; applicability and construction of MCL 324.80168 and 324.80169.

Sec. 80170. (1) Any officer, magistrate, or district court judge violating section 80168 or 80169 is guilty of misconduct in office and is subject to removal from office.

(2) Sections 80168 and 80169 govern all peace officers in making arrests without a warrant for violations of this part and do not prevent the execution of a warrant for the arrest of the person as in other cases of misdemeanors when it may be necessary.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80171 Violation of part; penalties.

Sec. 80171. Unless otherwise specified under this part, a violation of this part or rules promulgated under this part is a misdemeanor. A political subdivision having adopted a local ordinance in conformity with this part may provide that any violation of the ordinance is a misdemeanor. Any person convicted of reckless operation of a vessel as defined in section 80147, or of operating a vessel while under the influence of intoxicating liquor or narcotic drugs, in addition to any other penalty, may be refused by the court having jurisdiction of the violation the right of operating any vessel on any of the waters of this state for a period of not more than 2 years.
History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80172 Negligent crippling or death; penalty.
Sec. 80172. A person who, by the operation of any vessel at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, injures so as to cripple or cause the death of another is guilty of a misdemeanor, and shall be imprisoned for not more than 2 years, or fined not more than $2,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80173 Felonious operation of watercraft; penalty.
Sec. 80173. A person who operates any vessel carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injures so as to cripple any person, but not causing death, is guilty of the offense of felonious operation, and shall be imprisoned for not more than 2 years, or fined not more than $2,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80174 Negligent homicide included in charge of manslaughter.
Sec. 80174. The crime of negligent homicide is included within every crime of manslaughter charged to have been committed in the operation of any vessel, and where a defendant is charged with manslaughter committed in the operation of any vessel, if the jury finds the defendant not guilty of the crime of manslaughter, the jury may render a verdict of negligent homicide.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80175 Nonresidents; secretary of state as attorney for service of summons; service; procedure; sufficiency; death; appointment of secretary of state as attorney; abatement of actions; costs; applicability to all courts.
Sec. 80175. (1) The operation by a nonresident of a vessel upon the waters of this state, or the operation on the waters of this state of a vessel owned by a nonresident if operated with his or her consent, expressed or implied, is the appointment by the nonresident of the secretary of state as his or her true and lawful attorney, upon whom may be served the summons in any action against him or her, growing out of any accident or collision in which the nonresident may be involved while operating a vessel on the waters of this state, or in which the vessel may be involved while being so operated. The operation is a signification of his or her agreement that any summons against him or her that is so served has the same legal force and validity as if served on him or her personally within this state. Service of summons shall be made by leaving a copy of the summons with the secretary of state, or his or her deputy, who shall keep a record of each process and the day and hour of service. Service shall be sufficient service upon the nonresident, if notice of the service and a copy of the summons are forthwith either served upon the defendant personally by the sheriff or constable of the county in which he or she resides or sent by certified mail by the plaintiff or his or her attorney to the defendant. If personal service of the notice and copy of summons is had upon the defendant, the officer making the service shall so certify in his or her return, which shall be filed with the court having jurisdiction of the cause. If service is made by certified mail, then the plaintiff or his or her attorney shall make an affidavit showing that he or she has made service of the notice and summons upon the defendant by certified mail, and the affiant shall attach to the affidavit a true copy of the summons and notice so served and the return receipt of the defendant and shall file the affidavit and attached papers with the court having jurisdiction of the cause. The court in which the action is pending may order such extension of time as is necessary to afford the defendant reasonable opportunity to defend the action.

(2) The death of a nonresident does not revoke the appointment by him or her of the secretary of state as his or her true and lawful attorney upon

whom may be served the summons in an action against him or her growing out of any such accident or collision, and any action growing out of such accident or collision may be commenced or prosecuted against his or her executor or administrator duly appointed by the state, territory, or district of the United States or foreign country in which the nonresident was domiciled at the time of his or her death. Service of the summons shall be made upon the secretary of state, and personal service of such notice and the copy of the summons be upon his or her executor or administrator, in like manner, with the same force and effect as service upon the nonresident during his or her lifetime.

(3) Any action or proceeding pending in any court of this state, in which the court has obtained jurisdiction of the nonresident pursuant to this section, shall not abate by reason of the death of the nonresident, but his or her executor or administrator duly appointed in the state, territory, or district of the United States or foreign country in which he or she was domiciled at the time of his or her death, upon the application of the plaintiff in the action and upon such notice as the court may prescribe, shall be brought in and substituted in the place of the decedent, and the action or proceeding shall continue.

(4) The court shall include as taxable costs, in addition to other legal costs against the plaintiff in case the defendant prevails in the action, the actual traveling expenses of the defendant from his or her residence to the place of trial and return, not to exceed the sum of $100.00.

(5) This section applies to actions commenced in all courts of this state having civil jurisdiction, including justice courts.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80176 Operation of vessel by person under influence of intoxicating liquor or controlled substance; violation as felony; penalty.

Sec. 80176. (1) A person shall not operate a vessel on the waters of this state if either of the following applies:

(a) The person is under the influence of intoxicating liquor or a controlled substance, or both.

(b) The person has a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) The owner of a vessel or a person in charge or in control of a vessel shall not authorize or knowingly permit the vessel to be operated on the waters of this state by a person who is under the influence of intoxicating liquor or a controlled substance, or both, or who has a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(3) A person shall not operate a vessel on the waters of this state when, due to the consumption of an intoxicating liquor or a controlled substance, or both, the person's ability to operate the vessel is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person who operates a vessel on the waters of this state under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, and by the operation of that vessel causes the death of another person is guilty of a felony, punishable by imprisonment for not more than 15 years, or a fine of not less than $2,500.00 or more than $10,000.00, or both.

(5) A person who operates a vessel on the waters of this state under the influence of intoxicating liquor or a controlled substance, or both, or with a blood alcohol content of 0.10 grams or more per 100 milliliters of

blood, per 210 liters of breath, or per 67 milliliters of urine, and by the operation of that vessel causes a serious impairment of a body function of another person is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than $1,000.00 or more than $5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996 ;-- Am. 2001, Act 12, Eff. July 1, 2001
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80177 Violation of MCL 324.80176(1) and 324.80176(2); sanctions; "prior conviction" defined.

Sec. 80177. (1) If a person is convicted of violating section 80176(1), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor and shall be punished by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not less than $100.00 or more than $500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00 and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be imprisoned for not more than 1 year.

(ii) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years, or a fine of not less than $500.00 or more than $5,000.00, or both.

(2) A term of imprisonment imposed under subdivision (b)(ii) shall not be suspended. A person sentenced to perform service to the community under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(3) In addition to the sanctions prescribed under subsection (1) and section 80176(4) and (5), the court may, pursuant to the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, order the person to pay

the costs of the prosecution. The court shall also impose sanctions under sections 80185 and 80186.

(4) A person who is convicted of violating section 80176(2) is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than $100.00 or more than $500.00, or both.

(5) As used in this section, “prior conviction” means a conviction for a violation of any of the following:

(a) Section 80176(1), (4), or (5).

(b) Former section 171(1), (4), or (5) of the marine safety act.

(c) Former section 73 of the marine safety act.

(d) A local ordinance substantially corresponding to section 80176(1) or former section 73 of the marine safety act.

(e) A law of another state substantially corresponding to section 80176(1), (4), or (5) or former section 73 of the marine safety act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2001, Act 12, Eff. July 1, 2001
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80178 Violation of MCL 324.80176(3); sanctions; “prior conviction” defined.
Sec. 80178. (1) If a person is convicted of violating section 80176(3), the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not more than $300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person shall be sentenced to both a fine of not less than $200.00 or more than $1,000.00, and either of the following:

(i) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(2) In addition to the sanctions prescribed in subsection (1), the court may, pursuant to the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, order the person to pay the costs of the prosecution. The court shall also impose sanctions under sections 80185 and 80186.

(3) A person sentenced to perform service to the community under this section shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(4) As used in this section, “prior conviction” means a conviction for a violation of any of the following:

(a) Section 80176(1), (3), (4), or (5).

(b) Former section 171(1) of the marine safety act.

(c) Former section 73 of the marine safety act.

(d) Former section 73b of the marine safety act.

(e) A local ordinance substantially corresponding to section 80176(1), former section 73 of the marine safety act, or former section 73b of the marine safety act.

(f) A law of another state substantially corresponding to section 80176(1), (3), (4), or (5), former section 73 of the marine safety act, or former section 73b of the marine safety act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2001, Act 12, Eff. July 1, 2001
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80179 Enhanced sentencing based on prior convictions; conditions; attempted violation of MCL 324.80176(1), MCL 324.80176(3), or local ordinance.
Sec. 80179. (1) If the prosecuting attorney intends to seek an enhanced sentence under section 80177 or 80178 based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information filed in district court, circuit court, recorder's court, municipal court, or probate court a statement listing the defendant's prior convictions.

(2) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(b) A copy of the defendant's boating record.

(c) An admission by the defendant.

(3) A person who is convicted of an attempted violation of section 80176(1) or (3), or a local ordinance substantially corresponding to section 80176(1) or (3), shall be punished as if the offense had been completed.

(4) When issuing an order under this part, the secretary of state and the court shall treat a conviction of an attempted violation of section 80176(1) or (3), former section 171(1) or (3) of the marine safety act, a local ordinance substantially corresponding to section 80176(1) or (3), or a law of another state substantially corresponding to section 80176(1) or (3) the same as if the offense had been completed.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80180 Peace officer; arrest without warrant; reasonable cause; conditions; returning vessel and occupants to shore; effect of not charging person receiving citation.
Sec. 80180. (1) A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vessel involved in the accident in this state while in violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3).

(2) A peace officer who has reasonable cause to believe that a person was operating a vessel on the waters of this state, and that, by the consumption of intoxicating liquor, the person may have affected his or her ability to operate a vessel, may require the person to submit to a preliminary chemical breath analysis. The following apply with respect to a preliminary chemical breath analysis:

(a) Only a peace officer who has successfully completed a training course taught by a state-certified instructor in the administration of the preliminary chemical breath analysis may administer that test.

(b) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(c) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime described in section 80187(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(d) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 80187 to 80190 for the purposes of chemical tests described in those sections.

(e) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

(3) A peace officer making an arrest under this part shall take measures to assure that the vessel and its occupants are safely returned to shore.

(4) If, not more than 60 days after the issuance of a citation for a state civil infraction under this section, the person to whom the citation is issued is not charged with a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), the citation issued for the state civil infraction is void. Upon application of the person to whom the citation is issued, money paid by the person as a fine, costs, or otherwise shall be immediately returned.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451

Popular Name: Marine Safety Act
Popular Name: NREPA

324.80181 Chemical test and analysis of blood, urine, or breath; collection of sample or specimen; application of administrative rules.
Sec. 80181. (1) The following apply with respect to a chemical test and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance, or both, in an operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 80187(1) shall be advised of all of the following:

(i) That if the person takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, the person has the right to demand that someone of the person's own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this part and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that the person is responsible for obtaining a chemical analysis of a test sample obtained pursuant to the person's own request.

(ii) That if the person refuses the request of a peace officer to take a test described in subparagraph (i), the test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(iii) That the person's refusal of the request of a peace officer to take a test described in subparagraph (i) will result in issuance of an order that the person not operate a vessel on the waters of this state for at least 6 months.

(2) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or

medical technician under the direction of a licensed physician, qualified to withdraw blood and acting in a medical environment, may withdraw blood at the request of a peace officer for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in a person's blood, as provided in this subsection. A qualified person who withdraws or analyzes blood, or assists in the withdrawal or analysis, in accordance with this part is not liable for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures unless the withdrawal or analysis is performed in a negligent manner.

(3) A rule relating to a chemical test for alcohol or a controlled substance promulgated under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, applies to a chemical test administered under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80182 Chemical test; administration at request of peace officer, during medical treatment, or by medical examiner if operator of vessel is deceased; procedures.

Sec. 80182. (1) A chemical test described in section 80181 shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 80187(1). A person who takes a chemical test administered at the request of a peace officer, as provided in section 80181, shall be given a reasonable opportunity to have someone of the person's own choosing administer 1 of the chemical tests described in section 80181 within a reasonable time after the person's detention, and the results of the test are admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by someone of the person's own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

(2) If, after an accident, the operator of a vessel involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(3) If, after an accident, the operator of a vessel involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80183 Chemical test; introduction of other competent evidence; availability of test results.
Sec. 80183. (1) The provisions of sections 80181 and 80182 relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or whether the person had a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) If a chemical test described in sections 80181 and 80182 is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80184 Chemical analysis of blood, urine, or breath; amount of alcohol in operator's blood; presumptions; refusal to submit to chemical test as evidence.
Sec. 80184. (1) Except in a prosecution relating solely to a violation of section 80176(1)(b), the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath gives rise to the following presumptions:

(a) If at the time defendant had an alcohol content of 0.07 grams or less per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the defendant's ability to operate a vessel was not impaired due to the consumption of intoxicating liquor and that the defendant was not under the influence of intoxicating liquor.

(b) If at the time defendant had an alcohol content of more than 0.07 grams but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the defendant's ability to operate a vessel was impaired within the provisions of section 80176(3) due to the consumption of intoxicating liquor.

(c) If at the time defendant had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters

of urine, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(2) A person's refusal to submit to a chemical test as provided in sections 80181 and 80182 is admissible in a criminal prosecution for a crime described in section 80187(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80185 Advising defendant of penalties and sanctions; ordering screening, assessment, and rehabilitative services.
Sec. 80185. (1) Before accepting a plea of guilty or nolo contendere under sections 80176 to 80179, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible sanctions that may be imposed will be based upon the boating record maintained by the secretary of state pursuant to section 80130 or other evidence of a prior conviction as provided in section 80179.

(2) Before imposing sentence, other than court-ordered operating sanctions, for a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education or treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The

person shall pay for the costs of the screening, assessment, and rehabilitative services.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80186 Sentencing as multiple offender; consideration of prior convictions; sanctions; "another boating substance abuse offense" defined.

Sec. 80186. (1) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 80176(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1) or (3), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently entered upon the boating record of the person or other evidence of prior convictions established under section 80179, except those convictions that, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following sanctions:

(a) For a conviction under section 80176(4) or (5), the court shall order with no expiration date that the person not operate a vessel on the waters of this state.

(b) For a conviction under section 80176(1) or a local ordinance substantially corresponding to section 80176(1):

(i) If the court finds that the person has no prior convictions within 7 years for a violation of section 80176(1), (3), (4), or (5), former section 171(1), (3), (4), or (5), or another boating substance abuse offense, or that the person has 1 prior conviction within 7 years for a violation of section 80176(3); former section 171(3) of the marine safety act; former section 73b of the marine safety act; a local ordinance substantially corresponding to section 80176(3) or former section 73b of the marine safety act; or a law of another state substantially corresponding to section 80176(3) or former section 73b of the marine safety act, the court may

order that the person not operate a vessel on the waters of this state for not less than 1 year or more than 2 years.

(ii) If the court finds that the person has 1 or more prior convictions within 7 years for a violation of section 80176(1), (3), (4), or (5); former section 73 of the marine safety act; a local ordinance substantially corresponding to section 80176(1) or former section 73 of the marine safety act; or a law of another state substantially corresponding to section 80176(1), (4), or (5) or former section 73 of the marine safety act, the court shall order that the person not operate a vessel on the waters of this state for not less than 2 years.

(iii) If the court finds that the person has 2 or more prior convictions within 10 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court shall order with no expiration date that the person not operate a vessel on the waters of this state.

(c) For a conviction under section 80176(3) or a local ordinance substantially corresponding to section 80176(3):

(i) If the court finds that the convicted person has no prior conviction within 7 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court may order that the person not operate a vessel on the waters of this state for not less than 6 months or more than 1 year.

(ii) If the court finds that the person has 1 prior conviction within 7 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse offense, the court shall order that the person not operate a vessel on the waters of this state for not less than 1 year or more than 2 years.

(iii) If the court finds that the person has 2 or more prior convictions within 10 years for a violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) or another boating substance abuse

offense, the court shall order with no expiration date that person not to operate a vessel on the waters of this state.

(2) As used in this section, “another boating substance abuse offense” means former section 73 or 73b of the marine safety act, a local ordinance substantially corresponding to section 80176(1) or (3) or former section 73 or 73b of the marine safety act, or a law of another state substantially corresponding to section 80176(1), (3), (4), or (5) or former section 73 or 73b of the marine safety act.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80187 Consent to chemical tests of blood, breath, or urine; circumstances; exception; administration.
Sec. 80187. (1) A person who operates a vessel on the waters of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance, or both, in his or her blood in all of the following circumstances:

(a) The person is arrested for a violation of section 80176(1), (3), (4), or (5), or a local ordinance substantially corresponding to section 80176(1) or (3).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a vessel, and the peace officer had reasonable grounds to believe that the person was operating the vessel while impaired by, or under the influence of, intoxicating liquor or a controlled substance, or both, or while having a blood alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) A chemical test described in subsection (1) shall be administered as provided in sections 80181 and 80182.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 174, Imd. Eff. Apr. 18, 1996
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80188 Refusal to submit to chemical test at request of peace officer; obtaining court order; forwarding report to secretary of state.

Sec. 80188. (1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 80181 or 80182, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) If a person refuses a chemical test offered pursuant to section 80181 or 80182, the peace officer who requested the person to submit to the test shall immediately forward a written report to the secretary of state. The report shall state that the officer had reasonable grounds to believe the person committed a crime described in section 80187(1) and that the person refused to submit to the test upon the request of the peace officer and has been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80189 Refusal to submit to chemical test; notice of right to request hearing.

Sec. 80189. (1) If a person refuses to submit to a chemical test pursuant to section 80181 or 80182, the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in section 80190. The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in issuance of an order that the person not operate a vessel on the waters of this state. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel is permitted to represent the person at the hearing.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80190 Refusal to submit to chemical test; failure to request hearing; manner and conditions of hearing if requested; record of proceedings; order; petitions to review order or to review determination of hearing officer.
Sec. 80190. (1) If a person who refuses to submit to a chemical test pursuant to section 80181 or 80182 does not request a hearing within 14 days of the date of notice pursuant to section 80189, the secretary of state shall issue an order that the person not operate a vessel on the waters of this state for 6 months or, for a second or subsequent refusal within 7 years, for 1 year.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.322 of the Michigan Compiled Laws. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 80188, and, if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and, except for delay attributable to the unavailability of the defendant, a

witness, or material evidence or to an interlocutory appeal or exceptional circumstances, but not for delay attributable to docket congestion, shall be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 80187(1).

(b) Whether the person was placed under arrest for a crime described in section 80187(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of his or her rights under section 80181.

(3) The hearing officer shall make a record of proceedings held pursuant subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to section 80194 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition is filed the original or a certified copy of the official record of the proceedings. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall order that the person not operate a vessel on the waters of this state for 6 months or, for a second or subsequent refusal within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the order as provided in section 80194. If after the hearing the

person who requested the hearing prevails, the peace officer who filed the report under section 80188 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 80194.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80191 Order not to operate vessel on waters of state; convictions requiring issuance of order by secretary of state; effectiveness of order if more than 1 conviction resulting from same incident.
Sec. 80191. (1) Notwithstanding a court order issued under section 80176(1), (3), (4), or (5), section 80185 or 80186, former section 171(1), (3), (4), or (5), 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1) or (3), section 80185 or 80186, or former section 73 or 73b of the marine safety act, if a court has not ordered a person not to operate a vessel as authorized by this part, the secretary of state shall issue an order that the person not operate a vessel on the waters of this state for not less than 6 months or more than 2 years, if the person has the following convictions within a 7-year period, whether under the law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) One conviction under section 80176(1), former section 171(1) of the marine safety act, or former section 73 of the marine safety act.

(b) Any combination of 2 convictions under section 80176(3), former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(c) One conviction under section 80176(1), former section 171(1) or the marine safety act, or former section 73 of the marine safety act and 1

conviction under section 80176(3), former section 171(3) of the marine safety act, or former section 73b of the marine safety act.

(d) One conviction under section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act followed by 1 conviction under section 80176(3) or former section 171(3) of the marine safety act.

(2) If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident, an order not to operate shall be issued solely for that violation for which an order could be effective for the longest period of time under this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Compiler's Notes: In subsection (1)(c), “former section 171(1) or the marine safety act” evidently should read “former section 171(1) of the marine safety act.”
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80192 Convictions requiring order with no expiration date; terminating order; multiple convictions from same incident; judicial review.

Sec. 80192. (1) Upon receipt of the appropriate records of conviction, the secretary of state shall issue an order with no expiration date that the person not operate a vessel on the waters of this state to a person having any of the following convictions, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Four convictions under section 80147, former section 74 of the marine safety act, or a local ordinance substantially corresponding to section 80147 within 7 years.

(b) Two convictions of a felony involving the use of a vessel within 7 years.

(c) Any combination of 2 convictions within 7 years for 1 or more of the following:

(i) A violation of section 80176(1) or former section 171(1) of the marine safety act.

(ii) A violation of former section 73 of the marine safety act.

(iii) A violation of section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act.

(d) One conviction under section 80176(4) or (5) or former section 171(4) or (5) of the marine safety act.

(e) Any combination of 3 convictions within 10 years for 1 or more of the following:

(i) A violation of section 80176(1), (3), (4), or (5) or former section 171(1), (3), (4), or (5) of the marine safety act.

(ii) A violation of former section 73 or former section 73b of the marine safety act.

(2) The secretary of state shall issue an order with no expiration date that a person not operate a vessel on the waters of this state notwithstanding a court order issued under section 80176, section 80185 or 80186, former section 73, 73b, 171, 181, or 182 of the marine safety act, or a local ordinance substantially corresponding to section 80176, section 80185 or 80186, or former section 73 or 73b of the marine safety act.

(3) The secretary of state shall not terminate an order with no expiration date issued under this part until both of the following occur:

(a) The later of the following:

(i) The expiration of not less than 1 year after the order was issued.

(ii) The expiration of not less than 5 years after the date of a subsequent issuance of an order with no expiration date occurring within 7 years after the date of a prior order.

(b) The person meets the requirements of the department.

(4) Multiple convictions resulting from the same incident shall be treated as a single violation for purposes of issuance of an order under this section.

(5) Judicial review of an administrative sanction under this section is governed by the law in effect at the time the offense was committed or attempted.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80193 Failure to answer citation or notice to appear in court or comply with judgment or order; notice of issuance of order without expiration date; conditions terminating order.
Sec. 80193. (1) If a person is charged with, or convicted of, a violation of section 80176(1), (2), (3), (4), or (5) or a local ordinance substantially corresponding to section 80176(1), (2), or (3), and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim's rights assessments, within 14 days after the notice is issued, the secretary of state will issue an order with no expiration date that the person not operate a vessel on the waters of this state. If the person fails to appear within the 7-day period or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately issue the order and send a copy to the person by personal service or first-class mail sent to the person's last known address.

(2) An order imposed under subsection (1) remains in effect until both of the following occur:

(a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation are resolved.

(b) The person has paid to the court a $25.00 administrative order processing fee.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80194 Petition for review of determination; order setting cause for hearing; service; authority and duty of court; applicability of section.
Sec. 80194. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 80190, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 80190 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) The circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition, which shall include the person's full name, current address, and birth date, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of

the record prepared pursuant to section 80190, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as provided in subsections (4) and (6), the court may take testimony and examine all the facts and circumstances incident to the order that the person not operate a vessel on the waters of this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 80190, the court shall confine its consideration to a review of the record prepared pursuant to section 80190 to determine whether the hearing officer properly determined the issues enumerated in section 80190.

(5) This section does not apply to an order issued by the secretary of state pursuant to a court order issued as part of the sentence for a conviction under section 80176, section 80185 or 80186, former sections 171, 181, or 182 of the marine safety act, former section 73 or 73b of the marine safety act, or a local ordinance substantially corresponding to section 80176(1), (2), or (3), or former section 73 or 73b of the marine safety act.

(6) In reviewing a determination resulting in issuance of an order under section 80192(1)(c), (d), or (e), the court shall confine its consideration to a review of the record prepared pursuant to section 80190 or the boating record. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

(a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.

(b) In excess of the statutory authority or jurisdiction of the secretary of state.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent, material, and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80195 Petition for stay of order; entering ex parte order; terms and conditions; exception.
Sec. 80195. (1) Within 63 days after the determination, a person who is aggrieved by a final determination of the secretary of state under this part may petition the circuit court for the county in which the conviction or determination resulting in issuance of the order that the person not operate a vessel on the waters of this state for an order staying the order. Except as provided in subsection (2), the court may enter an ex parte order staying the order subject to terms and conditions prescribed by the court until the determination of an appeal to the secretary of state or of an appeal or a review by the circuit court, or for a lesser time that the court considers proper.

(2) The court shall not enter an ex parte order staying the order if the order is based upon a claim of undue hardship.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80196 Person subject to order not to operate vessel on waters of state; prohibited conduct; violation of subsection (1) as misdemeanor; penalty; extending length of order; obtaining and furnishing boating record; applicability of section; confiscating certificate of number and cancelling registration numbers.
Sec. 80196. (1) A person who is ordered not to operate a vessel on the waters of this state and who has been notified of the order by personal service or first-class mail shall not operate a vessel on the waters of this state. A person shall not knowingly permit a vessel owned by the person to be operated on the waters of this state by a person who is subject to such an order. A person who violates this subsection is guilty of a misdemeanor punishable as follows:

(a) By imprisonment for not more than 90 days or by a fine of not more than $500.00, or both.

(b) For a second or subsequent violation punishable under this subsection, by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(2) Upon receiving a record of the conviction of a person upon a charge of unlawful operation of a vessel while the person is subject to an order not to operate a vessel on the waters of this state, the secretary of state shall immediately extend the length of the order for an additional like period. If the secretary of state receives records of more than 1 conviction resulting from the same incident, all of the convictions shall be treated as a single violation for purposes of extending the length of an order under this subsection.

(3) Before a person is arraigned before a judge or district court magistrate on a charge of violating this section, the arresting officer shall obtain the boating record of the person from the secretary of state and shall furnish the record to the court. The boating record of the person may be obtained from the secretary of state's computer information network.

(4) This section does not apply to a person who operates a vessel solely for the purpose of protecting human life or property, if the life or property is endangered and the summoning or giving of prompt aid is essential.

(5) If a person is convicted of violating subsection (1), the court shall order confiscation of the vessel's certificate of number and cancellation of the vessel's registration numbers, unless the vessel was stolen or permission to use the vessel was not knowingly given. The secretary of state shall not assign a registration number to or issue a certificate of number for a vessel whose number is canceled and certificate confiscated until after the expiration of 90 days after the cancellation or confiscation, whichever is later.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80197 Impoundment of vessel; order; execution; liability for expenses; rights of conditional vendor, chattel mortgagee, or lessor of vessel.

Sec. 80197. (1) When a person is convicted under section 80196(1), the vessel, if it is owned in whole or in part by that person, shall be ordered impounded for not less than 30 or more than 120 days from the date of judgment. An order of impoundment issued pursuant to this subsection is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vessel to the storage for insurance coverage purposes.

(2) The owner of a vessel impounded pursuant to this section is liable for expenses incurred in the removal and storage of the vessel whether or not the vessel is returned to him or her. The vessel shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vessel is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the vessel, the vessel shall be considered abandoned.

(3) Nothing in this section affects the rights of a conditional vendor, chattel mortgagee, or lessor of a vessel registered in the name of another person as owner who becomes subject to this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80197a Conviction based on plea of nolo contendere.

Sec. 80197a. A conviction based on a plea of nolo contendere shall be treated in the same manner as a conviction based on a plea of guilty or a finding of guilt for all purposes under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80198 Administrative order processing fee; disposition and allocation.

Sec. 80198. Whether with or without an expiration date, an order not to operate a vessel on the waters of this state or to operate a vessel with restrictions does not expire until the person subject to the order pays an administrative order processing fee of $125.00 to the secretary of state. The state treasurer shall deposit $10.00 of the fee in the drunk driving prevention equipment and training fund created under section 625h of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.625h of the Michigan Compiled Laws, and $30.00 in the drunk driving caseflow assistance fund created under section 625h of Act No. 300 of the Public Acts of 1949. The state treasurer shall allocate the balance of the fee to the department of state for the administration of orders issued under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80198a Public dock, pier, wharf, or retaining wall; entry or use prohibited under certain wind conditions; barricades; notice.
Sec. 80198a. (1) When wind conditions on the Great Lakes attain a magnitude whereby 1/3 of the waves resulting from the conditions cause any public dock, pier, wharf, or retaining wall to be awash, it constitutes a state not conducive to the orderly and safe use and occupancy of those structures.

(2) When the conditions described in subsection (1) exist, any harbormaster, peace or police officer, or other authorized official may rope off or barricade entry to these structures or post in a conspicuous manner notices that entry on those structures for the purpose of fishing, swimming, or other recreational activity is prohibited.

(3) A person shall not knowingly enter or remain upon any public dock, pier, wharf, or retaining wall for the purpose of fishing, swimming, or other recreational activity when the structure is roped, cabled, or otherwise barricaded in a manner designed to exclude intruders, when notice against entry is given by posting in a conspicuous manner, or when notice to leave or stay off is personally communicated to that person by a peace or police officer or other authorized official of the local unit of government.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80198b Public bathing beaches; buoys required; prohibited swimming area; exception; violation; fine.
Sec. 80198b. (1) The owner or person in charge of a bathing beach maintained primarily for public use shall not knowingly permit a person to bathe or swim from the bathing beach unless buoys outlining a safe bathing or swimming area are established in accordance with section 80159.

(2) A person who is bathing or swimming from a bathing beach maintained primarily for public use shall not bathe or swim in waters that

are within 100 feet beyond the buoyed bathing or swimming area. This subsection does not apply to persons swimming from adjacent privately owned beaches that are not open to the general public.

(3) A person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2007, Act 8, Imd. Eff. May 11, 2007
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA

324.80199 Part not to affect owner's rights under laws of United States.

Sec. 80199. This part does not affect any of the rights of an owner under the laws of the United States.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995
Popular Name: Act 451
Popular Name: Marine Safety Act
Popular Name: NREPA