

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

PART 303
WETLANDS PROTECTION

324.30301 Definitions; technical wetland delineation standards.

Sec. 30301. (1) 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) "Council" means the wetland advisory council created in section 30329.

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

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

(f) "Director" means the director of the department.

(g) "Environmental area" means an environmental area as defined in section 32301.

(h) "Exceptional wetland" means wetland that provides physical or biological functions essential to the natural resources of the state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.

(i) "Fill material" means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

(j) "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.

(k) "Landscape level wetland assessment" means the use of aerial photographs, maps, and other remotely sensed information to predict and evaluate wetland characteristics and functions in the context of all of the following:

- (i) The wetland's landscape position and hydrologic characteristics.
- (ii) The surrounding landscape.
- (iii) The historic extent and condition of the wetland.

(l) "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.

(m) "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.

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

(o) "Nationwide permit" means a nationwide permit issued by the United States army corps of engineers under 72 FR 11091 to 11198 (March 12, 2007), including all general conditions, regional conditions, and conditions imposed by this state pursuant to a water quality certification under section 401 of title IV of the federal water pollution control act, 33 USC 1341, or a coastal zone management consistency determination under section 307 of the coastal zone management act of 1972, 16 USC 1456.

(p) "Ordinary high-water mark" means the ordinary high-water mark as specified in section 32502.

(q) "Path" means a temporary access walkway from 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 exposed, nonvegetated bottomlands or from the upland riparian property.

(r) "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.

(s) "Rapid wetland assessment" means a method for generally assessing the functions, values, and condition of individual wetlands based on existing data and field indicators.

(t) "Rare and imperiled wetland" means any of the following:

- (i) Great Lakes marsh.
- (ii) Southern wet meadow.
- (iii) Inland salt marsh.
- (iv) Intermittent wetland or boggy seepage wetland.
- (v) Coastal plain marsh.
- (vi) Interdunal wetland.
- (vii) Lakeplain wet prairie.
- (viii) Lakeplain wet-mesic prairie.
- (ix) Northern wet-mesic prairie.
- (x) Wet-mesic prairie.
- (xi) Wet prairie.
- (xii) Prairie fen.
- (xiii) Northern fen.
- (xiv) Patterned fen.
- (xv) Poor fen.
- (xvi) Muskeg.
- (xvii) Rich conifer swamp.
- (xviii) Relict conifer swamp.
- (xix) Hardwood-conifer swamp.
- (xx) Northern swamp.
- (xxi) Southern swamp.
- (xxii) Southern floodplain forest.
- (xxiii) Inundated shrub swamp.

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

(v) "Water dependent" means requiring access or proximity to or siting within an aquatic site to fulfill its basic purpose.

(w) "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.

(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.

(2) The department and local units of government shall apply the technical wetland delineation standards set forth in the United States army corps of engineers January 1987 wetland delineation manual, technical report Y-87-1, and appropriate regional United States army corps of engineers supplements, in identifying wetland boundaries under this part, including, but not limited to, section 30307.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: 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.

Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30302 Legislative findings; criteria to be considered in administration of part.

Rendered Thursday, February 02, 2012

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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 note: 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; identification of land suitable for cranberry production activities.

Sec. 30303. (1) 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, 1976 PA 442, MCL 15.234.

(2) Within 180 days after the effective date of the 2009 amendatory act that added this subsection, the commission of agriculture in consultation with the department of environmental quality shall identify at least 2,500 acres of land suitable for cranberry production activities. Priority shall be given to upland sites, sites that have been drained for agricultural use and are no longer wetland, and sites that have been drained for agricultural use and continue to be wetland. The department and the department of agriculture shall make available to the public a map of the areas identified as provided in this section. The map is for informational purposes and does not constitute a regulatory determination for purposes of this part.

(3) After 2,000 acres of sites identified under subsection (2) have been developed for cranberry production activities, at least an additional 2,500 acres shall be identified as provided in subsection (2).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** 324.30303b THIS SECTION IS REPEALED BY ACT 120 OF 2009 EFFECTIVE OCTOBER 1, 2012

324.30303b Increasing efficiency of permitting process; pilot program; designation of participants; report; repeal of section.

Sec. 30303b. (1) The department shall implement a pilot program to facilitate the role of local units of government, conservation districts, nonprofit organizations, and wetland professionals in assisting persons seeking such assistance with completing permit applications, avoiding and minimizing impacts from a proposed project, using best management practices in a proposed project, and otherwise complying with this part. The goals of the pilot program include increasing the efficiency of the permitting process through better utilization of all available resources, including department staff, while protecting the wetland of this state. The pilot program shall not affect the department's authority to make regulatory decisions in any way.

(2) Within 60 days after the effective date of the amendatory act that added this section, the director shall designate at least 3 entities to participate in the pilot program, with the goal of selecting at least 1 local unit of government, 1 conservation district, and 1 nonprofit organization. A proposed designation under this subsection shall be posted on the department's website for public review and comment for at least 21 days before the designation is made.

(3) By April 1, 2012, the department and entities participating in the program under subsection (2) shall report to the council on program results and recommendations for further refining the program.

(4) This section is repealed effective October 1, 2012.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** 324.30303d THIS SECTION IS REPEALED BY ACT 120 OF 2009 EFFECTIVE OCTOBER 1, 2012

324.30303d Development of wetland mitigation banks; pilot program; designation of participants; report; repeal of section.

Sec. 30303d. (1) The department shall implement a pilot program for assisting local units of government and partnering individuals or entities in the development of wetland mitigation banks. This assistance shall include, but not be limited to, supplying maps of potential wetland restoration areas for site selection, reviewing potential sites for mitigation banks, and, if the mitigation bank sponsor is a county with a population of 500,000 or more, expediting review of conceptual design plans.

(2) Within 180 days after the effective date of the amendatory act that added this section, the director shall designate 2 counties with a population of 500,000 or more. Those counties, or municipalities and partnering individuals or entities in those counties, are eligible to participate in the pilot program. A proposed designation under this subsection shall be posted on the department's website for at least 21 days before the designation is made, for public review and comment.

(3) By April 1, 2012, the department and entities participating in the program under subsection (2) shall report to the council on program results and recommendations for further refining the program.

(4) This section is repealed effective October 1, 2012.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

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"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

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

324.30304b Issuance of state programmatic general permits; agreement with United States army corps of engineers; applicability of subsections (2) and (3).

Sec. 30304b. (1) The department shall pursue an agreement with the United States army corps of engineers for the corps to issue state programmatic general permits under section 404(e) of title IV of the federal water pollution control act, 33 USC 1344, for activities regulated under this part in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344.

(2) This subsection applies beginning January 1, 2011. This subsection applies to an application for a permit under this part only if the application is for an activity or use in waters over which the corps retains jurisdiction under section 404(g)(1) of title IV of the federal water pollution control act, 33 USC 1344, and if the corps has not issued a state programmatic general permit for the activity or use. In such a case, if requested by the applicant in the application, all of the following apply:

(a) The department shall approve or deny the application for a permit under this part not more than 30 days after the corps grants or denies an application for a permit for the project under section 404(a) of title IV of the federal water pollution control act, 33 USC 1344, or by the end of the processing period otherwise provided for in section 1301, whichever is later. If a project proposed in a permit application processed under this subsection also requires authorization under 1 or more of parts 31, 301, 315, 323, 325, or 353, the requirements of this subdivision also apply to the department's decision under that part or parts.

(b) Subject to subsection (3), if the corps grants a permit for the project, the department shall grant a permit under this part without conditions or limitations other than those imposed by the corps unless any of the following apply:

- (i) The wetland is a rare and imperiled wetland.
- (ii) The wetland is regionally significant for the protection of fisheries, wildlife, or migratory birds.
- (iii) The site is described in section 30309(a), (e), or (g).

(iv) The proposed project involves a use or activity not regulated under section 404(a) of title IV of the federal water pollution control act, 33 USC 1344.

(3) The department shall inform the applicant in writing of the basis for a finding that the requirements of subsection (2)(b)(i), (ii), (iii), or (iv) are met and the specific reasons why denial of the permit or the imposition of additional conditions or limitations on the permit is consistent with this part and rules promulgated under this part.

(4) Subsections (2)(b) and (3) apply only to the department's decision under this part notwithstanding that the project proposed in the application also requires authorization under 1 or more of parts 31, 301, 315, 323, 325, and 353.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

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

324.30305b Cranberry beds.

Sec. 30305b. (1) The department shall consider construction of cranberry beds, including associated dikes and water control structures associated with dikes, such as headgates, weirs, and drop inlet structures, to be a water dependent activity.

(2) The following activities associated with cranberry operations are not considered to be water dependent:

(a) The construction of roads, ditches, reservoirs, and pump houses that are used during the cultivation of cranberries.

(b) The construction of secondary support facilities for shipping, storage, packaging, parking, and similar purposes.

(3) The demonstration by an applicant under section 30311 that there is no feasible and prudent alternative to the construction of cranberry beds, including dikes and water control structures associated with dikes, is not subject to either of the following presumptions:

(a) That feasible and prudent alternatives that do not involve a wetland are available.

(b) That a feasible and prudent alternative that does not affect a wetland will have less adverse effects on the aquatic ecosystem.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

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. The 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, as applicable:

(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 under a general permit, 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 affecting wetland.

(iv) A subdivision affecting wetland.

(v) A condominium affecting 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 otherwise 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;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

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"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** 324.30306b THIS SECTION IS REPEALED BY ACT 180 OF 2010 EFFECTIVE OCTOBER 1, 2015

324.30306b Preapplication meeting; fee; withdrawal of request; refund of fee; duration of written agreement; repeal of section.

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, both of the following apply:

(a) 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.

(b) There is no fee for a preapplication meeting for cranberry production activities, whether at the district office or project site. This subdivision does not apply on or after October 1, 2012.

(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 after 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 after the date of the agreement.

(5) This section is repealed effective October 1, 2015.

History: Add. 2006, Act 435, Imd. Eff. Oct. 5, 2006;—Am. 2009, Act 120, Eff. Nov. 6, 2009;—Am. 2010, Act 180, Imd. Eff. Sept. 30, 2010.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

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; determination of unreasonable costs.

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 effects of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed.

(e) The probable effects 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.

(5) If it is otherwise a feasible and prudent alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity may be considered.

(6) An alternative that entails higher costs, as described in R 281.922a(11) of the Michigan administrative code, is not feasible and prudent if those higher costs are unreasonable. In determining whether such costs are unreasonable, the department shall consider both of the following:

(a) The relation of the increased cost to the overall scope and cost of the project.

(b) Whether the projected cost is substantially greater than the costs normally associated with the particular type of project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30311a Guideline, bulletin, interpretive statement; form with instructions; effect; guideline document for evaluation of feasible and prudent alternatives; denial of application for permit; prohibition; extension of processing period; request for rule-making.

Sec. 30311a. (1) A guideline, bulletin, interpretive statement, or form with instructions under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or form with instructions under this part is not legally binding on the public or the regulated community and shall not be cited by the department for compliance and enforcement purposes.

(2) Within 1 year after the effective date of the 2009 amendatory act that added this subsection, the department shall adopt a new guidance document for the evaluation of feasible and prudent alternatives. The guidance document shall be consistent with findings and recommendations of the United States environmental protection agency's region 5 review of the program under this part. The department shall develop the guidance document in consultation with interested parties, including the council.

(3) Before the guidance document under subsection (2) takes effect, the department shall not deny an application for a permit required under section 30304 because of the availability of a feasible and prudent alternative based solely on consideration of statewide alternatives, higher cost, or reduced profit unless both of the following apply:

(a) The proposed denial has been reviewed by a department deputy director.

(b) The department has requested information from the Michigan economic development corporation and applicable regional and local economic development authorities relative to the project and considered the information received.

(4) Before the guidance document under subsection (2) takes effect, the processing period specified under section 1301 for a permit required under section 30304 is extended if department staff have proposed denying the permit for reasons set forth in subsection (7). Notwithstanding section 1307(1), the extension shall be for not more than 45 days.

(5) The department shall not file a request for rule-making under section 39 of the administrative procedures act, 1969 PA 306, MCL 24.239, for rules addressing the evaluation of feasible and prudent alternatives before October 1, 2012.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30311b Permit; validity; duration; conditions.

Sec. 30311b. (1) A permit issued under this part shall not be valid for more than 5 years.

(2) The department may establish a reasonable time when the construction, development, or use authorized under any permit issued under this part is to be completed or terminated.

(3) The department may impose on any permit or authorization under a general permit under this part conditions designed to do any of the following:

(a) Remove or reduce an impairment to wetland benefits, as set forth in section 30302, that would otherwise result from the project.

(b) Improve the water quality that would otherwise result from the project.

(c) Remove or reduce the effect of a discharge of fill material.

(4) The department may impose a condition on an authorization under a general permit under subsection (3) only after consultation with the applicant or applicant's agent.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

Rendered Thursday, February 02, 2012

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"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30311d Compensatory wetland mitigation; methods; submission of mitigation plan; financial assurance.

Sec. 30311d. (1) The department may impose as a condition on any permit, other than a general permit, under this part a requirement for compensatory wetland mitigation. The department may approve 1 or more of the following methods of compensatory wetland mitigation:

(a) The acquisition of approved credits from a wetland mitigation bank. The department shall not require a permit applicant to provide compensatory wetland mitigation under subdivision (b), (c), or (d) if the applicant prefers and qualifies to use approved credits from the wetland mitigation bank to provide required compensatory wetland mitigation under this subdivision.

(b) The restoration of previously existing wetland. The restoration of previously existing wetland is preferred over the creation of new wetland where none previously existed.

(c) The creation of new wetlands, if the permit applicant demonstrates that ecological conditions necessary for establishment of a self-sustaining wetland ecosystem exist or will be created.

(d) The preservation of exceptional wetlands.

(2) If compensatory wetland mitigation under subsection (1)(b), (c), or (d) is required, a permit applicant shall submit a mitigation plan to the department for approval. In approving a compensatory mitigation plan, the department shall consider how the location and type of wetland mitigation supports the sustainability or improvement of aquatic resources in the watershed where the activity is permitted. The permit applicant shall provide for permanent protection of the wetland mitigation site. The department may accept a conservation easement to protect wetland mitigation and associated upland.

(3) If a permittee carries out compensatory wetland mitigation under subsection (1)(b), (c), or (d) in cooperation with public agencies, private organizations, or other parties, the permittee remains responsible for the compensatory wetland mitigation to the extent otherwise provided by law.

(4) The department may require financial assurance to ensure that compensatory wetland mitigation is accomplished as specified. To ensure that wetland benefits are replaced by compensatory wetland mitigation, the department may release financial assurance only after the permit applicant or mitigation bank sponsor has completed monitoring of the mitigation site and demonstrated compliance with performance standards in accordance with a schedule in the permit or mitigation banking agreement.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30312 Minor project categories of activities; general permit for category of activities; notice and public hearing; determinations; requirements and standards; duration of general permit; mowing or removal of vegetation; coordination of general permit and minor project categories.

Sec. 30312. (1) After providing notice and an opportunity for a public hearing, the department shall establish minor project categories of activities that are similar in nature, have minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The department may act upon an application received pursuant to section 30306 for an activity

within a minor project category without holding a public hearing or providing notice pursuant to section 30307(1) or (3). A minor project category shall not be valid for more than 5 years, but may be reestablished. All other provisions of this part, except provisions applicable only to general permits, are applicable to a minor project.

(2) The department, after notice and opportunity for a public hearing, shall 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 effects on the environment. A general permit 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. A general permit shall not be valid for more than 5 years, but may be reissued.

(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.

(4) Before authorizing a specific project to proceed under a general permit, the department may provide notice pursuant to section 30307(3) but shall not hold a public hearing and shall not typically require a site inspection. The department shall issue an authorization under a general permit if the conditions of the general permit and the requirements of section 30311 are met. However, in determining whether to issue an authorization under a general permit, the department shall not consider off-site alternatives to be feasible and prudent alternatives.

(5) 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 effects on aquatic resources, including high-value aquatic habitats, the department may require that the application be processed under section 30307.

(6) The department shall coordinate general permit and minor project categories under this part and parts 301 and 325 consistent with nationwide permits, as appropriate.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2003, Act 14, Imd. Eff. June 5, 2003;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** 324.30312b THIS SECTION IS REPEALED BY ACT 120 OF 2009 EFFECTIVE OCTOBER 1, 2012

324.30312b New or existing general permits equivalent to nationwide permits or minor project categories; repeal of section.

Sec. 30312b. (1) The department shall propose new or maintain existing general permits under this part equivalent to the following nationwide permits, to the extent applicable to wetland, without further limitations:

- (a) Maintenance.
- (b) Scientific measuring devices.
- (c) Survey activities.
- (d) Oil spill cleanup.
- (e) Moist soil management.
- (f) Cleanup of hazardous and toxic waste.
- (g) Storm water management facilities.
- (h) Pipeline safety program designated time sensitive inspections and repairs.

(2) The department shall propose new or maintain existing general permits or minor project categories equivalent to the following nationwide permits, to the extent that the nationwide permits are applicable to

wetland, subject to additional limitations based on best management practices and necessary to ensure that adverse environmental effects are minimal or based on other statutes, which limitations may be established by the department after providing notice and an opportunity for public comment:

- (a) Outfall structures and associated intake structures.
- (b) Minor discharges.
- (c) Utility line activities.
- (d) Expansion of existing cranberry production activities.

(3) The department shall propose new or maintain existing general permits or minor project categories for the following:

- (a) Temporary recreational structures.
 - (b) Linear transportation projects.
 - (c) Aquatic habitat restoration, establishment, and enhancement activities, including reversion of temporary wetland restorations.
 - (d) Residential developments.
 - (e) Completed enforcement actions.
 - (f) Temporary construction, access, and dewatering.
 - (g) Cranberry production activities.
 - (h) Agricultural activities.
 - (i) Reshaping existing drainage ditches.
 - (j) Recreational facilities.
- (4) This section is repealed effective October 1, 2012.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30312d Ecologically responsible voluntary wetland restoration and enhancement projects.

Sec. 30312d. The department shall develop a program to facilitate ecologically responsible voluntary wetland restoration and enhancement projects in coordination with state, federal, tribal, and nongovernmental groups specializing in wetland restoration and conservation. The program shall include, but not be limited to, enhancing coordination, consistency, and operational procedures and improving and streamlining the permitting process, to facilitate a net gain in wetland quantity, quality, or both.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

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. (1) 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.

(2) Subsection (1) does not apply to fines or fees collected under an ordinance adopted under section 30307(4).

(3) 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, 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 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;—Am. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

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

Administrative rules: 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

324.30325 Expansion of categories of discharges; agreement with United States environmental protection agency.

Sec. 30325. The department shall pursue an agreement with the United States environmental protection agency to expand the categories of discharges subject to the waiver from the requirements of section 404(j) of title IV of the federal water pollution control act, 33 USC 1344, pursuant to section 404(k) of title IV of the federal water pollution control act, 33 USC 1344.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

324.30327 Certifications by department under federal water pollution control act.

Sec. 30327. The department may provide certifications under section 401 of title IV of the federal water pollution control act, 33 USC 1341.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act

***** 324.30329 THIS SECTION IS REPEALED BY ACT 120 OF 2009 EFFECTIVE APRIL 1, 2013 *****

324.30329 Wetland advisory council; creation; membership; appointment; term; vacancy; removal; meetings; election of chairperson and officers; quorum; compliance with open meetings act; writings subject to freedom of information act; service without compensation; reports; repeal of section.

Sec. 30329. (1) The wetland advisory council is created within the department. The council shall consist of the following:

(a) The director of the department or his or her designee. The director of the department shall invite a representative of the United States army corps of engineers, a representative of the United States environmental protection agency, and a representative of the United States department of agriculture natural resource conservation service to also serve as members of the council.

(b) The director of the department of natural resources or his or her designee.

(c) The director of the department of agriculture or his or her designee.

(d) The following members appointed by the senate majority leader:

(i) One individual representing a statewide association of home builders.

(ii) One individual representing a statewide conservation organization.

(iii) One individual representing a statewide association of local units of government.

(iv) One individual representing a statewide association of manufacturers.

(e) The following members appointed by the speaker of the house of representatives:

(i) One individual representing a statewide environmental protection organization.

(ii) One individual representing the largest general statewide farm organization.

(iii) One individual representing a statewide association of realtors.

(iv) One drain commissioner representing an association of county drain commissioners.

(f) The following members appointed by the governor:

(i) One individual representing a watershed organization.

(ii) One individual representing natural gas or electric utilities.

(iii) One individual representing a conservation district.

(iv) One individual representing a statewide association of businesses.

(v) One individual representing the general public.

(vi) A university professor with expertise in wetland science.

(vii) A wetland professional who regularly submits applications for permits and obtains permits from the department.

(2) The appointments to the council under subsection (1) shall be made not later than 30 days after the effective date of the amendatory act that added this section.

(3) An appointed member of the council shall serve for a term of 3 years. If a vacancy occurs on the council, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. The appointing officer may remove a member of the council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(4) The first meeting of the council shall be called by the director of the department. At the first meeting, the council shall elect from among its members a chairperson and any other officers that it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of the chairperson or if requested by 2 or more members.

(5) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(6) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, a member of the council representing the department of natural resources, the department of agriculture, or the department shall serve

without additional compensation.

(8) By October 1, 2010, the council shall submit a report to the governor, the department, and the standing committees and appropriations subcommittees of the legislature with primary responsibility over issues pertaining to natural resources and the environment. The report shall evaluate and make recommendations on all of the following:

(a) Improving the overall efficiency of the program under this part, including all of the following aspects of the permit application, review, and decision-making process:

(i) The quality of applications submitted.

(ii) The effect of mandatory decision-making time frames on meeting the purposes of this part, and, if appropriate, the time frames that should apply to decision-making under this part.

(b) The point in the department's process of decision-making on a permit application at which the possibility of mitigation should be considered.

(c) Actions necessary to adopt and implement measures determined by the United States environmental protection agency to support consistency with the requirements of section 404 of title IV of the federal water pollution control act, 33 USC 1344, as set forth in "Final Report Results of the U. S. Environmental Protection Agency Region 5 Review of Michigan Department of Environmental Quality's Section 404 Program", dated May 2008.

(9) By August 15, 2012, the council shall submit a report to the governor, the department, and the standing committees and appropriations subcommittees of the legislature with primary responsibility over issues pertaining to natural resources and the environment. The report shall evaluate and make recommendations on all of the following:

(a) Improving coordination and reducing duplication of effort with the United States army corps of engineers.

(b) Potential long-term changes in program structure, including all of the following:

(i) Scientific methods to achieve more consistent and accurate determinations of wetland functions and values for reviewing applications for permits, watershed planning, conservation plans, and other purposes. These methods include rapid wetland assessment and landscape level wetland assessment.

(ii) The appropriate role of local units of government and conservation districts in the administration of this part.

(iii) A certification process for wetland professionals. The council shall consider information reported under section 30303b in evaluating and making recommendations under this subparagraph.

(iv) The definition of wetland and wetland delineation methods, including the role of hydric soils as a factor in wetland delineation. In making recommendations under this subparagraph, the council shall evaluate differences in the state and federal wetland programs.

(c) The appropriate means and level of program funding under this part.

(d) Minor project categories and general permits under section 30312b(1) to (3).

(e) The appropriateness of the provisions of section 30304b as a means of reducing regulatory burdens from dual federal and state regulation.

(f) The promotion of the development of wetland mitigation banks.

(g) Ways for the public and interested parties to advise the department on a continuing basis concerning the administration and enforcement of this part.

(h) Appropriate regulation of the siting, construction, and operation of cranberry production activities, in light of the benefit of cranberry production activities to the economy, the regulatory approach of other states, and other factors.

(i) The feasible and prudent alternative standard under section 30311 and consistent application of the standard.

(j) Methods to assist both of the following in successfully obtaining permits under this part in a timely manner:

(i) Individuals proposing a use or activity for their personal homesite.

(ii) Nonprofit organizations.

(10) This section is repealed effective April 1, 2013.

History: Add. 2009, Act 120, Eff. Nov. 6, 2009.

Compiler's note: Enacting section 1 of Act 120 of 2009 provides:

"Enacting section 1. This amendatory act does not take effect unless both of the following requirements are met:

"(a) \$4,000,000.00 from the cleanup and redevelopment trust fund created in section 3e of 1976 IL 1, MCL 445.573e, and \$4,000,000.00 from the community pollution prevention fund created in section 3f of 1976 IL 1, MCL 445.573f, is appropriated by the legislature to the environmental protection fund created in section 503a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.503a.

"(b) \$2,000,000.00 is appropriated by the legislature from the environmental protection fund to support the program under part 303 of
Rendered Thursday, February 02, 2012

the natural resources and environmental protection act, 1994 PA 451, MCL 324.30301 to 324.30329."

Popular name: Act 451

Popular name: NREPA

Popular name: Wetland Protection Act