

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 17

MICHIGAN ENVIRONMENTAL PROTECTION ACT

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