

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

CHAPTER 2  
NONPOINT SOURCE POLLUTION CONTROL

PART 81  
GENERAL NONPOINT SOURCE POLLUTION CONTROL

PART 82  
CONSERVATION PRACTICES

**324.8201 Definitions.**

Sec. 8201. As used in this part:

- (a) "Conservation easement" means that term as it is defined in section 2140.
- (b) "Conservation plan" means a plan approved by the department for all or a portion of a parcel of land that specifies the conservation practices to be undertaken and includes a schedule for implementation.
- (c) "Conservation practices" means practices, voluntarily implemented by the landowner, that protect and conserve water quality, soil, natural features, wildlife, or other natural resources and that meet 1 or more of the following:
  - (i) The practices comply with United States natural resource conservation service standards and specifications as approved by the department.
  - (ii) The practices are provided in rules promulgated by the department under this part.
  - (iii) The practices have been approved by the commission of agriculture.
- (d) "Department" means the department of agriculture or its authorized representatives.
- (e) "Fund" means the agriculture pollution prevention fund created in section 8206.
- (f) "Verification" or "verify" means a determination by the department that 1 or more conservation practices have been established and are being maintained in accordance with a conservation plan.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8202 Conservation programs; establishment; purpose; coordination with departments of natural resources and environmental quality.**

Sec. 8202. (1) The department may establish conservation programs designed to encourage the voluntary use of conservation practices in the state.

(2) In implementing the conservation programs established under this part, the department, in coordination with the departments of natural resources and environmental quality, may do 1 or more of the following:

- (a) Enter into contracts with 1 or more persons for the implementation of conservation practices on his or her land.
- (b) Enter into contracts or other agreements with 1 or more persons to administer or promote conservation programs, or to implement conservation practices.
- (c) Provide payments, financial incentives, or, upon verification of the implementation of conservation practices, reimbursement for rental payments or for costs of conservation practice implementation, or both.
- (d) Promote the use of conservation practices.
- (e) Recognize and provide awards for persons who have implemented conservation practices.
- (f) Monitor and verify compliance with conservation plans.
- (g) Enforce contracts or other agreements entered into under this part.
- (h) Terminate contracts or other agreements entered into under this part in accord with terms established in the contract or other agreement.

(3) In carrying out its responsibilities under this part, the department shall coordinate with the departments of natural resources and environmental quality and other applicable partners.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8203 Conservation practice verification; conditions; revocation; penalties and repayment.**

Sec. 8203. (1) As part of a conservation program established under this part, the department may provide for conservation practice verification. Conservation practice verification may be granted to a person if all of the following conditions are met:

- (a) The person has submitted a conservation plan in compliance with requirements of the department.
- (b) The person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.
- (c) The person has agreed to allow the department, after giving prior notice to the landowner, to conduct inspections of the applicable land and facilities.
- (d) The department has conducted an on-site inspection of the conservation practices and has determined that the person has established and is maintaining all conservation practices provided for in the conservation plan, according to the plan schedule.

(2) If the department determines at any time that the conservation practices provided in a conservation plan have not been established or are not being maintained, the department may revoke a person's conservation practice verification.

(3) If a person's conservation practice verification is revoked, the person may be subject to penalties and repayment of all or a portion of the payments, financial incentives, land rental payments, and reimbursement of costs paid for implementation of the conservation practice according to the terms of the contract.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8204 Conservation easements.**

Sec. 8204. (1) The department may purchase or otherwise acquire conservation easements in accordance with subpart 11 of part 21. A conservation easement purchased or otherwise acquired under this section may contain provisions for the allowable or required use of the land subject to the conservation easement, implementation of conservation practices on the land, maintenance of the conservation practices, opportunities for inspection of the land, penalties for noncompliance with the terms of the conservation easement, termination of the easement, and other terms agreed to by the department.

(2) If the department purchases or acquires a conservation easement under this section, the department shall record that conservation easement with the register of deeds for the county in which the land subject to the conservation easement is located. If that conservation easement is subsequently terminated, the department shall record a notice of that termination with the register of deeds for the county in which the land subject to the conservation easement is located.

(3) The department may enter into contracts with 1 or more persons to monitor and enforce the terms of conservation easements purchased or acquired under subsection (1).

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8205 Disposition of recovered money.**

Sec. 8205. Any money recovered by the department under this part, including, but not limited to, money paid to the department due to the termination of a contract, agreement, or conservation easement, shall be deposited into the fund.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8206 Agriculture pollution prevention fund.**

Sec. 8206. (1) The agriculture pollution prevention fund is created in the state treasury.

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

(3) Money in the fund or in any account within the fund at the close of the fiscal year shall remain in the fund or account and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

(4) Money in the fund shall be expended, upon appropriation, only for 1 or more of the following:

(a) For payments, financial incentives, or reimbursement for rental payments for the implementation of conservation practices.

- (b) For payments required under contracts entered into under this part.
- (c) For the purchase of conservation easements.
- (d) For monitoring and enforcement of conservation easements.
- (e) For awards to participants in conservation programs established by the department under this part.
- (f) For the promotion of conservation programs established by the department under this part.
- (g) Not more than 20% of the annual appropriations from the fund for the administrative costs of the department in implementing this part. As used in this subdivision, administrative costs include, but are not limited to, costs incurred in doing 1 or more of the following:
  - (i) Developing and implementing conservation programs.
  - (ii) Managing payments and financial incentives.
  - (iii) Monitoring and verifying the implementation of conservation practices and enforcing contracts or agreements concerning conservation practices.
  - (iv) Coordinating conservation programs with the United States department of agriculture and other state agencies with jurisdiction over conservation programs.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8207 Confidentiality; exemption from freedom of information act.**

Sec. 8207. Any information voluntarily provided by a person in connection with the development, implementation, or verification of a conservation plan or conservation practices under this part is confidential, is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and is not open to public inspection without the person's consent. Any such information that is released to a legislative body shall not contain information that identifies a specific person. The exemption provided in this section does not extend to any documents, communication, data, reports, or other information required to be collected, maintained, or made available or reported to a regulatory agency or any other person by statute, rule, ordinance, permit, order, consent agreement, or as otherwise provided by law.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8208 Rules.**

Sec. 8208. The department may promulgate rules to implement this part.

**History:** Add. 2001, Act 176, Imd. Eff. Dec. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 83 PESTICIDE CONTROL

### **324.8301 Meanings of words and phrases.**

Sec. 8301. For the purposes of this part, the words and phrases defined in sections 8302 to 8306 have the meanings ascribed to them in those sections.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8302 Definitions; A to C.**

Sec. 8302. (1) "Active ingredient" means an ingredient that will prevent, destroy, repel, or mitigate pests, or that will act as a plant regulator, defoliant, or desiccant or otherwise alter the behavior of plants or products.

(2) "Activity plan" means a plan for the mitigation of groundwater contamination at a specific location, including a time frame for implementation.

(3) "Adulterated" applies to a pesticide if its strength or purity is less than, or significantly greater than, the professed standard or quality as expressed on its labeling or under which it is sold; if any substance was substituted wholly or in part for a pesticide; or if a valuable constituent of the pesticide was wholly or in part abstracted.

(4) "Agricultural commodity" means a plant or part of a plant, or an animal or animal product, produced

primarily for sale, consumption, propagation, or other use by human beings or animals.

(5) "Agricultural pesticide" means a pesticide that bears labeling that meets federal worker protection agricultural use requirements established in 40 CFR parts 156 and 170.

(6) "Agricultural pesticide dealer" means a person engaged in distributing, selling, or offering for sale an agricultural pesticide to the ultimate user.

(7) "Animal" means all vertebrate and invertebrate species, including, but not limited to, human beings and other mammals, birds, fish, and shellfish.

(8) "Antimicrobial pesticide" means a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbial organisms, as defined under FIFRA.

(9) "Application season" means a time period of pesticide application, consistent with the category of application, within a calendar year.

(10) "Aquifer" means a geologic formation, a group of formations, or a part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(11) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of pesticides into that aquifer.

(12) "Avicide" means a pesticide intended for preventing, destroying, repelling, or mitigating pest birds.

(13) "Building manager" means the person who is designated as being responsible for the building's pest management program and to whom any reporting and notification shall be made pursuant to this part or rules promulgated under this part.

(14) "Certified applicator" means an individual who is authorized under this part to use and supervise the use of a restricted use pesticide.

(15) "Commercial applicator" means a person who is required to be a registered or certified applicator under this part, or who holds himself or herself out to the public as being in the business of applying pesticides. A commercial applicator does not include a person using a pesticide for a private agricultural purpose.

(16) "Commercial building" means a portion of a building that is not a private residence, where a business is located, and that is frequented by the public.

(17) "Confirmed contaminant" means a contaminant that has been detected in at least 2 groundwater samples collected from the same groundwater sampling point at an interval of greater than 14 days.

(18) "Contaminant" means a pesticide originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or waste that does not occur naturally in groundwater or that naturally occurs at a lower concentration than detected.

(19) "Contamination" means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activity.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8303 Definitions; D to G.**

Sec. 8303. (1) "Day care center" means a facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child, and which is licensed as a child care organization by the department of human services under 1973 PA 116, MCL 722.111 to 722.128.

(2) "Defoliant" means a substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(3) "Department" means the department of agriculture.

(4) "Desiccant" means a substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(5) "Device" means an instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating a pest; but does not include equipment used for the application of pesticides when sold separately.

(6) "Direct supervision" means directing the application of a pesticide while being physically present during the application. However, direct supervision by a private agricultural applicator means either of the following:

(a) The private agricultural applicator is in the same field or location as an uncertified applicator, directing the application of a restricted use pesticide by the uncertified applicator.

(b) The private agricultural applicator supervises an uncertified applicator and is physically present during

the initial restricted use pesticide application on an agricultural commodity or agricultural structure, including calibration, mixing, application, operator safety, and disposal.

(7) "Director" means the director of the department or his or her authorized representative.

(8) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, inventory or receive for others for a period greater than 21 days, or deliver pesticides in this state.

(9) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(10) "Environment" includes water, air, land, and all plants and human beings and other animals living therein, and the interrelationships that exist among them.

(11) "EPA" means the United States environmental protection agency.

(12) "FIFRA" means the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y.

(13) "Fungi" means all nonchlorophyll bearing thallophytes; that is, all nonchlorophyll bearing plants of a lower order than mosses and liverworts, as for example rusts, smuts, mildews, molds, yeasts, and bacteria, except those in or on other animals, and except those in or on processed foods, beverages, or pharmaceuticals.

(14) "General use pesticide" means a pesticide that is not a restricted use pesticide.

(15) "Groundwater" means underground water within the zone of saturation.

(16) "Groundwater protection rule" means a rule promulgated under this part that specifies a minimum operational standard for structures, activities, and procedures that may have contributed or may contribute to the contamination of groundwater and that specifies the standard's scope, region of implementation, and implementation period. As used in this subsection:

(a) "Structures, activities, and procedures" includes, but is not limited to, mixing, loading, and rinse pads, application equipment, application timing, application rates, crop rotation, and pest control thresholds.

(b) "Scope" means applicability to a particular pesticide, structure, activity, or procedure or pesticides containing specific ingredients.

(c) "Region of implementation" may include specific soil types or aquifer sensitivity regions or any other geographic boundary.

(17) "Groundwater resource protection level" means a maximum contaminant level, health advisory level, or, if the EPA has not established a maximum contaminant level or a health advisory level, a level established by the director of community health using risk assessment protocol established by rule under this part.

(18) "Groundwater resource response level" means 20% of the groundwater resource protection level. If 20% of the groundwater resource protection level is less than the method detection limit, the method detection limit is the groundwater resource response level.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8304 Definitions; I to M.**

Sec. 8304. (1) "Inert ingredient" means an ingredient that is not active.

(2) "Ingredient statement" means:

(a) A statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide.

(b) When the pesticide contains arsenic in any form, the ingredient statement shall include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(3) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example beetles, bugs, bees, and flies, and to other allied classes or arthropods whose members are wingless and usually have more than 6 legs, as for example spiders, mites, ticks, centipedes, and wood lice.

(4) "Insecticide" means a pesticide intended for preventing, destroying, repelling, or mitigating an insect.

(5) "Integrated pest management" means a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels.

(6) "Integrated pest management program" means a program for integrated pest management that includes at least all of the following elements:

(a) The following integrated pest management practices and principles:

(i) Site evaluation, including site description, inspection, and monitoring and the concept of threshold

levels.

(ii) Consideration of the relationship between pest biology and pest management methods.

(iii) Consideration of all available pest management methods, including population reduction techniques, such as mechanical, biological, and chemical techniques and pest prevention techniques, such as habitat modification.

(iv) Pest control method selection, including consideration of the impact on human health and the environment.

(v) Continual evaluation of the integrated pest management program to determine the program's effectiveness and the need for program modification.

(b) Recordkeeping which shall be maintained by the applicator and which shall include all of the following:

(i) The site address.

(ii) The date of service.

(iii) The target pest or pests.

(iv) The inspection report, including the number of pests found or reported, and the conditions conducive to pest infestation.

(v) The pest management recommendations made by the applicator, such as structural or habitat modification.

(vi) The structural or habitat modification or other measures that were initiated as a part of the pest management program.

(vii) The name of each pesticide used.

(viii) Quantity of each pesticide used.

(ix) The location of the area or room or rooms where pesticides were applied.

(x) The name of the applicator.

(xi) The name of the pest control firm, if a firm is employed, and the emergency telephone number.

(c) Provision of the following information to the building manager:

(i) The integrated pest management program and initial service inspection record, which shall be provided at the time of, or made available electronically within 48 hours after, the initial service.

(ii) A record that includes the information specified in subdivision (b), which shall be provided upon or made available electronically within 48 hours after the completion of each inspection, application, or service call.

(d) The acceptance of responsibility by the building manager to post signs provided by the pesticide applicator in compliance with rules promulgated under section 8325.

(7) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(8) "Labeling" means the label and all other written, printed, or graphic matter accompanying the pesticide or device, or to which reference is made on the label or in literature accompanying the pesticide or device, and all applicable modifications or supplements to official publications of the EPA, the United States departments of agriculture and interior, the United States departments of education and health and human services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(9) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, 42 USC 300f to 300j-25, and regulations promulgated under that act.

(10) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(11) "Minor use" means the use of a pesticide on a crop, animal, or site where any of the following exist:

(a) The total United States acreage for the crop or site is less than 300,000 acres.

(b) The acreage expected to be treated nationally as a result of that use is less than 300,000 acres annually.

(c) The use does not provide sufficient economic incentive to support the initial registration or continuing registration of the use.

(12) "Misbranded" applies to any pesticide or device if it is an imitation of or is offered for sale under the name of another pesticide, or if its labeling does not comply with labeling requirements of this part, the rules promulgated under this part, FIFRA, or regulations promulgated under FIFRA.

(13) "Molluscicide" means a pesticide intended for preventing, destroying, repelling, or mitigating a mollusk.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

**Popular name:** Act 451

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### **324.8305 Definitions; N to P.**

Sec. 8305. (1) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, which are unsegmented roundworms with elongated, fusiform, or sac-like bodies covered with cuticle that inhabit soil, water, plants, or plant parts. A nematode may also be called a nema or eelworm.

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

(3) "Pest" means an insect, rodent, nematode, fungus, weed, and other forms of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism, or any other organism that the director declares to be a pest under section 8322, except viruses, fungi, bacteria, nematodes, or other microorganisms in or on living animals.

(4) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests or intended for use as a plant regulator, defoliant, or desiccant. Pesticide does not include liquid chemical sterilant products, including any sterilant or subordinate disinfectant claims on such products, for use on a critical or semi-critical device, as defined in section 201 of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 321. As used in this subsection:

(a) "Critical device" includes any device that is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body.

(b) "Semi-critical device" includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body.

(5) "Pesticide registration renewal" means the registration of any pesticide that was previously registered by the department.

(6) "Place of business" means a location that is staffed by at least 1 person who independently, without supervision, sells or uses pesticides within this state or where a person exercises the right to control others in the sale or use of pesticides within this state.

(7) "Plant regulator" means a substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. Plant regulator does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(8) "Private agricultural applicator" means a certified applicator who uses or supervises the use of a restricted use pesticide for a private agricultural purpose.

(9) "Private agricultural purpose" means the application of a pesticide for the production of an agricultural commodity on either of the following:

(a) Property owned or rented by the person applying the pesticide or by his or her employer.

(b) Property of another person if applied without compensation, other than trading of personal services between producers of agricultural commodities.

(10) "Protect health and environment" means protection against any unreasonable adverse effects on the environment.

(11) "Public building" means a building that is owned or operated by a federal, state, or local government, including public universities.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8306 Definitions; R to W.**

Sec. 8306. (1) "Registered applicator" means an individual who is authorized to apply general use pesticides for a private or commercial purpose as provided in this part and in the rules promulgated under this part.

(2) "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol insecticide or rodenticide bait pack that does not require mixing or loading prior to application.

(3) "Registrant" means a person who is required to register a pesticide pursuant to this part.

(4) "Restricted use pesticide" means a pesticide classified for restricted use by the EPA or the director.

(5) "Restricted use pesticide dealer" means a person engaged in distributing, selling, or offering for sale restricted use pesticides to the ultimate user.

(6) "Rodenticide" means a pesticide intended for preventing, destroying, repelling, or mitigating rodents.

(7) "School" means public and private schools, grades kindergarten through the twelfth grade, but does not include a home school.

(8) "Supervise" means directing the application of a pesticide with or without being physically present during the application.

(9) "Unreasonable adverse effect on the environment" means any unreasonable risk to human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a pesticide.

(10) "Use of a pesticide" means the loading, mixing, applying, storing, transporting, and disposing of a pesticide.

(11) "Vendor" means a person who sells or distributes pesticides.

(12) "Violates this part" or "violation of this part" means a violation of this part, a rule promulgated under this part, or an order issued under this part.

(13) "Weed" means a plant which grows where it is not wanted.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307 Repealed. 2002, Act 418, Imd. Eff. June 5, 2002.**

**Compiler's note:** The repealed section pertained to procedures for registration of pesticides.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307a Pesticide; distribution, sale, exposure, or offer for sale; registration required.**

Sec. 8307a. (1) Every pesticide distributed, sold, exposed, or offered for sale in this state shall be registered with the director pursuant to this part. The registration shall be submitted on a form provided by the director and shall be renewed annually before July 1. The director shall not register a pesticide under this part unless the registrant has paid all water quality protection fees and late fees required under part 87, registration fees under this part, and any administrative fines imposed under this part.

(2) A pesticide is considered distributed, sold, exposed, or offered for sale in this state when the offer to sell either originates within this state or is directed by the offeror to persons in this state and received by those persons.

(3) If a registrant distributes identical pesticides under more than 1 brand name, or distributes more than 1 pesticide formulation, each brand or formulation shall be registered as a separate product.

(4) A registrant shall not register a pesticide that contains a substance that is required to be registered with the department unless that substance is also registered with the department.

(5) A pesticide registration applicant shall submit to the director a complete copy of the pesticide labeling and the following, in a format prescribed by the director:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant.

(b) The full product name of the pesticide and the EPA registration number.

(c) Other information considered necessary by the director.

(6) The applicant shall submit a complete formula of the pesticide proposed for registration, including the active and inert ingredients, when requested by the director and necessary for the director to execute his or her duties under this part. The director shall not use any information relative to formulas of products, trade secrets, or other information obtained under this part for his or her own advantage or reveal such information, other than to his or her authorized representative, the EPA, the department of environmental quality, the department of health and human services, a court of the state in response to a subpoena, a licensed physician, or in an emergency to a pharmacist or other persons qualified to administer antidotes.

(7) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.



**History:** Add. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307b Maintenance of registration; renewal; discontinuing registration.**

Sec. 8307b. (1) A pesticide that has been registered with the department must continue to be registered as long as the pesticide remains in the channels of trade in this state. It is the registrant's responsibility to maintain the pesticide registration.

(2) It is a violation of this part to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received by the director on or before the last day in June. It is the responsibility of the registrant to obtain and submit an application for renewal of a pesticide registration before the expiration date.

(3) A registrant who intends to discontinue a pesticide registration shall do either of the following:

(a) Terminate further distribution within the state and continue to register the pesticide annually for 2 successive years.

(b) Initiate a recall of the pesticide from distribution in the state prior to the expiration of the registration of the pesticide. Pesticides that do not go through a 2-year discontinuance period and that are found in the channels of trade are subject to registration penalties and all related fees since the product's last year of registration.

**History:** Add. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307c Registration of pesticide; exception.**

Sec. 8307c. Registration is not required under this part if a pesticide is shipped from 1 plant or warehouse to another plant or warehouse operated by the same person and used to make a pesticide that is registered under this part, or if the pesticide is distributed pursuant to an EPA experimental use permit.

**History:** Add. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307d Prohibited claims.**

Sec. 8307d. (1) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide can be used on sites that are not included in the pesticide labeling.

(2) No person who uses, distributes, exposes, or offers to sell a pesticide shall make claims that the pesticide has characteristics, ingredients, uses, benefits, or qualities that it does not have or that are not allowed under FIFRA.

**History:** Add. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307e Registration for special local needs.**

Sec. 8307e. To register a pesticide for special local needs pursuant to section 24(c) of FIFRA, 7 U.S.C. 136v, or the regulations promulgated under that section, the director shall require the information required under section 8307a(5). A pesticide may be registered for special local needs if the director determines that all of the following conditions are met:

(a) A special local need exists.

(b) The pesticide's composition warrants the proposed claims for it.

(c) The pesticide's labeling and other submitted material comply with the labeling requirements of FIFRA or regulations promulgated under that act.

(d) It does not cause unreasonable adverse effects on the environment.

(e) The classification for general or restricted use conforms with section 3(d) of FIFRA, 7 U.S.C. 136a.

**History:** Add. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8307f Information requirements.**

Sec. 8307f. (1) Upon the director's request, a person who has registered a pesticide shall provide the

information necessary to determine its mobility in the environment and its potential to contaminate groundwater. This information may include any of the following:

- (a) Water solubility.
- (b) Vapor pressure.
- (c) Octanol-water partition coefficient.
- (d) Soil absorption coefficient.
- (e) Henry's law constant.
- (f) Dissipation studies including the rate of hydrolysis, photolysis, or aerobic or anaerobic soil metabolism.
- (g) Product formulation.
- (h) Other information considered necessary by the director.

(2) Information requested under subsection (1) shall be consistent with product registration information required under FIFRA.

(3) As used in this section:

- (a) "Aerobic soil metabolism" means chemical degradation in soil in the presence of oxygen.
- (b) "Anaerobic soil metabolism" means chemical degradation in soil in the absence of oxygen.
- (c) "Henry's law constant" means the ratio of the partial pressure of a compound in air to the concentration of the compound in water at a given temperature.
- (d) "Hydrolysis" means a chemical reaction in which water combines with and splits the original chemical creating degradation products.
- (e) "Octanol-water partition coefficient" means the ratio of a chemical's concentration in the water-saturated octanol phase to the chemical's concentration in the octanol-saturated water phase.
- (f) "Photolysis" means a chemical reaction in which light or radiant energy serves to split the original compound creating degradation products.
- (g) "Soil absorption coefficient" means the ratio of absorbed chemical per unit weight of soil or organic carbon to the aqueous solute concentration.
- (h) "Vapor pressure" means the pressure exerted by the vapor of a substance when it is under equilibrium conditions.
- (i) "Water solubility" means the maximum amount of a material that can be dissolved in water to give a stable solution.

**History:** Add. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8308 Powers of director; audits.**

Sec. 8308. (1) The director may do all of the following:

- (a) Issue an experimental permit to a person applying for that permit if the director determines that the permit is necessary for the applicant to accumulate information necessary to register a pesticide.
- (b) Prescribe terms, conditions, and the period of time the pesticide may be used under the experimental permit, which shall be under the supervision of the director.
- (c) Revoke an experimental permit when its terms or conditions are violated or its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(2) The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8308a Access to markets for pesticides; certificate of free sale; application; fees; "certificate of free sale" defined.**

Sec. 8308a. (1) To facilitate continued access to markets for pesticides, the department may do 1 or both of the following:

- (a) At the request of a registrant or based upon records voluntarily supplied by a registrant, inspect, audit, or certify locations where pesticides are manufactured in this state.
- (b) Issue certificates of free sale under subsection (3).

(2) A registrant shall submit an application for a certificate of free sale on a form and in a manner prescribed by the department.

(3) The department shall grant or deny an application for a certificate of free sale within 10 business days

after the department receives a completed application under subsection (2) and the application fee under subsection (4). If the department determines that the application meets the requirements of this part and the rules promulgated under this part, the department shall issue a certificate of free sale. If the department determines that the application does not meet the requirements of this part or the rules promulgated under this part, the department shall deny the application and send written notice to the registrant stating the reasons for the denial.

(4) If a certificate of free sale is issued under subsection (3), the registrant shall pay the department the following fees, as applicable:

(a) An application fee, \$60.00.

(b) A duplicate copy of a certificate of free sale, \$10.00.

(5) A fee collected under subsection (4) must be deposited in the agriculture licensing and inspections fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

(6) A certificate of free sale issued under this section is valid for 1 year.

(7) As used in this section, "certificate of free sale" means a document that is issued by the department that verifies that the pesticide listed is registered with the department and is legally sold or distributed in this state and on the open market with the approval of the department.

**History:** Add. 2022, Act 124, Imd. Eff. June 29, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8309 Refusing, canceling, or suspending registration; circumstances.**

Sec. 8309. The director may refuse to register or may cancel or suspend registration of a pesticide if any of the following circumstances exist:

(a) The pesticide does not meet its EPA registration and labeling claims.

(b) The pesticide labeling and other material required to be submitted does not comply with this part or the rules promulgated under this part.

(c) The pesticide is in violation of this part.

(d) Based on substantial scientific evidence, the director determines that the use of the pesticide is likely to cause an unreasonable adverse effect on the environment, which cannot be controlled by designating the pesticide as a restricted use pesticide, by limiting the uses for which a pesticide may be used or registered, or by other changes to the registration or pesticide label.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8310 Restricted use pesticide dealer's license; examination; operation of business located outside of state; sales records; summary form of information; sale or distribution of restricted use pesticide; denial, suspension, or revocation of license; maintenance and submission of certain records; confidentiality of information; report.**

Sec. 8310. (1) A person shall not engage in distributing, selling, or offering for sale restricted use pesticides to the ultimate user except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the person in charge of each business location. The applicant shall demonstrate by written examination his or her knowledge of laws and rules governing the use and sale of restricted use pesticides.

(3) A person licensed under subsection (1) that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

(4) A restricted use pesticide dealer shall forward to the director a record of all sales of restricted use pesticides on forms provided by the director as required by rule. A restricted use pesticide dealer shall keep

copies of the records on file for 2 years. These records are subject to inspection by an authorized agent of the director. The records shall, upon request, be supplied in summary form to other state agencies. The summary shall include the name and address of the restricted use pesticide dealer, the name and address of the purchaser, the name of the pesticide sold, and, in an emergency, the quantity sold. Information may not be made available to the public if, in the discretion of the director, release of that information could have a significant adverse effect on the competitive position of the dealer, distributor, or manufacturer.

(5) A restricted use pesticide dealer shall sell or distribute restricted use pesticides for use only by applicators certified under this part.

(6) The director may deny, suspend, or revoke a restricted use pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied a restricted use pesticide dealer's license of the reasons why the license was denied.

(7) A restricted use pesticide dealer shall maintain and submit to the department records of all restricted use pesticide sales to private applicators and the intended county of application for those pesticides.

(8) Information collected in subsection (7) is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(9) A restricted use pesticide dealer that distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

- (a) The product name.
- (b) The EPA registration number.
- (c) The amount of pesticide sold or distributed.
- (d) The wholesale value of pesticide sold or distributed.
- (e) The date of sale or distribution.
- (f) The sales or distribution invoice number.
- (g) The name and address of the consignee.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8310a Agricultural pesticide dealer's license; distribution, sale, or offer for sale; applicant as person in charge; form; information to be provided; out-of-state business location; report; denial, suspension, or revocation of license; exemption from requirements of subsection (1).**

Sec. 8310a. (1) A person that is not licensed under section 8310 shall not engage in distributing, selling, or offering for sale agricultural pesticides except as authorized under an annual license for each place of business issued by the department pursuant to part 13.

(2) The applicant for a license under subsection (1) shall be the individual in charge of each business location.

(3) The application for a license under subsection (1) shall be on a form provided by the director and shall contain information regarding the applicant's proposed operations and other information considered pertinent by the director.

(4) A person licensed under subsection (1) who operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under subsection (1) shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

(5) An agricultural pesticide dealer who distributes an agricultural pesticide into this state shall report to the agricultural pesticide registrant all of the following information concerning that distribution:

- (a) The product name.
- (b) The EPA registration number.

- (c) The amount of pesticide sold or distributed.
- (d) The wholesale value of pesticide sold or distributed.
- (e) The date of sale or distribution.
- (f) The sales or distribution invoice number.
- (g) The name and address of the consignee.

(6) The director may deny, suspend, or revoke an agricultural pesticide dealer's license for any violation of this part or an order issued under this part, or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state committed by the dealer or the dealer's officer, agent, or employee. The director shall inform an applicant who is denied an agricultural pesticide dealer's license of the reasons why the license was denied.

(7) A pesticide registrant who distributes agricultural pesticides into this state is exempt from subsection (1).

**History:** Add. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8311 Certification and other requirements; identification; records of certified commercial applicator; submission of summary to director; supervision; following recommended and accepted good practices; governmental agencies subject to part and rules.**

Sec. 8311. (1) A person shall not use a restricted use pesticide without first complying with the certification requirements of this part.

(2) A person is not required to be a certified applicator to apply a restricted use pesticide for a private agricultural purpose if the person is under the direct supervision of a certified applicator, unless prohibited by the pesticide label.

(3) Certification requirements for commercial applicators shall include completion of written examinations prescribed by the director. Certification requirements for private agricultural applicators shall provide optional methods of certification to include 1 of the following:

- (a) Self-study and examination.
- (b) Classroom training and examination.

(c) An oral fact-finding interview administered by an authorized representative of the director when a person is unable to demonstrate competence by examination or classroom training.

(4) At the time of sale, private applicators shall identify the intended county of application of a restricted use pesticide.

(5) A certified commercial applicator shall maintain records of restricted use pesticide applications for 3 years from the date of application and make those records available upon request to an authorized representative of the director during normal business hours.

(6) A commercial applicator shall keep for 3 years from the date of application a record of the pesticide registration number, product name, the formulated amount applied, and application location for all restricted use pesticides used by the commercial applicator. A summary of this information indicating the pesticide registration number, product name, and total formulated amount of pesticide applied to each county during the previous calendar year shall be transmitted to the director before March 1. This summary shall be submitted on forms provided by or approved by the director. Information collected under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(7) A certified applicator shall directly supervise the application of a restricted use pesticide if prescribed by the label, this part, or rules promulgated under this part.

(8) A commercial applicator is responsible for pesticide applications made by persons under his or her supervision.

(9) Each person shall follow recommended and accepted good practices in the use of pesticides, including, but not limited to, use of a pesticide in a manner consistent with its labeling.

(10) A federal agency, state agency, municipality, county road commission, or any other governmental agency that uses a pesticide classified for restricted use is subject to this part and the rules promulgated under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8312 Certified applicator; completion of certification requirements; application for certified applicator certificate; fee; issuance of certificate; restrictions; grounds for refusal to issue or renew certificate; denying, revoking, or suspending certificate; reasons for denial; display of certificate.**

Sec. 8312. (1) To become a certified applicator, an applicant must satisfactorily complete the certification requirements prescribed by the director and categorized according to the various types of pesticide applications prescribed by rule and consistent with the regulations of the EPA.

(2) The application for a certified applicator certificate shall contain information considered to be pertinent by the director.

(3) A certified applicator applicant shall pay the appropriate fee as provided in section 8317.

(4) The director shall issue a certificate to applicants that successfully comply with all certification requirements under this part.

(5) The director may restrict an applicant to use only a certain type of equipment or pesticide upon finding that the applicant is only qualified to use that type of equipment or pesticide.

(6) The director may refuse to issue or renew a certificate if an applicant demonstrates an insufficient knowledge of any item called for in the application or has unsatisfied judgments under this part or rules promulgated under this part against him or her or if the equipment to be used by the applicant is unsafe or inadequate to properly apply pesticides.

(7) The director may at any time deny, revoke, or suspend a private agricultural applicator certificate or a commercial applicator certificate for a violation of this part or upon conviction under section 14 of FIFRA, 7 USC 136f, or upon conviction under a state pesticide law of a reciprocating state in accordance with section 8320.

(8) The director shall inform an applicant who is denied an applicator certificate of the reasons why the certificate was denied.

(9) A person shall display his or her certificate upon the request of the director.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8313 Commercial applicator; license required; qualifications; form and contents of application; fee; proof of financial responsibility; restriction; grounds for refusal to issue or renew license; denying, revoking, or suspending license; reasons for denial; allowable pesticides; limitations; operation of business located outside of state.**

Sec. 8313. (1) Commercial applicators that hold themselves out to the public as being in the business of applying pesticides shall obtain a commercial applicator license for each place of business.

(2) A commercial applicator shall be certified under section 8312 and shall have at least 1 of the following to qualify for a license:

(a) Service for not less than 2 application seasons as an employee of a commercial applicator or comparable education and experience as determined by the director.

(b) A baccalaureate degree from a recognized college or university in a discipline that provides education regarding pests and the control of pests and 1 application season of service as an employee of a commercial applicator.

(3) The commercial applicator license application shall be on a form provided by the director and shall contain information regarding the applicant's qualifications and proposed operations, the type of equipment to be used by the applicant, and other information considered pertinent by the director.

(4) An application for a commercial applicator license shall be accompanied by the appropriate fee as provided in section 8317.

(5) An application for a commercial applicator license shall be accompanied by proof of sufficient financial responsibility as prescribed by rule.

(6) The director may restrict an applicant to use only a certain type of equipment or pesticide upon finding that the applicant is qualified to use only that type.

(7) The director may refuse to issue or renew a commercial applicator license if the applicant demonstrates insufficient knowledge of an item in the application, or has unsatisfied judgments under this part or a rule promulgated under this part against him or her, or if the equipment used by the applicant is unsafe or inadequate for pesticide applications.

(8) The director may at any time deny, revoke, or suspend a commercial applicator license for a violation of this part or a violation of an order issued under this part, or upon conviction under this part, FIFRA, or a

state pesticide law of a reciprocating state in accordance with section 8320.

(9) The director shall inform an applicant that is denied a commercial applicator license of the reasons why the license was denied.

(10) A person subject to the licensing requirements in this section shall only apply pesticides that are registered with the United States EPA, or subject to either the United States EPA's or this state's laws and rules.

(11) A person subject to the licensing requirements in this section shall not represent that a pesticide application has characteristics, ingredients, uses, benefits, or qualities that it does not have.

(12) A person subject to the licensing requirements in this section shall not represent that a pesticide application is necessary to control a pest if the pest is not present or likely to occur.

(13) A commercial applicator that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The commercial applicator shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8314 Commercial application of pesticide; certified or registered applicator; qualifications; temporary registration; fee; program completion form; authorized applications; exemption; displaying registration certificate; training program; denial, revocation, or suspension of certification or registration; documents and forms.**

Sec. 8314. (1) A person shall not apply a pesticide for a commercial purpose or in the course of his or her employment unless that person is either a certified applicator or a registered applicator. A person may apply a general use pesticide for a private agricultural purpose without being a certified applicator or registered applicator.

(2) A person who is not subject to the licensing requirement in section 8313 may apply a general use ready-to-use pesticide without being a certified applicator or a registered applicator.

(3) A commercial certified or registered applicator must be at least 18 years of age.

(4) A person who is not subject to the licensing requirements in section 8313 may apply a general use antimicrobial pesticide without being a certified or registered applicator if there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(5) A commercial applicator shall only make pesticide applications in the category for which he or she is certified or registered.

(6) A registered applicator shall do all of the following:

(a) Complete a training program that is approved by the director and conducted by a trainer who has the minimum qualifications established by rule. The training program for applicators who apply pesticides for private agricultural purposes may utilize other methods of training and testing as provided in section 8311(1).

(b) Pass a test that is approved by the director.

(c) Possess a valid registration certificate issued by the director.

(7) A trainer shall issue a temporary registration to an applicant who completes an approved training program and passes a test administered by the director. A temporary registration is valid from the time it is issued until the applicant receives a registration certificate from the director. The department shall provide the applicant with the registration certificate upon payment of the fee provided for in section 8317 and when the approved trainer completes and submits a program completion form.

(8) A registered applicator who applies general use pesticides and is not subject to commercial pesticide applicator licensing requirements is exempt from the provisions requiring supervision by a certified applicator.

(9) A person shall display his or her registration certificate upon the request of the director.

(10) A registered applicator shall complete a training program every 3 years to be eligible to renew his or her registration.

(11) The director may at any time deny, revoke, or suspend a certification or registration for a violation of this part or upon conviction under this part, FIFRA, or a state pesticide law of a reciprocating state in accordance with section 8320.

(12) The director shall develop and provide the documents and forms necessary to implement this section.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8315 Aerial application of pesticides; requirements.**

Sec. 8315. (1) A private agricultural applicator or a commercial applicator, in addition to complying with the other requirements of this part, shall meet 1 or more of the following requirements before engaging in the aerial application of pesticides:

(a) Attainment of at least 3 years of experience with not fewer than 200 hours of agricultural aerial application under the supervision of a commercial aerial applicator.

(b) Be licensed as a commercial aerial applicator before December 27, 1988.

(c) Successfully complete an aerial applicator training program recognized by the director as sufficient to assure the protection of the public health, safety, and welfare and the environment.

(2) A private agricultural applicator or a commercial applicator authorized under this part to make aerial application of pesticides shall do either of the following once every 3 years:

(a) Demonstrate to the director the applicator's personal participation in a self-regulating application flight efficiency clinic sponsored or recognized by the Michigan cooperative extension service and approved by the department with an aircraft that the applicant operates.

(b) Retake the certification examinations and submit to an inspection of the applicator's aircraft, equipment, and spray operations by an authorized representative of the director.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8316 Notice of pesticide application at school or day care center.**

Sec. 8316. (1) Beginning 1 year after the effective date of the amendatory act that added this subsection, a person shall not apply a pesticide in a school or day care center unless the school or day care center has an integrated pest management program in place for the building.

(2) The primary administrator of a school or day care center or his or her designee shall annually notify the parents or guardians of children attending that school or cared for at that day care center that the parents or guardians will receive advance notice of the application of a pesticide, other than a bait or gel formulation, at the school or day care center. The primary administrator of a school or his or her designee shall give the annual notification not more than 30 days after the beginning of the school year, and the primary administrator of a day care center or his or her designee shall give the annual notification in September.

(3) An annual notification under subsection (2) shall satisfy all of the following requirements:

(a) Be in writing.

(b) Specify 2 methods by which advance notice of the application of a pesticide will be given at least 48 hours before the application. The first method shall be by posting at the entrances to the school or day care center. Subject to subdivision (c), the second method shall be 1 of the following:

(i) Posting in a public, common area of the school or day care center, other than an entrance.

(ii) E-mail.

(iii) A telephone call by which direct contact is made with a parent or guardian of a student of the school or a child under the care of the day care center or a message is recorded on an answering machine.

(iv) Providing students of the school or children under the care of the day care center with a written notice to be delivered to their parents or guardians.

(v) Posting on the school's or day care center's website.

(c) State that, in addition to notice under subdivision (b), parents or guardians are entitled to receive the notice by first-class United States mail postmarked at least 3 days before the application, if they so request, and the manner in which such a request shall be made.

(d) For a school, inform parents and guardians that they may review the school's integrated pest management program, if any, and records on any pesticide applications.

(e) For a school, provide the name, telephone number, and, if applicable, e-mail address of the person at the school building responsible for pesticide application procedures.



(4) An advance notice of application of a pesticide, other than a bait or gel formulation, shall contain all of the following information:

- (a) A statement that a pesticide is expected to be applied.
- (b) The target pest or pests.
- (c) The approximate location of the application.
- (d) The date of the application.

(e) The name, telephone number, and, if available, e-mail address of a contact person at the school or day care center responsible for maintaining records with specific information on pest infestation and actual pesticide application as required by rules.

(f) A toll-free telephone number for a national pesticide information center recognized by the department and a telephone number for pesticide information from the department.

(5) Before applying a pesticide, other than a bait or gel formulation, a school or day care center shall provide advance notice to parents and guardians consistent with subsections (3)(b) to (e) and (4). However, in an emergency, a school or day care center may apply a pesticide without providing advance notice to parents or guardians. Promptly after the emergency pesticide application, the school or day care center shall give parents or guardians notice of the emergency pesticide application that otherwise meets the requirements of subsection (3)(b) and (c). The notice shall contain a statement that a pesticide was applied and shall meet the requirements of subsection (4)(b) to (f).

(6) Liquid spray or aerosol insecticide applications shall not be made in a room of a school building or day care center building unless the room will be unoccupied by students or children for not less than 4 hours after the application or unless the product label requires a longer reentry period. The building manager shall be notified of the reentry restrictions by the applicator.

(7) The department shall do both of the following:

(a) Within 1 year after the effective date of the amendatory act that added this subsection, develop a model integrated pest management policy for schools, in consultation with the department of education and the pesticide advisory committee created in section 8326, and make the policy available to all school districts, intermediate school districts, public school academies, and private schools.

(b) Encourage local and intermediate school boards and boards of directors of public school academies to do both of the following:

(i) Adopt and follow the model integrated pest management policy developed under subdivision (a).

(ii) Require appropriate staff to obtain periodic updates and training on integrated pest management from experts on the subject.

(8) Subsections (1) to (7) do not apply to sanitizers, germicides, disinfectants, or antimicrobial agents.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 24, Imd. Eff. Mar. 10, 2004.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8316b Pesticide notification registry; notification requirements; exclusions; definitions.**

Sec. 8316b. (1) The department shall maintain a voluntary registry of individuals who, due to a medically documented condition, are required to be notified before the application of a lawn or ornamental pesticide, other than a general-use ready-to-use pesticide, but only if the application is on property adjacent to or within a physician-recommended distance from the property on which the individual's primary residence is located. The registry shall contain a list of those properties adjacent to or within a physician-recommended distance from the individual's primary residence. The notification to the individual listed in the registry shall be provided by the means provided in the registry and shall state that a pesticide application is scheduled on 1 or more of the properties listed in the registry.

(2) The notification requirements described in subsection (1) and any yard marker requirements provided by rule do not apply if the pesticide is applied only on or within 10 feet of a structure located on the property on which the pesticide application takes place and is applied to prevent, destroy, repel, or mitigate pests on the structure.

(3) As used in subsection (1):

(a) "Adjacent to" means either of the following:

(i) Sharing a common boundary line or property corner with.

(ii) Located directly across an undivided road, stream, or right-of-way from.

(b) "Physician-recommended distance" means a specified distance, not more than 100 feet from a linear boundary line, considered necessary and substantiated by a physician.

**History:** Add. 2018, Act 270, Eff. Sept. 27, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8317 Fees; certificate; license; registration; validity; duration; expiration; fees nonrefundable; waiver; deposit.**

Sec. 8317. (1) An application submitted under this part shall be accompanied by the following application fee:

- (a) For a commercial applicator certification, \$75.00.
- (b) For a private agricultural applicator certification, \$50.00.
- (c) For a commercial registered applicator, \$45.00.
- (d) For a private registered applicator, \$50.00.

(2) Certificates for commercial applicators, private agricultural applicators, and registered applicators are valid for a period of not less than 3 years to be established by rule by the director.

(3) The license application fee for a commercial applicator license is \$100.00. The license expires annually on December 31.

(4) The registration application fee for the registration of pesticides sold, offered for sale, exposed for sale, or distributed is \$100.00 per product. However, if the pesticide registration fee is received by the department after June 30, the registrant shall pay an additional late fee of \$100.00 for each pesticide.

(5) The license application fee for a restricted use pesticide dealer's license is \$100.00. The license expires annually on December 31.

(6) The license application fee for an agricultural pesticide dealer's license is \$100.00. The license expires annually on December 31.

(7) Application fees submitted under this section are not refundable.

(8) Notwithstanding any other provision of subsection (1)(b) and (d), the department shall waive any fee otherwise required under subsection (1)(b) and (d) if the individual responsible for paying the fee is, and provides proof satisfactory to the department that he or she is, an honorably discharged veteran of the armed forces of the United States.

(9) The department shall deposit application, license, registration, and administrative fees and administrative, civil, and noncriminal fines received, as well as any payment for costs or reimbursement to the department for investigation, under this part in the agriculture licensing and inspection fees fund created in section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209, to be used, pursuant to appropriation, by the director in administering and carrying out those duties required by law under this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002;—Am. 2003, Act 82, Imd. Eff. July 23, 2003;—Am. 2007, Act 78, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2012, Act 316, Imd. Eff. Oct. 1, 2012;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8318 Repealed. 2007, Act 78, Imd. Eff. Sept. 30, 2007.**

**Compiler's note:** The repealed section pertained to establishment of pesticide control fund.

**324.8319 Exemptions; supervision by allopathic or osteopathic physician or doctor of veterinary medicine.**

Sec. 8319. (1) The certification and registration of applicators and licensing requirements do not apply to any of the following:

(a) Employees of a certified private agricultural applicator while acting under the level of supervision required in this part.

(b) Persons applying general use pesticides for a private agricultural purpose.

(c) Commercial applicators applying general use microbiocides indoors where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater. However, this subdivision does not exempt from these requirements the application of antimicrobial pesticides by commercial applicators to plants or planting medium indoors.

(d) Persons not subject to licensing requirements in section 8313 that apply general use pesticides to swimming pools.

(e) Indoor applications of general use antimicrobial pesticides by persons on their own premises or employees of those persons when making applications on those premises as a scheduled and required work assignment in the course of their employment, where there is no potential for movement of an antimicrobial pesticide to affect surface water or groundwater.

(f) Allopathic or osteopathic physicians and doctors of veterinary medicine applying pesticides during the course of their normal practice and their employees and people working under their control while acting under the level of supervision required in subsections (2) and (3).

(g) Persons conducting laboratory type research involving restricted use pesticides.

(2) An allopathic or osteopathic physician or a doctor of veterinary medicine shall supervise the application of a general use pesticide by a competent employee under his or her instruction and control during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine even if the allopathic or osteopathic physician or the doctor of veterinary medicine is not physically present. An allopathic or osteopathic physician or a doctor of veterinary medicine shall directly supervise the application of a restricted use pesticide by an employee under his or her instruction or control during the course of the normal practice of the allopathic or osteopathic physician or doctor of veterinary medicine by being physically present at the time and place the restricted use pesticide is being applied.

(3) An allopathic or osteopathic physician or doctor of veterinary medicine is subject to the requirements, prohibitions, and penalties of this part and rules promulgated under this part for an application of pesticides by the allopathic or osteopathic physician or the doctor of veterinary medicine and for an application of pesticides by an employee directly or indirectly supervised by the allopathic or osteopathic physician or the doctor of veterinary medicine during the course of the normal practice of the allopathic or osteopathic physician or the doctor of veterinary medicine.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 312, Imd. Eff. June 24, 1996;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8320 Reciprocal agreements.**

Sec. 8320. The director may enter into reciprocal agreements with other states or federal agencies for the purpose of accepting certification or registration required for pesticide applicators, if those states or federal agencies have an approved program to certify or register applicators, and if the requirements for certification or registration by those states or federal agencies equal or exceed the certification or registration requirements of this state.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8321 Responsibility for damage resulting from misuse of pesticides; filing claim for damages; inspection of damages; collection of samples; effect of failure to file report.**

Sec. 8321. (1) A certificate or license issued by the director does not exonerate the holder from responsibility for damage resulting from misuse of pesticides, such as, but not limited to, overdosing, drifting, or misapplication.

(2) A person claiming damages from a pesticide application shall file a claim to, and on a reporting form provided by, the director. This report shall be filed within 60 days after the date of the alleged damaging application or first observation of damage by the claimant. If a growing crop is alleged to have been damaged, the report shall be filed before 25% of the crop is harvested. The director shall, within 7 days after receipt of the report, notify the applicator and the owner or lessee of the property or other persons who may be charged with the responsibility of the damages claimed, and furnish them copies of any statements that are requested. The director or his or her representative will inspect damages if the director determines that the complaint has sufficient merit. The director shall make all information pertaining to the complaint available to the person claiming damage and to the person who is alleged to have caused the damage.

(3) The claimant shall permit the director, the applicator, and their representatives, such as a bondsman or insurer, to observe within reasonable hours the property or nontarget organism alleged to have been damaged and to collect samples for further examination in order that damage may be determined.

(4) The filing of a report or the failure to file a report is not required to be alleged in any petition filed in a court of law, and the failure to file the report is not a bar to the maintenance of a criminal or civil action.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8322 Additional powers of director; preliminary order; program on pesticide container recycling and disposal.**

Sec. 8322. (1) The director may do all of the following:

- (a) Declare as a pest any form of plant or animal life, except viruses, nematodes, bacteria, or other microorganisms on or in living human beings or other animals, that is injurious to health or the environment.
- (b) Determine the toxicity of pesticides to human beings. The director shall use the data in support of registration and classification as a guide in this determination.
- (c) Determine pesticides, and quantities of substances contained in pesticides, that are injurious to the environment. The director shall use the EPA regulations as a guide in this determination.
- (d) Enter into cooperative agreements with agencies of the federal government or any other agency of this state, or an agency of another state, for the purpose of implementing this part and securing uniformity of rules.
- (e) Enter and conduct inspections upon any public or private premises or other place, including vehicles of transport, where pesticides or devices are being used or held for distribution or sale, for the purposes of inspecting records, inspecting and obtaining samples of pesticides or devices, and to inspect equipment or methods of application, to assure compliance with this part and the rules promulgated under this part.
- (f) Allow only certified applicators to apply a pesticide that is classified as a restricted use pesticide pursuant to subsection (2).
- (g) Conduct investigations when there is reasonable cause to believe that a pesticide has been used in violation of this part or the rules promulgated under this part.

(2) In addition to any other authority provided by this part, the director, by administrative order, may:

(a) Classify a pesticide as a restricted use pesticide in accordance with any 1 of the restrictive criteria in 40 C.F.R. 152.170.

(b) Create certification categories in addition to those promulgated by rule.

(3) Prior to classifying a pesticide as a restricted use pesticide under subsection (2), the director shall issue a preliminary administrative order and provide for a 30-day period for public comment and review pertaining to the preliminary order. Prior to issuing the final administrative order, the director shall review and consider any public comments received during the 30-day period. An administrative order classifying a pesticide as a restricted use pesticide shall cite each of the provisions of subsection (2) that justify that classification.

(4) The department shall develop a program on pesticide container recycling and disposal to be approved by the commission of agriculture. The program shall be limited to licensed pesticide dealers and other persons seeking approval from the department for participation in the program.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8323 Confirmation of groundwater contamination; duties of director; development of activity plan by person responsible for contamination; approval or rejection by director; continuation of certain activities; order to cease or modify activities; hearing.**

Sec. 8323. (1) Upon confirming contamination of groundwater by a pesticide pursuant to part 87 at a single location, the director shall do all of the following:

- (a) Assist in the coordination of local activities designed to prevent further contamination of groundwater.
- (b) Conduct envelope monitoring.
- (c) Perform an evaluation of activities that may have contributed to the contamination.
- (d) Make a determination as to the degree to which groundwater stewardship practices were being utilized.
- (e) Make a determination as to the potential source or sources of the contamination.

(2) If confirmed concentrations of pesticides exceed the groundwater resource response level or a confirmed contaminant has migrated into groundwater off of the property, the director shall require a person whose action or negligence was potentially responsible for the contamination to develop an activity plan. A person required to develop an activity plan shall develop and submit the activity plan to the director within 90 days after receiving notice from the director. Upon receipt of an activity plan, the director shall approve or reject the plan within 90 days. If rejected, the director shall provide a description of reasons for rejection. Upon receipt of a rejection, the person shall within 90 days develop an acceptable activity plan.

(3) If the activities on a contamination site are determined by the director to be in accordance with all applicable components of the groundwater stewardship practices and groundwater protection rules, activities that are not responsible for or potentially responsible for the contamination incident may continue.

(4) If activities on a contamination site are determined by the director not to be in accordance with this part, the director may issue an order to cease or modify activities on the site involving pesticide use. A person aggrieved by an order issued under this section may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the

Michigan Compiled Laws.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.8324 Groundwater protection rules.**

Sec. 8324. (1) The director shall promulgate a groundwater protection rule that defines the scope and region of implementation of the rule if any of the following occur:

(a) A pesticide has been confirmed in groundwater at levels exceeding its groundwater resource response level in at least 3 distinct locations as a result of similar activities as determined under section 8323(1) and the director determines that voluntary adoption of the groundwater stewardship practices pursuant to part 87 has not been effective in preventing groundwater contaminant concentrations from exceeding the groundwater resource response level.

(b) The EPA proposes to suspend or cancel registration of the pesticide, prohibits or limits the pesticide's sale or use in the state, or otherwise initiates action against the pesticide because of groundwater concerns.

(2) The director may promulgate a groundwater protection rule for a specific pesticide if the pesticide contains an active ingredient with a method detection limit greater than its groundwater resource response level.

(3) In determining the need for and scope of a groundwater protection rule, the director shall consider the type of contaminant or contaminants and the extent to which any of the following apply:

(a) The source or sources of the contaminant or contaminants can be identified.

(b) An identified source or sources are associated with a specific activity or activities.

(c) Local response to the contamination is adequate to protect groundwater.

(d) There are state label restrictions as allowed under sections 18 and 24 of FIFRA, chapter 125, 86 Stat. 995 and 997, 7 U.S.C. 136p and 136v, that could adequately address the problem.

(e) Restricted use classification could adequately address the problem.

(f) The use, value, and vulnerability of the resource and whether the groundwater is a currently or reasonably expected source of drinking water.

(g) The technical and economic feasibility of any mandated practices on persons in the region.

(h) The overall productivity and economic viability of the state's agriculture.

(4) In determining the region of implementation for a groundwater protection rule, the director shall consider both of the following:

(a) The reliability and geographical distribution of groundwater sample test data.

(b) The extent to which local aquifer sensitivity conditions can be considered characteristics of a larger region.

(5) The director may approve alternative operations to those defined in a groundwater protection rule if they can be shown to provide the equivalent level of groundwater protection.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.8325 Rules.**

Sec. 8325. (1) The director shall promulgate rules for implementing this part, including, but not limited to, rules providing for the following:

(a) The collection, examination, and reporting the results of examination of samples of pesticides or devices.

(b) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.

(c) The designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state. The director may include in the rule the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides.

(d) The certification and licensing of applicators and the licensing of restricted use pesticide dealers and agricultural pesticide dealers.

(e) The maintenance of records by certified commercial applicators with respect to applications of restricted use pesticides.

(f) Good practice in the use of pesticides.

(g) Notification or posting, or both, designed to inform persons entering certain public or private buildings or other areas where the application of a pesticide, other than a general use ready-to-use pesticide, has

occurred.

(h) Use of a pesticide in a manner consistent with its labeling including adequate supervision of noncertified applicators if appropriate.

(i) Prenotification by the building manager upon request for affected persons regarding the application of a pesticide at daycare centers and schools.

(j) Responsibility of a building manager to post signs provided to him or her by a commercial applicator.

(k) Designation of posted school bus stops as sensitive areas.

(l) The establishing of a schedule of civil fines for violation of local ordinances as described in section 8328(3).

(2) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules pertaining to all of the following:

(a) The development of a training program for applicators who apply pesticides for private agricultural purposes on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(b) The development of training programs for integrated pest management systems in schools, public buildings, and health care facilities.

(c) The duty of commercial applicators to inform customers of potential risks and benefits associated with the application of pesticides.

(3) By June 27, 1990, the director shall submit rules to the joint committee on administrative rules pertaining to the protection of agriculture employees who hand harvest agricultural commodities regarding all of the following:

(a) The establishment of field reentry periods after the application of agricultural pesticides.

(b) The posting and notification of areas where pesticides have been applied.

(c) The use of protective clothing, safety devices, hand washing, or other methods of protection from pesticide exposure.

(d) Notification of agricultural workers of poison treatment facilities.

(4) If the EPA at any time adopts and publishes agricultural worker protection standards, the federal standards shall supersede rules promulgated under subsection (3).

(5) By December 27, 1989, the director shall submit rules to the joint committee on administrative rules. These rules shall include all of the following:

(a) Minimum standards of competency and experience or expertise for trainers of certified and registered applicators.

(b) The development of a training program for applicators on the use of appropriate procedures for the application of pesticides; safety procedures for pesticide application; clothing and protective equipment for pesticide application; the detection of common symptoms of pesticide poisoning; the means of obtaining emergency medical treatment; hazards posed by pesticides to workers, the public health, and the environment; specific categories of pesticides; and the requirements of applicable laws, rules, and labeling.

(c) The number of directly supervised application hours required before a registered applicator may apply each category of restricted use pesticide without direct supervision.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 285.636.1 et seq. of the Michigan Administrative Code.

### **324.8326 Pesticide advisory committee; creation; appointment, qualifications, and terms of members; vacancies; meetings; quorum; duties and responsibilities; meetings open to the public.**

Sec. 8326. (1) A pesticide advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director.

(b) The director of the department of natural resources.

(c) A representative of the department of natural resources selected by the director of the department of natural resources who has expertise regarding water quality programs.

(d) The director of public health.

- (e) The director of the Michigan cooperative extension service.
- (2) The director shall appoint additional members to the committee, 1 each representing the following:
  - (a) The Michigan pest control association.
  - (b) Licensed outdoor commercial applicators.
  - (c) Producers of agricultural commodities.
  - (d) Licensed aerial applicators.
  - (e) Nongovernmental organizations for environmental preservation.
  - (f) Farm employees.
  - (g) Those in the medical or health science profession experienced in the toxicology of pesticides.
  - (h) Agricultural chemical industry.
  - (i) Nongovernmental organizations representing human health interests.
- (3) The members of the committee may designate an authorized representative or substitute to represent them on the committee. Of the members first appointed by the director, 3 shall serve for 1 year, 3 for 2 years, and 2 for 3 years. Thereafter, an appointment shall be for 3 years. The director shall remove any member who is absent, either personally or through a designated representative or substitute, for 4 or more consecutive meetings. Vacancies shall be filled for the balance of an unexpired term. The committee shall meet on the call of the director, who shall serve as chairperson. The director shall call a meeting of the committee upon request of 2 or more members. A majority of the members of the committee constitutes a quorum.
- (4) The pesticide advisory committee shall consult with and advise the director in the administration of this part and shall have the following responsibilities:
  - (a) To analyze and summarize information pertaining to pesticide use, including, but not limited to, the number and types of pesticide use violations and the underlying causes and circumstances involving pesticide misuse, and to develop a profile of violators of this part.
  - (b) To evaluate potential contamination related to the size and disposal of pesticide containers for home, agricultural, industrial, and commercial use and make recommendations to the legislature.
  - (c) To utilize available information pertaining to the misuse of pesticides to determine whether the training programs offered by the director are effective in curtailing misuses.
  - (d) To review all training requirements for applicators and persons licensed under this part, including the specific review of the components of each area tested under this part, and to make recommendations to the director regarding training and testing. Notwithstanding the responsibilities of the committee under this subdivision, the specific test questions prepared to implement the requirements of this part shall remain confidential.
  - (e) To annually publish a report to be submitted to the governor, the legislature, and the director. The report shall include all of the following:
    - (i) A review of the recommendations of the committee.
    - (ii) Recommendations regarding amendatory language for this part.
    - (iii) Recommendations regarding resources necessary to adequately implement this part.
    - (iv) A summary of the annual enforcement actions taken under this part.
- (5) All meetings of the committee shall be conducted pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8327 Order to cease use of, or to refrain from intended use of, pesticide; effect of noncompliance; inspection; rescission of order.**

Sec. 8327. (1) When the director has probable cause to believe that an applicator is using or intending to use a pesticide in an unsafe or inadequate manner or in a manner inconsistent with its labeling, the director shall order the applicator to cease the use of or refrain from the intended use of the pesticide. The order may be either oral or written and shall inform the applicator of the reason for the order.

(2) Upon receipt of the order, the applicator shall immediately comply with the director's order. Failure to comply constitutes cause for revocation of the applicator's license or certification or registration and subjects the applicator to the penalty imposed under section 8333.

(3) The director shall rescind the order upon being satisfied that the applicator has complied with the order.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8328 Local governments; powers.**

Sec. 8328. (1) Except as otherwise provided in this section, it is the express legislative intent that this part preempt any local ordinance, regulation, or resolution that purports to duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, then that local unit of government may pass an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (7). The local unit of government's enforcement response for a violation of the ordinance that involves the use of a pesticide is limited to issuing a cease and desist order as prescribed in section 8327.

(3) A local unit of government may enact an ordinance identical to this part and rules promulgated under this part regarding the posting and notification of the application of a pesticide. Subject to subsection (8), enforcement of such an ordinance may occur without prior authorization from the department and without a contract with the department for the enforcement of this part and rules promulgated under this part. The local unit of government shall immediately notify the department upon enactment of such an ordinance and shall immediately notify the department of any citations for a violation of that ordinance. A person who violates an ordinance enacted under this subsection is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(4) A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and which regulates the distribution, sale, storage, handling, use, application, transportation, or disposal of pesticides under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the use of a pesticide within that unit of government has resulted or will result in the violation of other existing state laws or federal laws.

(5) An ordinance enacted pursuant to subsections (2), (3), and (4) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (4) shall not be enforced by a local unit of government until approved by the commission of agriculture. If the commission of agriculture denies an ordinance enacted pursuant to subsection (4), the commission of agriculture shall provide a detailed explanation of the basis of the denial within 60 days.

(6) Upon identification of unreasonable adverse effects on the environment or public health by a local unit of government as evidenced by a resolution submitted to the department, the department shall hold a local public meeting within 60 days after the submission of the resolution to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the use of pesticides. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(7) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated pursuant to this part. The department shall have sole authority to assess fees, register and certify pesticide applicators, license commercial applicators and restricted use pesticide dealer firms, register pesticide products, cancel or suspend pesticide registrations, and regulate and enforce all provisions of this part pertaining to the application and use of a pesticide to an agricultural commodity or for the purpose of producing an agricultural commodity.

(8) For any ordinance enacted pursuant to this section, the local unit of government shall provide that persons enforcing the ordinance comply with the training and enforcement requirements as determined by the director. A local unit of government shall reimburse the department for actual costs incurred in training local government personnel.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 172, Imd. Eff. Apr. 18, 1996.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8329 Order to stop prohibited conduct; proceeding in rem for condemnation; disposition of pesticide or device; award of court costs, fees, storage, and other expenses.**



Sec. 8329. (1) When the director has reasonable suspicion that a pesticide or device is distributed, stored, transported, offered for sale, or used in violation of this part, the director may issue an order to stop the prohibited conduct. The person shall immediately comply with the order.

(2) A pesticide or device that is transported, or is in original unbroken packages, or is sold or offered for sale in this state, or is imported from a foreign country, in violation of this part, is liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if:

(a) In the case of a pesticide, any of the following circumstances exist:

(i) It is adulterated or misbranded.

(ii) It is not registered pursuant to this part.

(iii) Its labeling fails to bear the information required by FIFRA or by regulations promulgated under FIFRA.

(iv) Its coloring is different than that required under FIFRA.

(v) Any claims or directions for its use differ from the representations made with its registration.

(b) In the case of a device, it is misbranded.

(c) In the case of a pesticide or device, when used in accordance with the requirements imposed under this part it causes unreasonable adverse effects on the environment.

(3) If the pesticide or device is condemned, it shall be disposed of by destruction or sale as the court directs. If the pesticide or device is sold, the proceeds less the court costs shall be credited to the general fund. A pesticide or device shall not be sold contrary to this part or the laws of the jurisdiction in which it is sold. Upon payment of the costs of the condemnation proceedings and the execution and delivery of a sufficient bond conditioned that it shall not be sold or disposed of contrary to this part or the laws of the jurisdiction in which it is sold, the court may direct that it be delivered to the owner. The proceedings of condemnation cases shall conform as nearly as possible to proceedings in admiralty, except that either party may demand trial by jury of an issue of fact joined in a case, and the proceedings shall be brought by and in the name of the people of the state.

(4) Court costs, fees, storage, and other proper expenses shall be awarded against the person, intervening as claimant of the pesticide or device upon entry of a decree of condemnation.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8330 Containers; labels; colored or discolored pesticides; handling, storage, display, or transportation of pesticides; adding or taking substance from pesticide; filing and inspection of shipping data.**

Sec. 8330. (1) Pesticides distributed, transported, sold, or exposed or offered for sale in this state shall be in the registrant's or manufacturer's unbroken immediate container and shall have attached to it a label conforming to the labeling requirements as prescribed under this part or the rules promulgated under this part. The unbroken container requirement of this subsection does not apply to an applicator who is transporting a pesticide between the place of storage and the area of application.

(2) A pesticide container shall be free from damage that renders the pesticide unsafe.

(3) A pesticide that is required to be colored shall not be distributed, sold, exposed, or offered for sale unless the pesticide is colored as prescribed.

(4) A pesticide shall be handled, stored, displayed, or transported so that it will not endanger human beings and the environment or endanger food, feed, or other products that are stored, displayed, or transported with the pesticide.

(5) A person shall not detach, alter, deface, or destroy any portion of a label or labeling provided for in this part or rules promulgated under this part, or add a substance to or take a substance from a pesticide in a manner that may defeat the purpose of this part or FIFRA.

(6) A pesticide vendor shall keep on file, subject to inspection by an authorized agent of the director for a period of 1 year, all invoices, freight bills, truckers' receipts, waybills, and similar shipping data pertaining to pesticides that would establish date and origin of the shipments.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Imd. Eff. June 5, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8331 False information; resisting, impeding, or hindering director.**

Sec. 8331. A person shall not give false information in a matter pertaining to this part, or resist, impede, or hinder the director or his or her authorized representatives in the discharge of their duties.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8332 Hearings.**

Sec. 8332. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8333 Violation; administrative fine; warning; action to recover fine; misdemeanors; injunction; action by attorney general; compliance as affirmative defense; gross negligence; applicability of revised judicature act.**

Sec. 8333. (1) A person who violates this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted alone or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for a hearing that a person has violated or attempted to violate any provision of this part, may impose an administrative fine of not more than \$1,000.00 for each violation of this part.

(3) If the director finds that a violation or attempted violation occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of a person to pay an administrative fine imposed under this section. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under this section.

(5) A person who violates this part or attempts to violate this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both, for each offense.

(6) The director may bring an action to enjoin a violation of this part or an attempted violation of this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(7) The attorney general may file a civil action in which the court may impose on any person who violates this part or attempts to violate this part a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the pesticide control fund created in section 8318.

(8) In defense of an action filed under this section, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation of this part or attempted violation of this part, he or she was in compliance with label directions and with this part and rules promulgated under this part at the time of the alleged violation.

(9) A civil cause of action does not arise for injuries to any person or property if a private agricultural applicator, or a registered applicator who stores, handles, or applies pesticides only for a private agricultural purpose, was not grossly negligent and stored, handled, or applied pesticides in compliance with this part, rules promulgated under this part, and the pesticide labeling.

(10) Applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed pursuant to this part.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 418, Eff. Sept. 3, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8334 Exemptions from penalties.**

Sec. 8334. The penalties provided for violations of this part do not apply to any of the following:

(a) A carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the pesticide or devices.

(b) Public officials of this state and the federal government while engaged in the performance of their official duties in administering the state or federal pesticide laws or regulations.

(c) A person who ships a substance or mixture of substances being tested in which the only purpose is to determine its toxicity or other properties and from the use of which the user does not expect to receive any pest control benefit.

(d) The shipment or movement of an unregistered or canceled pesticide for the specific purposes of disposal or storage.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8335 Probable cause as precluding recovery of damages.**

Sec. 8335. A court shall not allow the recovery of damages from an administrative action taken or an order stopping the sale or use or requiring seizure if the court finds that there was probable cause for the action or order.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8336 Effect of part on other civil or criminal liability; act or omission occurring before June 25, 1976.**

Sec. 8336. (1) This part does not terminate or in any way modify any liability, civil or criminal, which is in existence on June 25, 1976.

(2) For the purposes of determining any penalty or liability in respect to an act or omission occurring before June 25, 1976, former Act No. 297 of the Public Acts of 1949, and former Act No. 233 of the Public Acts of 1959 shall apply.

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

**Popular name:** Act 451

**Popular name:** NREPA

## PART 85 FERTILIZERS

### **324.8501 Definitions; A to T.**

Sec. 8501. As used in this part:

(a) "Adulterated product" means a product that contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown on the label.

(b) "Agricultural use" means that term as defined in section 36101.

(c) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(d) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer.

(e) "Aquifer sensitivity region" means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit.

(f) "Biosolids" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment, or other means.

(g) "Brand or product name" means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(h) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(i) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or blended as specifically requested by the consumer prior to blending.

(j) "Department" means the department of agriculture and rural development.

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

(l) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

- (m) "Distributor" means any person who distributes fertilizer for sale or use in this state.
- (n) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.
- (o) "Fertilizer material" means a fertilizer to which 1 or more of the following apply:
- (i) Contains not more than 1 of the following as primary nutrients:
    - (A) Total nitrogen (N).
    - (B) Available phosphate (P<sub>2</sub>O<sub>5</sub>).
    - (C) Soluble potash (K<sub>2</sub>O).
  - (ii) Has 85% or more of its plant nutrient content present in the form of a single chemical compound.
  - (iii) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.
- (p) "Fund" means the fertilizer control fund created under section 8514.
- (q) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate (P<sub>2</sub>O<sub>5</sub>), and soluble potash (K<sub>2</sub>O), of a fertilizer. Grade shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.
- (r) "Groundwater" means underground water within the zone of saturation.
- (s) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture and rural development pursuant to part 87, designed to protect groundwater from contamination by fertilizers.
- (t) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.
- (u) "Impervious surface" means a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.
- (v) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.
- (w) "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.
- (x) "Licensee" means the person who receives a license to manufacture or distribute fertilizers under this part.
- (y) "Lot" means an identifiable quantity of fertilizer that can be sampled officially according to methods adopted under section 8510, that is contained in a single vehicle, or that is delivered under a single invoice.
- (z) "Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.
- (aa) "Manufacture" means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.
  - (bb) "Natural fertilizer" means a substance composed only of natural organic, natural inorganic, or both types of fertilizer materials and natural fillers.
  - (cc) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.
  - (dd) "Turf" means land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2008, Act 13, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8501a Definitions; M to U.**

Sec. 8501a. As used in this part:

- (a) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.
- (b) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.
- (c) "Official sample" means a sample of fertilizer taken by a representative of the department of agriculture

in accordance with acceptable sampling methods under section 8510.

(d) "Order" means a cease and desist order issued under section 8511.

(e) "Package" or "packaged" means any type of product regulated by this part that is distributed in individual labeled containers.

(f) "Percent" and "percentage" mean the percentage by weight.

(g) "Person" means an individual, partnership, association, firm, limited liability company, or corporation.

(h) "Primary nutrients" means total nitrogen, available phosphate, or soluble potash, or any combination of those nutrients.

(i) "Registrant" means the person who registers a product under this part.

(j) "Soil conditioner" means any substance that is used or intended for use to improve the physical characteristics of soil, including, but not limited to, materials such as peat moss and peat products, composted products, synthetic soil conditioners, or other products that are worked into the soil or are applied on the surface to improve the properties of the soil for enhancing plant growth. Soil conditioner does not include guaranteed plant nutrients, agricultural liming materials, pesticides, unmanipulated animal or vegetable manures, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth. A soil conditioner for which claims are made of nutrient value is considered a fertilizer for the purposes of this part.

(k) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as use in connection with home gardens, lawns, shrubbery, flowers, golf courses, parks, and cemeteries, and may include fertilizers used for research or experimental purposes.

(l) "Ton" means a net weight of 2,000 pounds avoirdupois.

(m) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

**History:** Add. 2006, Act 503, Eff. Mar. 30, 2007.

**Compiler's note:** Act 451

**Popular name:** NREPA

### **324.8502 Label; invoice.**

Sec. 8502. (1) A packaged fertilizer distributed in this state, including packaged mixed fertilizer and soil conditioner, shall have placed on or affixed to the package or container a label setting forth in clearly legible and conspicuous form the following:

(a) The net weight of the contents of the package, except that soil conditioners, peat, or peat moss may be designated by volume.

(b) Brand or product name.

(c) Name and address of the licensed manufacturer or distributor.

(d) Grade. However, the grade is not required when no primary nutrients are claimed. This subdivision does not apply to peat or peat moss, material sold as a soil conditioner, or fertilizer for which no primary nutrients are claimed.

(e) Guaranteed analysis. This subdivision does not apply to peat or peat moss or material sold as a soil conditioner.

(2) A fertilizer distributed in this state in bulk, except a custom blend, shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Brand or product name.

(e) Grade. However, the grade is not required when no primary nutrients are claimed.

(f) Guaranteed analysis.

(g) Net weight.

(3) A custom blend shall be accompanied by a written or printed invoice or statement to be furnished to the purchaser at the time of delivery containing in clearly legible and conspicuous form the following information:

(a) Name and address of the licensed manufacturer or distributor.

(b) Name and address of purchaser.

(c) Date of sale.

(d) Either the net weight and guaranteed analysis of the custom blend or the guaranteed analysis and net weight of each material used in the formulation of the custom blend or both.

(4) Fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving

the name and address of the licensed manufacturer or distributor and the name and grade of the product.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8503 Order and form of guaranteed analysis; minimum percentage of plant nutrients; additional plant nutrients; other beneficial compounds or substances.**

Sec. 8503. (1) The guaranteed analysis shall show the minimum percentage of plant nutrients claimed in the following order and form:

- (a) Total nitrogen (N). \_\_\_\_\_%
- Available phosphate (P<sub>2</sub>O<sub>5</sub>). \_\_\_\_\_%
- Soluble potash (K<sub>2</sub>O). \_\_\_\_\_%

(b) When applied to mixed fertilizers, grade shall be given in whole numbers only. However, specialty fertilizers with a guarantee of less than 1% of total nitrogen, available phosphate, and soluble potash may use fractional units. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(c) When applied to custom blends, grade can either be given in whole numbers or in numbers expressed to the nearest 1/10 of a percent in the form of a decimal in the analysis.

(d) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

(2) Additional plant nutrients, other than nitrogen, phosphorus, and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis, at levels not less than those established by rules. Other beneficial compounds or substances, determinable by laboratory methods, may be guaranteed if approved by the director.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8504 License to manufacture or distribute fertilizer; fee; application; beneficial use by-product intended for beneficial use 3; notice of additional distribution points; exceptions; expiration; operation of business located outside of state.**

Sec. 8504. (1) A person shall not manufacture or distribute fertilizer in this state, except specialty fertilizer and soil conditioners, until the appropriate water quality protection fee provided in section 8715 has been submitted, and except as authorized by a license to manufacture or distribute issued by the department pursuant to part 13. An application for a license shall be accompanied by a fee of \$100.00 for each of the following:

- (a) Each fixed location at which fertilizer is manufactured in this state.
- (b) Each mobile unit used to manufacture fertilizer in this state.
- (c) Each location out of this state that applies labeling showing an out-of-state origin of fertilizer distributed in this state to nonlicensees.

(2) An application for a license to manufacture or distribute fertilizer shall include all of the following:

- (a) The name and address of the applicant.
- (b) The name and address of each bulk distribution point in this state not licensed for fertilizer manufacture or distribution. The name and address shown on the license shall be shown on all labels, pertinent invoices, and bulk storage for fertilizers distributed by the licensee in this state.

(3) If the fertilizer is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(4) The licensee shall inform the director in writing of additional distribution points established during the period of the license.

(5) A distributor is not required to obtain a license if the distributor is selling fertilizer of a distributor or a manufacturer licensed under this part.

(6) All licenses to manufacture or distribute fertilizer expire on December 31 of each year.

(7) A person licensed under this section that operates from a business location outside this state shall do either of the following:

- (a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company

authorized to transact business in this state and having a business office identical with the registered office. The person licensed under this section shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred in auditing the records if they are held at an out-of-state location.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8505 Distribution of specialty fertilizer or soil conditioner; registration; application; labels to accompany application; beneficial use by-product intended for beneficial use 3; copy of registration approval; expiration; fees; labeling blended soil conditioners; operation of business located outside of state.**

Sec. 8505. (1) A person shall not distribute a specialty fertilizer or soil conditioner unless it is registered with the department. An application for registration listing each brand and product name of each grade of specialty fertilizer or soil conditioner shall be made on a form furnished by the director. An application shall be accompanied with the fees described in subsection (4) for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application.

(2) If the specialty fertilizer or soil conditioner is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(3) Upon approval of an application by the director, a copy of the registration approval shall be furnished to the applicant. All registrations expire on December 31 of each year.

(4) A person applying for a registration under subsection (1) shall pay the following annual fees for each brand and product name of each grade:

(a) Registration fee of \$25.00.

(b) Appropriate water quality protection fee provided for in section 8715.

(5) A distributor is not required to register a brand of fertilizer that is registered under this part by another person, if the label does not differ in any respect.

(6) A manufacturer or distributor of custom blend specialty fertilizers for home lawns, golf courses, recreational areas, or other nonfarm areas is not required to register each grade distributed but shall license their firm on an application furnished by the director for an annual fee of \$100.00 and shall label the fertilizer as provided in section 8502. The label of each fertilizer distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(7) A manufacturer or distributor of soil conditioners blended according to specifications provided to a blender or blended as specifically requested by the consumer prior to blending shall either register each brand or blend distributed or license its firm on an application furnished by the director for an annual fee of \$100.00 and shall label the soil conditioner as provided in section 8502. The label of each soil conditioner distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(8) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8506 Inspection fee; tonnage reports as basis of payment; waiver; penalty; unpaid fees and penalties as basis of judgment; responsibility for reporting tonnage and paying inspection fee; deposit of money collected.**

Sec. 8506. (1) An inspection fee of 35 cents per ton shall be paid to the department for all fertilizers or soil conditioners sold or distributed in this state. For peat or peat moss, the inspection fee shall be 2 cents per cubic yard. This fee does not apply to registered specialty fertilizers or soil conditioners sold or distributed only in packages of 10 pounds or less.

(2) Payment of the inspection fee shall be made on the basis of tonnage reports setting forth the number of tons of each grade of fertilizer and soil conditioner and the number of cubic yards of peat or peat moss sold or distributed in this state. The reports shall cover the periods of the year and be made in a manner specified by the director in rules, and shall be filed with the department not later than 30 days after the close of each period. The time may be extended for cause for an additional 15 days only on written request to, and approval by, the department. Remittance to cover the inspection fee shall accompany each tonnage report. Payments due of less than \$5.00 are waived, and refunds of less than \$5.00 will not be processed, unless requested in writing. For any report not filed with the department by the due date, a penalty of \$50.00 or 10% of the amount due, whichever is greater, shall be assessed. Unpaid fees and penalties constitute a debt and become the basis of a judgment against the licensee. Records upon which the statement of tonnage is based, including those described in this section and section 8715, are subject to department audit.

(3) When more than 1 person is involved in the distribution of fertilizer or soil conditioners, the last person who is licensed or has the fertilizer or soil conditioner registered and who distributes to a nonlicensee or nonregistrant is responsible for reporting the tonnage and paying the inspection fee.

(4) Money collected by the department under this section shall be forwarded to the state treasurer for deposit into the fund.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8506a Audits.**

Sec. 8506a. The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

**History:** Add. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Compiler's note:** NREPA

### **324.8507 Records; disclosure of information.**

Sec. 8507. (1) Each licensee and registrant shall maintain for a period of 3 years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee or registrant and shall make the records available for inspection and audit during normal business hours on request of the department. Each distributor shall maintain for a period of 3 years shipping data such as invoices and freight bills pertaining to fertilizer and soil conditioner that establish date and origin of the shipment, and shall make the records available for inspection and audit on request of the department.

(2) Tonnage payments, tonnage reports, or other information furnished or obtained under this part shall not be disclosed in a way that will divulge the business operations of any 1 person.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8507a Access to markets for fertilizer; certificate of free sale; application; fees; "certificate of free sale" defined.**

Sec. 8507a. (1) To facilitate continued access to markets for fertilizer, the department may do 1 or both of the following:

(a) At the request of a licensee or based upon records voluntarily supplied by a licensee, inspect, audit, or certify locations where fertilizer is manufactured in this state.

(b) Issue certificates of free sale under subsection (3).

(2) A licensee shall submit an application for a certificate of free sale on a form and in a manner prescribed by the department.

(3) The department shall grant or deny an application for a certificate of free sale within 10 business days after the department receives a completed application under subsection (2) and the application fee under subsection (4). If the department determines that the application meets the requirements of this part and the rules promulgated under this part, the department shall issue a certificate of free sale. If the department



determines that the application does not meet the requirements of this part or the rules promulgated under this part, the department shall deny the application and send written notice to the licensee stating the reasons for the denial.

(4) A licensee shall pay the department the following fees, as applicable:

(a) An application fee, \$60.00.

(b) A duplicate copy of a certificate of free sale, \$10.00.

(5) A fee collected under subsection (4) must be deposited in the fertilizer control fund created in section 8514.

(6) A certificate of free sale issued under this section is valid for 1 year.

(7) As used in this section, "certificate of free sale" means a document that is issued by the department that verifies that the fertilizer listed is manufactured in this state and is legally sold or distributed in this state and on the open market with the approval of the department.

**History:** Add. 2022, Act 125, Imd. Eff. June 29, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8508 Construction and application of part.**

Sec. 8508. (1) This part does not require the payment of inspection fees for sales or exchanges of fertilizers or soil conditioners between manufacturers who mix fertilizer or soil conditioner materials for sale, or prevent the free and unrestricted shipment of fertilizers or soil conditioners for further processing to manufacturers licensed under this part.

(2) This part does not apply to a carrier in respect to a fertilizer or soil conditioner delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8509 Prohibitions.**

Sec. 8509. A person shall not do any of the following:

(a) Sell or distribute fertilizer or soil conditioner in violation of the requirements of this part or the rules promulgated under this part.

(b) Make a guarantee, claim, or representation in connection with the sale of fertilizer or soil conditioner, or in its labeling, which is false, deceptive, or misleading.

(c) Manufacture or distribute a fertilizer or soil conditioner without a license as required by this part or distribute a specialty fertilizer or soil conditioner unless registered as required by this part.

(d) Make a false or misleading statement in an application for a license or in an inspection fee or statistical report or in any other statement or report filed with the department pursuant to this part.

(e) Attach or cause to be attached an analysis stating that a fertilizer contains a higher percentage of a plant nutrient than it in fact contains.

(f) Distribute an adulterated product.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8510 Inspecting, sampling, and analyzing fertilizer and soil conditioners; methods; rules; access to premises; stopping conveyances; submission of information to department; confidentiality.**

Sec. 8510. (1) The director shall inspect, sample, and analyze fertilizers and soil conditioners distributed within this state at a time and place and to the extent necessary to determine compliance with this part.

(2) The methods of sampling and analysis under subsection (1) shall be those as established by the association of American plant food control officials or the association of analytical communities, international, as those standards exist on the effective date of the amendatory act that added this subsection, and are incorporated by reference. The department may promulgate rules to update these standards. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the director may adopt, by rule, such other methods as are considered appropriate.

(3) Department representatives and inspectors shall have free access during regular business hours and extended operating hours to all premises where fertilizers or soil conditioners are manufactured, sold, or

stored, and to all trucks or other vehicles and vessels used in the transportation of a fertilizer or soil conditioner in this state, to determine compliance with this part. Department representatives and inspectors may stop any conveyance transporting fertilizer or soil conditioner for the purpose of inspecting and sampling the products and examining their labeling.

(4) A manufacturer or distributor of fertilizer or soil conditioner shall submit to the department, upon request, product samples, copies of labeling, or any other data or information that the department may request concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by the manufacturer or distributor within this state.

(5) The director may, upon reasonable notice, require a person to furnish any information relating to the identification, nature, and quantity of fertilizers that are or have been used on a particular site and to current or past practices that may have affected groundwater quality. Information required under this subsection is confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8511 Selection of sample from package or bulk lot for comparison with label; order to cease and desist; seizing, or stopping sale of, fertilizer or soil conditioner; conditions; filing action with court.**

Sec. 8511. (1) The director, by a duly authorized agent, may select from any package or bulk lot of commercial fertilizer or soil conditioner exposed for sale in this state a sample to be used for the purposes of an official analysis for comparison with the label affixed to the package or bulk lot on sale. The director may at any time order a person to cease and desist from manufacturing, storing, distributing, selling, or registering a product regulated by this part, or may seize or stop the sale of a fertilizer or soil conditioner that is misbranded or adulterated, fails to meet a label claim or guarantee, is being manufactured or distributed by an unlicensed person, or otherwise fails to comply with this part.

(2) An order shall be written and shall inform the manufacturer, storage operator, distributor, seller, or registrant of the grounds for issuance of the order. The person receiving the order shall immediately comply with the order. Failure to comply shall subject the person to the penalty imposed under this part.

(3) The director shall rescind the order immediately upon being satisfied by inspection of compliance with the order. The inspection shall be conducted as soon as possible at the verbal or written request of the responsible party. The rescinding order of the director may be verbal and the person may rely on the verbal rescinding order. However, a verbal order shall be followed by a written rescinding order.

(4) The director may issue and enforce a written order prohibiting the sale, use, or removal of a product regulated by this part to the owner or custodian of any product or product lot and requiring the product to be held by the owner or custodian at a designated place when the director finds that the product is being distributed in violation of this part. The order remains in effect until the director determines that the person is complying with the law or until the violation has been otherwise legally disposed of by written authority. The director shall release the product for sale, use, or removal upon compliance with this part and payment of all costs and expenses incurred in connection with the issuance and enforcement of the order.

(5) Any product or product lot not in compliance with this part is subject to seizure upon an action filed by the director in a court of competent jurisdiction in the county in which the product is located. If the court finds the product to be in violation of this part and orders the condemnation of the product, the product shall be disposed of in any manner consistent with the quality of the product and the laws of this state except that the disposition of the product shall not be ordered by the court without first providing the claimant an opportunity to petition the court for release of the product or for permission to process or relabel the product to bring it into compliance with this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8512 Nitrates in groundwater exceeding certain limits associated with aquifer sensitivity or fertilizer use; educational materials provided to fertilizer users; authority of department director; eligibility of regional stewardship to receive certain grants; authorization to land-apply materials containing fertilizers at agronomic rates.**

Sec. 8512. (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of

the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director of the department shall provide educational materials to fertilizer users within that region and may do 1 or more of the following:

(a) Establish a regional stewardship team to assist in the coordination of local activities designed to prevent further contamination of groundwater and to identify all probable sources of nitrate.

(b) Conduct further monitoring to determine the concentration and spatial distribution of nitrates in the aquifer.

(c) Perform an evaluation of activities in the monitoring region to determine the sources of nitrate that may have contributed to the contamination.

(d) Implement a stewardship program in the aquifer sensitivity region pursuant to part 87.

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities, which plan must include an assessment of all probable sources of nitrates.

(f) Establish a program that provides incentives for users to increase nitrogen use efficiency.

(2) Upon approval of a regional plan by the director of the department, the regional stewardship team is eligible to receive grants from the freshwater protection fund established by part 87.

(3) The director of the department may, upon written request, authorize persons to land-apply materials containing fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.8512b Fertilizer containing phosphate; application to turf; requirements.**

Sec. 8512b. (1) Except as provided in subsection (2), (3), (4), or (5), a person shall not apply to turf a fertilizer labeled as containing the plant nutrient available phosphate ( $P_2O_5$ ).

(2) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate ( $P_2O_5$ ) in the soil is deficient to support healthy turf grass growth or establishment, a person may apply fertilizer to the turf at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(3) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subsection (2) has not been performed, a person may apply fertilizer to the turf at an application rate for available phosphate ( $P_2O_5$ ) not exceeding the standard rate for new turf grass establishment, which shall be specified by the director after consultation with the Michigan state university extension.

(4) A person may apply biosolids, a natural fertilizer, or a manipulated manure to turf at a rate of not more than 0.25 pounds of phosphorus per 1,000 square feet at any 1 time.

(5) In addition, a person may apply fertilizer labeled as containing the plant nutrient available phosphate ( $P_2O_5$ ) to a golf course if 1 or more of the following apply:

(a) The golf course has been certified by an organization as a result of the golf course's staff having successfully completed a training program approved by the director. The director shall approve a training program if it is a continuing program, adequately addresses best management practices for use of turf fertilizer containing available phosphate, and requires trainees to demonstrate successful implementation of those best management practices.

(b) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate in the soil is deficient to support healthy golf course turf grass growth or establishment, the golf course may apply fertilizer at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(c) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subdivision (b) has not been performed, a golf course may apply fertilizer to the turf at an application rate for available phosphate ( $P_2O_5$ ) not exceeding the rate necessary for new golf course turf grass establishment.

(6) A person shall not apply fertilizer to turf within 15 feet of any surface water, unless 1 or more of the following apply:

(a) A continuous natural vegetative buffer at least 10 feet wide separates the turf from the surface water.

(b) A spreader guard, deflector shield, or drop spreader is used when applying the fertilizer, and the fertilizer is not applied within 3 feet of the surface water.

(7) A person shall not clean a fertilizer spreader that is used to apply fertilizer to turf in a manner that allows wash water from the spreader to discharge directly into waters of this state, including, but not limited to, a drain under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(8) The department shall post information concerning the requirements of subsections (1) to (5) on its website and publicize the availability of that information by whatever means the department determines to be appropriate.

**History:** Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8512f Release of fertilizer on impervious turf; application of fertilizer on frozen or saturated turf.**

Sec. 8512f. (1) A person who releases fertilizer on an impervious surface shall do both of the following:

(a) Promptly contain the fertilizer.

(b) Either legally apply the fertilizer to turf or another appropriate site or return the fertilizer to an appropriate container.

(2) A person shall not apply a fertilizer to turf if the soil is frozen or saturated with water.

**History:** Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

### **324.8512g Residential uses of phosphorus; consumer information on use restrictions and recommended best practices.**

Sec. 8512g. The department, in consultation with the fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties, may approve consumer information on use restrictions and recommended best practices for lawn fertilizer containing available phosphate ( $P_2O_5$ ), and on best management practices for other residential uses of phosphorus. The information shall be in a format and include content suitable for use by the general public or posting and distribution at retail points of sale of turf fertilizer.

**History:** Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

### **324.8512h Fertilizer advisory committee; membership; terms; removal; vacancy; meetings; quorum; duties; meetings subject to open meetings act; "committee" defined.**

Sec. 8512h. (1) The fertilizer advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director of the department of agriculture and rural development.

(b) Two members representing the fertilizer industry.

(c) One member representing the specialty fertilizer industry.

(d) Four members representing farmers and other agricultural organizations.

(e) One member from the United States Department of Agriculture Natural Resources Conservation Service.

(f) One member who is a certified crop advisor.

(g) One member representing conservation districts.

(h) The director of Michigan State University AgBioResearch.

(i) One member representing the largest statewide land conservancy in this state.

(2) The members of the committee may designate an authorized representative or substitute to represent them on the committee. Of the members first appointed by the director, 4 shall serve for 1 year, 4 for 2 years, and 4 for 3 years. Thereafter, an appointment shall be for 3 years. The director shall remove any member who is absent, either personally or through a designated representative or substitute, for 4 or more consecutive meetings. Vacancies shall be filled for the balance of an unexpired term. The committee shall meet on the call of the director, who shall serve as chairperson. The director shall call a meeting of the committee upon request of 2 or more members. A majority of the members of the committee constitute a quorum.

(3) The committee shall advise the director on the research funded under section 8514(4)(c).

(4) All meetings of the committee shall be conducted pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) As used in this section, "committee" means the fertilizer advisory committee created in subsection (1).

**History:** Add. 2015, Act 118, Eff. Oct. 1, 2015.

**Compiler's note:** Act 451

Compiler's note: NREPA

### **324.8513 Rules; bulk storage of fertilizers; exemption.**

Sec. 8513. (1) The department may promulgate rules regarding the bulk storage of fertilizers.

(2) If storage of a material used as a beneficial use by-product for beneficial use 3 under part 115 meets the storage requirements of that part, then the storage is exempt from regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 285.641.1 et seq. and R 285.642.1 et seq. of the Michigan Administrative Code.

### **324.8514 Fertilizer control fund; creation; deposits; money remaining in fund; lapse; expenditures; grants to local government agencies, institutions of higher education, or nonprofit organizations; notice to legislature.**

Sec. 8514. (1) The fertilizer control fund is created within the state treasury.

(2) The state treasurer shall receive for deposit in the fund all fees, administrative or civil fines, and payments for the costs of investigations incurred by the department collected under this part. In addition, the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

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

(a) The administration and enforcement of this part.

(b) The development of training programs to ensure the proper use and storage of fertilizer.

(c) For research necessary to ensure the adoption and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and address environmental concerns with regard to fertilizer use. Until December 31, 2019, not less than 40% of the inspection fees collected with section 8506(1) shall be used for purposes of this subdivision.

(5) The department shall not provide grants with money from the fund to local government agencies, institutions of higher education, or nonprofit organizations unless the department provides notice of the grant to the senate and house appropriations subcommittees and the senate and house fiscal agencies at least 10 days before the grant is issued.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8515 Revocation or refusal of license or registration; grounds; hearing; exception for refusal to sell ammonium nitrate fertilizer.**

Sec. 8515. (1) The director of the department may revoke the license of a manufacturer or distributor or the registration of a fertilizer product or soil conditioner, or may refuse to license a manufacturer or distributor or to register a fertilizer product or soil conditioner, upon satisfactory evidence that the licensee has engaged in fraudulent or deceptive practices or has evaded or attempted to evade this part or the rules promulgated under this part.

(2) A license or registration shall not be revoked or refused until the licensee or applicant has been given the opportunity by the director of the department to appear for a hearing.

(3) The department shall not suspend or revoke the license of a distributor or manufacturer who refuses to sell ammonium nitrate fertilizer to a person who fails to comply with the request for information required under section 8518 or who refuses to sell ammonium nitrate fertilizer to a person who purchases that fertilizer out of season, in unusual amounts, or under a pattern or circumstances considered unusual, as described in section 8518.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2005, Act 68, Imd. Eff. July 11, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8516 Enforcement; rules.**

Sec. 8516. The director of the department shall enforce this part and may promulgate rules.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8517 Local ordinance, regulation, or resolution; preemption; adoption; enforcement; identification of unreasonable adverse effects; local public meeting; contract by director with local government; compliance with training and enforcement requirements; application of fertilizer containing phosphate.**

Sec. 8517. (1) Except as otherwise provided in this section, this part preempts any local ordinance, regulation, or resolution that would duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not adopt, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, that local unit of government may adopt an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (6). The local unit of government's enforcement response for a violation of the ordinance that involves the manufacturing, storage, distribution, sale, or agricultural use of products regulated by this part is limited to issuing a cease and desist order in the manner prescribed in section 8511.

(3) A local unit of government may adopt an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part only under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will otherwise exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part within that unit of government has resulted or will result in the violation of other existing state or federal laws.

(4) An ordinance adopted under subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance adopted under subsection (3) shall not be enforced by a local unit of government until approved by the commission of agriculture. The commission of agriculture shall provide a detailed explanation of the basis of a denial within 60 days.

(5) Within 60 days after the legislative body of a local unit of government submits to the department a resolution identifying unreasonable adverse effects on the environment or public health as provided for in subsection (3)(a), the department shall hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(6) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated under this part. The department has sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and administer and enforce provisions of section 8512.

(7) A local unit of government that adopts an ordinance under subsection (2) or (3) shall require persons enforcing the ordinance to comply with training and enforcement requirements determined appropriate by the director.

(8) Subsection (1) does not prohibit the maintenance or enforcement of an ordinance that regulates or prohibits the application to turf of fertilizer containing the plant nutrient available phosphate ( $P_2O_5$ ), but only if the ordinance was in effect on the enactment date of the amendatory act that added this subsection.

**History:** Add. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2008, Act 14, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8518 Ammonium nitrate fertilizer; storage methods; information to be obtained by**

**retailers; records; refusal of retailer to sell.**

Sec. 8518. (1) A retailer shall secure at all times ammonium nitrate fertilizer to provide reasonable protection against vandalism, theft, or unauthorized access. Secured storage includes, but is not limited to, the following methods:

- (a) Fencing.
- (b) Lighting.
- (c) Locks.

(2) Retailers shall obtain the following information regarding any sale of ammonium nitrate fertilizer:

- (a) Date of sale.
- (b) Quantity purchased.
- (c) License number of the purchaser's valid state operator's license with the appropriate endorsement, if applicable, or other picture identification card number approved for purchaser identification by the department.
- (d) The purchaser's name, current address, and telephone number.
- (e) The agency relationship, if any, between the purchaser and the person picking up or accepting delivery of the ammonium nitrate fertilizer.

(3) Records created pursuant to this section shall be maintained by the retailer for a minimum of 2 years on a form or using a format recommended by the department. Records shall be made available for inspection and audit upon request of the director of the department.

(4) Records generated by means of the tracking system established under subsection (2) are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Any retailer of ammonium nitrate fertilizer may refuse to sell to any person attempting to purchase ammonium nitrate fertilizer out of season, in unusual patterns or circumstances, or in unusual amounts as determined by the retailer.

**History:** Add. 2005, Act 68, Imd. Eff. July 11, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8519 Hearing; request.**

Sec. 8519. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

**History:** Add. 2006, Act 503, Eff. Mar. 30, 2007.

**Compiler's note:** Act 451

**Popular name:** NREPA

**324.8520 Violations; penalties; remedies; injunctive action; civil action; defenses; liability for damages; applicability of provisions of revised judicature act.**

Sec. 8520. (1) A person who violates or attempts to violate this part or rules promulgated under this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted directly or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for an administrative hearing that a person has violated or attempted to violate any provision of this part or a rule promulgated under this part, may impose an administrative fine of not more than \$1,000.00 for each violation or attempted violation. A person shall not be fined under both this subsection and subsection (7) for the same violation or attempted violation. A person shall not be fined under this subsection for a violation described in subsection (7)(b).

(3) If the director finds that a violation or attempted violation has occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(5) A person who violates this part or a rule promulgated under this part, or attempts to violate this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00 for each violation or attempted violation, in addition to any administrative fines imposed. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(6) A person who knowingly and with malicious intent violates or attempts to violate this part or a rule

promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$25,000.00 for each offense. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(7) A person who violates or attempts to violate section 8512b or 8512f is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than the following for each violation or attempted violation:

(a) Except as provided in subdivision (b), not more than \$1,000.00.

(b) Not more than \$50.00 if all of the following apply:

(i) The violation or attempted violation occurs on a single-family residential parcel, or any other parcel or contiguous parcels with a total of not more than 4 acres of turf.

(ii) The violation or attempted violation is committed by the property owner or lessee, a member of his or her family, or a person who resides on the property.

(8) The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

(9) The attorney general may file a civil action in which the court may impose on any person who violates or attempts to violate this part or a rule promulgated under this part, other than section 8512b or 8512f, a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the fund.

(10) In defense of an action filed under this section for a violation or attempted violation of this part, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation or attempted violation, he or she was in compliance with this part and rules promulgated under this part.

(11) A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other sanctions provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

(12) A civil action filed pursuant to this part is subject to applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

**History:** Add. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

**Compiler's note:** Act 451

**Popular name:** NREPA

### **324.8521 Penalties and sanctions; exceptions.**

Sec. 8521. The penalties and sanctions provided for violations of this part do not apply to any of the following:

(a) A commercial carrier while lawfully engaged in transporting a commercial fertilizer within this state, if the carrier, upon request, permits the director to copy all records showing the transactions in and movement of the commercial fertilizer.

(b) The shipment or movement of any commercial fertilizer considered to be in violation of this part, for the specific purposes of disposal or storage when conducted under the approval of the director.

(c) Public officials of this state and the federal government while engaged in the performance of their official duties in administering this part or rules promulgated under this part.

**History:** Add. 2006, Act 503, Eff. Mar. 30, 2007.

**Compiler's note:** Act 451

**Popular name:** NREPA

### **324.8522 Finding of probable cause.**

Sec. 8522. A court shall not allow the recovery of damages by a person against whom an administrative action was brought resulting in an order stopping the sale or use of fertilizer or fertilizer material or requiring its seizure if the court finds that there was probable cause for the action or order.

**History:** Add. 2006, Act 503, Eff. Mar. 30, 2007.

**Compiler's note:** Act 451

**Popular name:** NREPA

## **PART 87**



## GROUNDWATER AND FRESHWATER PROTECTION

### 324.8701 Meanings of words and phrases.

Sec. 8701. For purposes of this part, the words and phrases defined in sections 8702 to 8705 have the meanings ascribed to them in those sections.

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

**Popular name:** Act 451

**Popular name:** NREPA

### 324.8702 Definitions; A to D.

Sec. 8702. (1) "Activity plan" means a plan for a specific location that identifies all environmental risks and includes a time frame for implementation of conservation practices to address the environmental risks.

(2) "Agronomic rate" means either of the following:

(a) For pesticides, the application of pesticide contaminated materials in such a manner as not to exceed legal labeled rates.

(b) For fertilizers, the application of fertilizer contaminated materials at rates not to exceed those recommended by the Michigan State University Extension, taking all available sources of nutrients into account.

(3) "Analyte" or "analytes" means the material or materials that an analysis is designed to detect either qualitatively or quantitatively.

(4) "Conservation plan" means that term as it is defined in part 82.

(5) "Conservation practices" means that term as it is defined in part 82.

(6) "Confirmation mechanism" means a scientific process for the verification of detection of analytes in groundwater utilizing at least 2 separate water samples collected at time intervals of greater than 14 days from the same groundwater sampling point and analyzed by peer reviewed and authenticated laboratory methodologies.

(7) "Contaminant" means any pesticide or fertilizer originated chemical, radionuclide, ion, synthetic organic compound, microorganism, or other waste that does not occur naturally or that naturally occurs at a lower concentration than detected.

(8) "Contamination" means the direct or indirect introduction into the environment of any contaminant caused in whole or in part by human activity.

(9) "Council" means the environmental assurance advisory council created in section 8708.

(10) "Demonstration project" means a project designed to illustrate the implementation and impact of alternate conservation practices.

(11) "Department" means the department of agriculture and rural development.

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

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### 324.8703 Definitions; E to M.

Sec. 8703. (1) "Envelope monitoring" means monitoring of groundwater in areas adjacent to properties where groundwater is contaminated to determine the concentration and spatial distribution of the contaminant in the aquifer.

(2) "Farm" means that term as it is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(3) "Farmer" means a person who owns or operates a farm.

(4) "Fertilizer" means a fertilizer as defined in part 85.

(5) "Fund" means the freshwater protection fund created in section 8716.

(6) "General screening" means monitoring of groundwater for the purpose of determining the presence and concentration of analytes.

(7) "Groundwater" means underground water within the zone of saturation.

(8) "MAEAP" or "Michigan agriculture environmental assurance program" means the Michigan agriculture environmental assurance program provided for in section 8710.

(9) "MAEAP standards" means all of the following as adopted by the commission of agriculture and rural development for the purpose of implementing the Michigan agriculture environmental assurance program:

(a) Conservation practices.

(b) Site-specific nutrient management plan requirements.

- (c) Emergency protocols.
- (d) Completed environmental risk and benefit assessments.
- (e) United States Department of Agriculture Natural Resources Conservation Service practice standards.
- (f) Generally accepted agricultural and management practices developed under the right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

(g) Other standards considered appropriate by the director.

(10) "MAEAP-verified farm" means a farm determined by the department as meeting applicable MAEAP standards through an on-site evaluation.

(11) "Maximum contaminant level" means that term as it is defined in title XIV of the public health service act, chapter 373, 88 Stat. 1660, and regulations promulgated under that act.

(12) "Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than 0 and is determined from analysis of a sample in a given matrix that contains the analyte.

(13) "Monitoring" means sampling and analysis to determine the levels of pesticides or their breakdown products; fertilizers or their residues; or other analytes as determined by the director.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8704 Definitions; O, P.**

Sec. 8704. (1) "On-site evaluation" means a specific set of criteria used to voluntarily evaluate a farmer's property with regard to determination of potential environmental risks.

(2) "Pesticide" means that term as it is defined in part 83.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8705 Definitions; R to W.**

Sec. 8705. (1) "Registrant" means that term as defined in part 83.

(2) "Restricted use pesticide" means that term as defined in part 83.

(3) "Site-specific nutrient management plan" means a plan designed to assist farmers in achieving MAEAP standards that includes both of the following:

(a) Conservation practices and nutrient management activities that, when implemented as part of a conservation system, will help to ensure that both production and natural resources protection goals are achieved.

(b) Proposed actions to address soil erosion, manure, and organic by-products and their potential impact on water quality.

(4) "State management plan" means a plan for the protection of groundwater as required by the United States Environmental Protection Agency's labeling requirements for pesticides and devices under 40 CFR part 156.

(5) "Technical assistance" means direct on-site assistance provided to individuals that is designed to achieve MAEAP standards.

(6) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a pesticide or fertilizer.

(7) "Verification" means the on-site evaluation performed by the department in accordance with protocols adopted by the commission of agriculture and rural development to determine if MAEAP standards have been met.

(8) "Water monitoring" means monitoring of water in areas adjacent to properties to determine the concentration and spatial distribution of contaminants.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8706 Purpose of part.**

Sec. 8706. The intent of this part is to reduce risks to the environment and public health and promote economic development by assisting farms in achieving MAEAP standards.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8707 Conservation practices; on-site evaluations; review and evaluation.**

Sec. 8707. (1) The director, in conjunction with Michigan State University Extension and Michigan State University AgBioResearch, and in cooperation with the United States Department of Agriculture Natural Resources Conservation Service, the department of environmental quality, and other professional and industry organizations, shall develop conservation practices for approval by the commission of agriculture and rural development and upon approval shall promote their implementation.

(2) The director, in conjunction with Michigan State University, the department of environmental quality, and other persons the director considers appropriate, shall develop protocols for voluntary on-site evaluations. The on-site evaluations shall be designed to do all of the following:

(a) Provide farmers with the ability to voluntarily determine the relative risk of current practices in relation to sources of contamination.

(b) Provide farmers with the ability to determine the degree to which farm operations are in accord with MAEAP standards and applicable law.

(c) Prioritize operational changes on farms to protect groundwater and surface waters from sources of contamination.

(d) Guide farmers to appropriate technical and educational materials.

(e) Provide farmers with the opportunity for verification.

(f) Provide landowners with the ability to voluntarily assess the value of managing areas of the land that are not utilized for traditional or production agriculture practices for environmental, ecological, and economic benefits.

(3) The director, in conjunction with the council, shall review and evaluate the effectiveness of conservation practices approved under subsection (1).

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2000, Act 100, Imd. Eff. May 19, 2000;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8708 Environmental assurance advisory council.**

Sec. 8708. (1) The director shall establish an environmental assurance advisory council composed of all of the following:

(a) The director of the department of agriculture and rural development.

(b) The director of the department of environment, Great Lakes, and energy.

(c) The director of the Michigan State University Extension.

(d) The director of the Michigan State University AgBioResearch.

(e) Representatives of all of the following as appointed by the director to serve terms of 3 years:

(i) The United States Department of Agriculture, Farm Service Agency.

(ii) The United States Department of Agriculture Natural Resources Conservation Service.

(iii) Conservation districts.

(iv) Farmers and other agricultural organizations.

(v) Nongovernmental conservation and environmental organizations.

(vi) Regulated agricultural industries.

(vii) A private consulting forester.

(viii) A member of the forest products industry.

(ix) A member of the logging profession.

(x) Other individuals as determined by the director.

(xi) A member representing each regional environmental assurance team established under section 8709.

(2) The council shall be co-chaired by the representative from Michigan State University Extension and a representative from 1 of the farmers and other agricultural organizations.

(3) The council shall advise the director on topics including, but not limited to, the following:

(a) MAEAP standards.

(b) On-site evaluations for verification of specific aspects of a farming operation.

(c) Water quality and environmental monitoring.

(d) Protocols for verification and revocation of verification.

(e) MAEAP activities.

- (f) Interagency coordination of conservation programs.
- (g) The use of money in the clean water fund created in section 8807 and other funding sources to promote MAEAP and activities to encourage more MAEAP-verified farms.
- (h) Options to increase assistance to assist small- and medium-sized farms in achieving MAEAP standards.
- (i) The creation of subcommittees as needed to address emerging and ongoing issues.
- (j) On-site evaluations of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.
- (4) The council shall do all of the following:
  - (a) Annually provide recommendations to the director on MAEAP standards and protocols for verification and revocation of verification for consideration by the commission of agriculture and rural development.
  - (b) Annually submit a report to the department that outlines activities, accomplishments, and emerging issues. The department shall share this report with the agriculture community.
  - (c) Provide recommendations to the director on the creation of a tiered recognition program for farms working toward MAEAP verification. To qualify for the tiered recognition program, farmers must have completed educational programs, conducted appropriate farm assessments, and implemented conservation practices as approved by the director. The tiers may be used to recognize a farm's movement toward MAEAP verification.
  - (d) Beginning April 1, 2022, provide biannually, or at the request of the director, recommendations to the director and the legislature on incentives and program modifications to increase participation in MAEAP.
  - (e) Annually provide recommendations to the director on funding for research projects that address impediments to verification and improve MAEAP practice standards.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013;—Am. 2015, Act 118, Eff. Oct. 1, 2015;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

**Compiler's note:** For abolishment of the groundwater advisory council and transfer of its powers and duties to the department of agriculture, see E.R.O. No. 2007-5, compiled at MCL 324.99907.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8709 Environmental assurance teams.**

Sec. 8709. (1) The director may establish regional environmental assurance teams composed of departmental, educational, and technical assistance personnel, and other persons as determined necessary by the director, or the team, or both for implementation of programs developed under this part.

(2) The environmental assurance teams established under subsection (1) are responsible for implementation of programs developed under this part, including, but not limited to, all of the following:

- (a) Providing access to educational opportunities including direct educational assistance and consulting programs; demonstration projects; educational programs; and tours, workshops, and conferences.
- (b) Providing access to technical assistance related to any of the following:
  - (i) On-site evaluation of practices that may impact natural resources.
  - (ii) The development and implementation of conservation plans.
  - (iii) The development and implementation of activity plans for persons making conservation practice changes.
  - (iv) On-site evaluation of potential environmental, ecological, and economic benefits that can be realized by managing areas of the land that are not utilized for traditional or production agriculture practices.
- (c) Evaluating, as available, grants to persons implementing activity plans and conservation practices required to achieve MAEAP standards.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2013, Act 46, Imd. Eff. June 6, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8710 Michigan agriculture environmental assurance program.**

Sec. 8710. (1) The director, in consultation with the council, shall implement a Michigan agriculture environmental assurance program designed to promote natural resources conservation through education, technical assistance, and verification. The MAEAP shall be a voluntary program that is available to farms throughout the state.

(2) A farmer who desires to have his or her farm MAEAP-verified shall do all of the following:

- (a) Complete educational requirements authorized by the department.
- (b) Develop and implement 1 or more conservation plans as approved by the director.
- (c) Upon completion of subdivisions (a) and (b), contact the department to arrange for an on-site

evaluation.

(3) If the department conducts an on-site evaluation and determines that a farm is meeting MAEAP standards, the department shall issue a MAEAP verification. A MAEAP verification that is in effect on September 30, 2015 is valid for 5 years from the original issue date. Beginning October 1, 2015, a new MAEAP verification or reverification is valid for 5 years.

(4) A farm is eligible for reverification if the department determines it is meeting MAEAP standards through an on-site evaluation conducted by the department or its designee.

(5) The department shall provide MAEAP verification signs to each MAEAP-verified farm.

(6) A farm that allows its verification to lapse or whose verification is revoked under subsection (7) shall forfeit its verification sign and all other benefits that are provided to MAEAP-verified farms under this act.

(7) The director may revoke verification of a MAEAP-verified farm if any of the following apply:

(a) The department, in consultation with the department of environmental quality, determines with scientific evidence provided by water quality data that the MAEAP-verified farm caused an exceedance of water quality standards as a result of nonconformance with MAEAP standards.

(b) The MAEAP-verified farm fails to conform to MAEAP standards as a result of gross negligence.

(c) The MAEAP-verified farm fails to comply with protocols for verification as approved by the commission of agriculture and rural development.

(d) Upon advice from the interagency technical review panel provided for in subsection (11), the director determines that the MAEAP-verified farm is responsible for a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, orders of consent, or judicial orders that were due to separate and distinct events.

(8) A farmer is not liable for groundwater contamination on a MAEAP-verified farm for activities on the MAEAP-verified farm unless he or she was grossly negligent or in violation of state or federal law or failed to comply with the MAEAP standards. This part does not modify or limit any obligation, responsibility, or liability imposed by any other provision of state law.

(9) The department shall establish a MAEAP grants program. Grants issued under the MAEAP grants program are limited to availability of funds collected pursuant to this part. Grants shall be available for all of the following:

(a) Technical assistance.

(b) Promotion of the MAEAP.

(c) Educational programs related to the MAEAP.

(d) Demonstration projects to implement conservation practices.

(e) Removal of potential sources of contamination.

(f) Other purposes considered appropriate by the director.

(10) Following review of the proposed tiered recognition program submitted to the director by the council under section 8708, the director shall approve and implement a tiered recognition program. As part of the tiered recognition program, the department shall provide a certificate of progress to a farm participating in MAEAP recognizing each time a new tier is achieved. The certificate of progress shall summarize conservation practices implemented by the farm and the environmental impacts of the implemented conservation practices. The certificate of progress shall recognize the farm for its achievement and encourage the farm to complete the remaining conservation practices necessary for verification. A certificate of progress is valid for 5 years from the date of mailing. Upon written confirmation by the farmer and the MAEAP technician updating any new conservation practices and confirming that all previous applicable conservation practices are still being implemented, the department shall reissue a certificate of progress for additional 5-year periods, as appropriate, until the farm becomes MAEAP-verified in the applicable system or the farmer ceases implementation of the conservation practices. Information collected under this section is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(11) The department and the department of environmental quality shall enter into a memorandum of understanding to formalize a commitment to promote the MAEAP and to clarify the application of state and federal environmental laws to farms. In addition, the memorandum of understanding shall provide for all of the following:

(a) An ongoing interagency technical review panel for MAEAP-verified farms that discharge in violation of state or federal law to determine enforcement action.

(b) Preference for funding for nonpoint source pollution – funds for farms seeking MAEAP verification.

(c) Considerations for reverification of a farm with revoked MAEAP verification status.

(d) Integration of the MAEAP into pollution prevention activities of both agencies.

(e) Clarification of the consultation process in part 88 to ensure that the department of agriculture and rural development has meaningful input into the establishment of the grants program and the issuance of grants.

(12) Beginning December 1, 2016 and every December 1 thereafter, the department shall publish a report on MAEAP that includes, but is not limited to, all of the following:

(a) County and statewide totals for the previous fiscal year of all of the following:

- (i) Conservation practices implemented.
- (ii) Environmental impacts of practices implemented.
- (iii) Number of new verifications and reverifications.
- (iv) Number of unique farms verified.
- (v) Number of farms in tiered recognition system.
- (vi) Total area and percentage of this state's farmland involved.

(b) County and statewide program to-date totals of all of the following:

- (i) Conservation practices implemented.
- (ii) Environmental impacts of practices implemented.
- (iii) Number of new verifications and reverifications.
- (iv) Number of unique farms verified.
- (v) Number of farms in tiered recognition system.
- (vi) Total area and percentage of this state's farmland involved.

(c) A summary of educational and MAEAP verification standards changes for each system tool and an overview of the reasons for the changes.

(d) A summary of each system subcommittee's work beyond the standards changes, including identification of ongoing and emerging issues.

(13) The department shall make available a consent form for completion by farmers implementing conservation practices that includes both of the following:

(a) Permission for the department to associate the farmer's name, farm location, and mailing address with conservation practices implemented on that farm.

(b) A statement by the farmer that conservation practices being implemented on the farm are for the purpose of working toward MAEAP verification.

(14) The department shall provide for the consent forms described in subsection (13) to be authenticated. The department may use a completed consent form in the recognition program described in subsection (10). Information collected under this subsection is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8711 Designation of pesticide as restricted use; establishment of groundwater resource protection levels.**

Sec. 8711. (1) Pesticides containing ingredients that have been confirmed in groundwater at a level above their groundwater resource response level or pesticides for which a state management plan is required shall be registered as restricted use pesticides pursuant to part 83. The director, by rule promulgated pursuant to part 83, shall establish criteria for designating a pesticide a restricted use pesticide due to groundwater concerns.

(2) The director of the department of public health shall establish groundwater resource protection levels and promulgate groundwater resource protection levels for all pesticides that do not have a federally established maximum contaminant level or a health advisory level and for which monitoring occurs.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8712 Program to track restricted use pesticides to county of application; additional information required; confidentiality.**

Sec. 8712. (1) The director shall establish and implement a program to track restricted use pesticides to their county of application.

(2) The director may require additional information for more refined tracking in specific areas determined through groundwater impact potential estimation to be highly vulnerable to groundwater contamination for those pesticides in which the United States environmental protection agency has required a state management plan.

(3) Information collected in subsection (2) is confidential business information and is not subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the

Michigan Compiled Laws.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.8713 Water quality monitoring program.**

Sec. 8713. (1) The director, in conjunction with the department of environmental quality and the department of community health, shall develop and establish priorities, procedures, and protocols for the implementation of a water quality monitoring program to do all of the following:

- (a) Provide general screening of groundwater or surface water, or both.
- (b) Determine the relative risk of groundwater contamination at different locations.
- (c) Perform envelope monitoring.

(2) The director shall, in a timely manner, notify affected well owners of their monitoring results from the monitoring conducted pursuant to this section, including the method detection limits and associated water resource protection levels.

(3) The monitoring program conducted pursuant to this section may provide for modifications of sampling density and analytes to reflect regional groundwater impact potential.

(4) The monitoring conducted pursuant to this section shall be conducted utilizing generally accepted scientific practices.

(5) The department shall establish a method detection limit goal for monitoring conducted pursuant to this section set at 10% of a compound's groundwater resource response level.

(6) Agencies conducting monitoring for pesticides or fertilizers pursuant to this section shall notify the director, on forms provided by or in a format approved by the director, of the location, procedure, and concentration of all pesticide detections or nitrate concentrations in excess of 10 parts per million. Information received by the director shall be evaluated based upon accepted protocols and procedures established under this part.

(7) The director shall establish by rule laboratory confirmation mechanisms used under this part.

(8) The director shall establish by rule risk assessment protocols for the development of groundwater resource protection levels.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8713a Surface water quality monitoring program.**

Sec. 8713a. (1) The director, in consultation with the council, may develop and establish priorities, procedures, and protocols for the implementation of a surface water quality monitoring program to do both of the following:

- (a) Promote voluntary water quality monitoring by farms.
- (b) Monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(2) Water quality information collected under this section by the department in cooperation with farmers shall be aggregated and made available to the commission of agriculture and rural development. Specific locations or persons involved in water quality information collection are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** Add. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

**324.8714 Confirmation of adverse impact on groundwater; powers and authority of director.**

Sec. 8714. (1) Upon confirmation of an adverse impact on groundwater, the director may, upon reasonable notice, require a person to furnish any information that the person may have relating to the identification, nature, and quantity of pesticides and fertilizers that are or have been used on a particular site and to current or past production practices that may have impacted groundwater quality. This information shall be treated as confidential business information and is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The director may, upon written request, authorize persons to land-apply materials contaminated with pesticides or fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control

activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

\*\*\*\*\* 324.8715 THIS SECTION IS REPEALED BY ACT 123 OF 2021 EFFECTIVE DECEMBER 31, 2025  
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### **324.8715 Fees; repeal of section.**

Sec. 8715. (1) In addition to the fees provided for in part 83, a registrant shall pay an annual water quality protection fee for each product to be registered. The water quality protection fee is \$270.00 per product. The water quality protection fee is due in the office of the director before July 1.

(2) A registrant shall pay an additional late fee of \$100.00 for each pesticide if the pesticide registration is a renewal registration and the water quality protection fee is received by the department after June 30.

(3) A person required to pay a specialty fertilizer or soil conditioner registration fee under section 8505 shall pay an additional \$100.00 water quality protection fee for each brand and product name of each grade registered.

(4) All fertilizer manufacturers or distributors licensed under part 85, except specialty fertilizer and soil conditioner registrants, shall pay the following:

(a) Until December 31, 2015, a water quality protection fee of 1-1/2 cents per percent of nitrogen in the fertilizer for each ton of fertilizer sold.

(b) Beginning January 1, 2016, \$.0005 per pound of fertilizer sold.

(5) The fees collected under this part, including any interest or dividends earned, must be transmitted to the state treasurer, who shall credit the money received to the fund.

(6) Upon the expenditure or appropriation of money raised in this section for any purpose other than those specifically listed in this part, authorization to collect fees in this section must be suspended until the money expended or appropriated for purposes other than those listed in this part are returned to the fund.

(7) The department may audit, or may contract for audits of records that are the basis for fees levied under this section.

(8) This section is repealed December 31, 2025.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995;—Am. 2000, Act 100, Imd. Eff. May 19, 2000;—Am. 2008, Act 18, Imd. Eff. Feb. 29, 2008;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8716 Freshwater protection fund.**

Sec. 8716. (1) The freshwater protection fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including general fund general purpose appropriations, gifts, grants, and bequests. The director shall annually seek matching general fund general purpose appropriations in amounts equal to the water quality protection fees collected under section 8715 that are deposited into the fund under this part. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

(4) The department is the administrator of the fund for auditing purposes.

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

(a) Direct assistance.

(b) Indirect assistance.

(c) Emergency response and removal of potential sources of water contamination. Expenditures under this subdivision must not exceed \$15,000.00 per location.

(d) Natural resources protection.

(e) Administrative costs. Expenditures under this subdivision must not exceed 20% of the annual appropriations from the fund.

(6) The department shall establish criteria and procedures for approving proposed expenditures from the



fund.

(7) Notwithstanding section 8715, if at the close of any fiscal year the amount of money in the fund exceeds \$5,000,000.00, the department shall not collect water quality protection fees for the following year. After the water quality protection fees have been suspended under this subsection, the fees must only be reinstated if, at the close of any succeeding fiscal year, the amount of money in the fund is less than \$2,000,000.00.

(8) The department of treasury shall, before November 1 of each year, notify the department of the balance in the fund at the close of the preceding fiscal year.

(9) As used in this section:

(a) "Administrative costs" includes, but is not limited to, costs incurred during any of the following:

(i) Groundwater monitoring for pesticides and fertilizers.

(ii) Development and enforcement of natural resources protection rules.

(iii) Coordination of programs under this part with the United States Environmental Protection Agency and other state programs with environmental protection responsibilities.

(iv) Coordination of programs under this part with the United States Department of Agriculture Natural Resources Conservation Service and state programs with nonpoint source pollution prevention and conservation practice responsibilities.

(v) Management of pesticide sales information.

(b) "Direct assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Provision of alternate noncommunity water supplies.

(ii) Closure of wells that may impact groundwater, such as abandoned, improperly constructed, or drainage wells.

(iii) The environmentally sound disposal or recycling of pesticide containers.

(iv) Pesticide disposal programs.

(v) Programs devoted to integrated natural resources conservation that encourage the judicious use of pesticides and fertilizers and other agricultural inputs and practices that are protective of water quality through targeted systems approach to management decisions.

(vi) Incentive and cost share programs to assist farmers in achieving MAEAP standards.

(vii) Incentive and cost share programs for MAEAP-verified farms with potential sources of contamination on their property.

(viii) Monitoring of private well water for pesticides, fertilizers, and other contaminants.

(ix) Removal of soils and waters contaminated by pesticides and fertilizers and the land application of those materials at agronomic rates.

(x) MAEAP grants under section 8710.

(xi) Programs that enhance investment of private and federal funds in conservation.

(xii) Verification.

(xiii) Other programs established under this part.

(c) "Indirect assistance" includes, but is not limited to, programs that will provide for any of the following:

(i) Public education and demonstration programs on pesticide container recycling and environmentally sound disposal methods.

(ii) Educational programs.

(iii) Technical assistance programs.

(iv) The promotion and implementation of on-site evaluation systems, conservation practices, and the MAEAP.

(v) Research programs.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2003, Act 163, Imd. Eff. Aug. 12, 2003;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007;—Am. 2011, Act 2, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015;—Am. 2021, Act 123, Imd. Eff. Dec. 17, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8717 Rules.**

Sec. 8717. The department may promulgate rules as it considers necessary or advisable to implement this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

## WATER POLLUTION PREVENTION AND MONITORING

### 324.8801 Definitions.

Sec. 8801. As used in this part:

- (a) "Department" means the department of environmental quality.
- (b) "Director" means the director of the department.
- (c) "Fund" means the clean water fund created in section 8807.
- (d) "Grant" means a nonpoint source pollution prevention and control grant or a wellhead protection grant under this part.
- (e) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; the office of a county drain commissioner; a soil conservation district established under part 93; a watershed council; a local health department as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105; or an authority or any other public body created by or pursuant to state law.
- (f) "MAEAP" means the Michigan agriculture environmental assurance program as that term is defined in part 87.
- (g) "MAEAP-verified farm" means that term as it is defined in part 87.
- (h) "Nonpoint source pollution" means water pollution from diffuse sources, including runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### 324.8802 Nonpoint source pollution prevention and control grants; wellhead protection grants.

Sec. 8802. (1) The department, in consultation with the department of agriculture and rural development, shall establish a grants program to provide grants for nonpoint source pollution prevention and control projects and wellhead protection projects. The grants program shall provide grants to local units of government or entities that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(2) The nonpoint source pollution prevention and control grants issued under this part shall be provided for projects that do 1 or more of the following:

- (a) Implement the physical improvement portion of watershed plans that are approved by the department.
- (b) Reduce specific nonpoint source pollution as identified by the department.
- (c) Promote MAEAP verification.

(3) The wellhead protection grants issued under this part shall be provided for projects that are consistent with a wellhead protection plan approved by the department and that do any of the following:

- (a) Plug abandoned wells.
- (b) Provide for the purchase of land or the purchase of rights in land to protect aquifer recharge areas.
- (c) Implement the physical improvement portion of the wellhead protection plan.

(4) For any grant issued under this part, a local unit of government shall contribute at least 25% of the project's total cost from other public or private funding sources. The department may approve in-kind services to meet all or a portion of the match requirement under this subsection. In addition, the department may accept as the match requirement under this subsection a contract between the grant applicant and the department that provides for maintenance of the project or practices that are funded under terms acceptable to the department. The contract shall require maintenance of the project or practices throughout the period of time in which the state is paying off the bonds that were issued pursuant to the clean Michigan initiative act to implement this part.

(5) In issuing grants under this section, the department, in consultation with the department of agriculture and rural development, shall select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### 324.8803 Grant awards; criteria for project selection.

Sec. 8803. In selecting projects for a grant award, the department shall consider the following as they relate to a project:

- (a) The expectation for long-term water quality improvement.
- (b) The expectation for long-term protection of high quality waters.
- (c) The consistency of the project with remedial action plans and other regional water quality or watershed management plans approved by the department.
- (d) The placement of the watershed on the list of impaired waters pursuant to section 303(d) of title III of the federal water pollution control act, chapter 758, 86 Stat. 846, 33 U.S.C. 1313.
- (e) Commitments for financial and technical assistance from the partners in the project.
- (f) Financial and other resource contributions, including in-kind services, by project participants in excess of that required in section 8802(4).
- (g) The length of time the applicant has committed to maintain the physical improvements.
- (h) The commitment to provide monitoring to document improvement in water quality or the reduction of pollutant loads.
- (i) Whether the project provides benefits to sources of drinking water.
- (j) Other information the department considers relevant.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8804 Grant applications.**

Sec. 8804. A local unit of government that wishes to apply for a grant shall submit a written grant application to the department in a manner prescribed by the department and containing the information required by the department. The grant application shall also include all of the following:

- (a) A detailed description of the project for which the grant is sought.
- (b) An explanation of how the project is consistent with an approved watershed plan, if applicable.
- (c) A description of the total cost of the project and the source of the local government's contribution to the project.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8805 Issuance of grants.**

Sec. 8805. Upon receipt of a grant application pursuant to section 8804, the department, in consultation with the department of agriculture and rural development, shall consider the projects proposed to be funded and the extent that money is available for grants under this part, and shall issue grants for projects that the department determines will assist in the prevention or control of pollution from nonpoint sources or will provide for wellhead protection.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8806 Administration of part.**

Sec. 8806. Grants made under this part are subject to the applicable requirements of part 196. The department, in consultation with the department of agriculture and rural development, shall administer this part in compliance with the applicable requirements of part 196, including the reporting requirements to the legislature of the grants provided under this part.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8807 Clean water fund.**

- Sec. 8807. (1) The clean water fund is created within the state treasury.
- (2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.
- (3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.
- (4) Except as otherwise provided in this section, the department, in consultation with the department of

agriculture and rural development, shall expend money in the fund, upon appropriation, for any of the following:

(a) To implement the programs described in the department's document entitled "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Waters", dated January 1997. In implementing these programs, the department may contract with any person.

(b) Not more than \$100,000.00 of the total annual appropriations from the fund to monitor and benchmark the effectiveness of conservation practices and MAEAP standards in cooperation with participating farmers.

(c) Promotion of MAEAP and activities to encourage more MAEAP-verified farms.

(d) Water pollution control activities.

(e) Wellhead protection activities.

(f) Storm water treatment projects and activities.

(5) Money in the fund shall not be expended for combined sewer overflow corrections.

(6) Money in the fund shall not be expended until rules are promulgated under section 8808.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998;—Am. 2011, Act 1, Imd. Eff. Mar. 9, 2011;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.8808 Rules.**

Sec. 8808. The department shall promulgate rules to implement this part including rules to establish a grant program or loan program, or both, for expenditure of money in the fund.

**History:** Add. 1998, Act 287, Eff. Dec. 1, 1998.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 324.8801 et seq. and R 324.8901 et seq. of the Michigan Administrative Code.

## PART 89 LITTERING

### **324.8901 Definitions.**

Sec. 8901. As used in this part:

(a) "Litter" means any of the following:

(i) Rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, or other foreign substances.

(ii) A vehicle that is considered abandoned under section 252a of the Michigan vehicle code, 1949 PA 300, MCL 257.252a.

(iii) An abandoned vessel as defined in section 80130f.

(iv) An ORV that is considered abandoned under section 80130f as made applicable in section 81151.

(v) A snowmobile that is considered abandoned under section 80130f as made applicable in section 82161.

(b) "Public or private property or water" includes, but is not limited to, any of the following:

(i) The right-of-way of a road or highway, a body of water or watercourse, or the shore or beach of a body of water or watercourse, including the ice above the water.

(ii) A park, playground, building, refuge, or conservation or recreation area.

(iii) Residential or farm properties or timberlands.

(c) "Vehicle" means a motor vehicle registered or required to be registered under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(d) "Vessel" means a vessel registered under part 801.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8902 Littering property or water prohibited; removal of injurious substances dropped on highway as result of accident.**

Sec. 8902. (1) A person shall not knowingly, without the consent of the public authority having supervision of public property or the owner of private property, dump, deposit, place, throw, or leave, or cause or permit the dumping, depositing, placing, throwing, or leaving of, litter on public or private property or water other than property designated and set aside for such purposes.

(2) A person who removes a vehicle that is wrecked or damaged in an accident on a highway, road, or street shall remove all glass and other injurious substances dropped on the highway, road, or street as a result of the accident.

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

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8903 Causing litter or object to fall or be thrown into path of or to hit vehicle; violation as misdemeanor; penalty.**

Sec. 8903. (1) A person shall not knowingly cause litter or any object to fall or to be thrown into the path of or to hit a vehicle traveling upon a highway.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$500.00, or both.

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

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8904 Presumptions.**

Sec. 8904. (1) Except as provided in subsection (3) involving litter from a leased vehicle or leased vessel, in a proceeding for a violation of this part involving litter from a motor vehicle or vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the registered owner of the vehicle or vessel at the time of the violation, gives rise to a rebuttable presumption that the registered owner of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(2) There is a rebuttable presumption that the driver of a vehicle or vessel is responsible for litter that is thrown, dumped, deposited, placed, or left from the vehicle or vessel on public or private property or water.

(3) In a proceeding for a violation of this part involving litter from a leased motor vehicle or leased vessel, proof that the particular vehicle or vessel described in the citation, complaint, or warrant was used in the violation, together with proof that the defendant named in the citation, complaint, or warrant was the lessee of the vehicle or vessel at the time of the violation, gives rise to a rebuttable presumption that the lessee of the vehicle or vessel was the driver of the vehicle or vessel at the time of the violation.

(4) In a proceeding for a violation of this part involving litter consisting of an abandoned vehicle, proof that the particular vehicle described in the citation, complaint, or warrant was abandoned, and that the defendant named in the citation, complaint, or warrant was the titled owner or lessee of the vehicle at the time it was abandoned, gives rise to a rebuttable presumption that the defendant abandoned the vehicle.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 111, Imd. Eff. June 28, 1995;—Am. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004.

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8905 Violation involving litter produced at health facility, agency, or laboratory as misdemeanor; violation involving infectious waste, pathological waste, or sharps as felony; penalty; second or subsequent violation under subsection (2); definitions.**

Sec. 8905. (1) A person who violates this part where the violation involves litter that is produced at a health facility or agency as defined in section 20106 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.20106 of the Michigan Compiled Laws, or at a laboratory described in section 20507 of Act No. 368 of the Public Acts of 1978, being section 333.20507 of the Michigan Compiled Laws, is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months or a fine of not more than \$1,000.00, or both.

(2) Except as provided in subsection (3), a person who violates this part where the violation involves litter that is infectious waste, pathological waste, or sharps is guilty of a felony punishable by imprisonment for not more than 2 years or by a fine of not more than \$5,000.00, or both.

(3) For a second or subsequent violation under subsection (2), the person shall be punished by imprisonment for not less than 1 year or more than 5 years and a fine of not more than \$10,000.00.

(4) As used in this section:

(a) "Infectious waste" means waste that contains varying amounts of microorganisms that have a potential for causing serious illness.

(b) "Pathological waste" means body organs, tissues, parts, and fluids removed during surgery or autopsy, whether or not they are infectious.

(c) "Sharps" means discarded hypodermic needles, syringes and scalpel blades, whether or not they are infectious.

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

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8905a Violation as state civil infraction; civil fine; default remedies; exception.**

Sec. 8905a. (1) A person who violates this part, if the amount of the litter is less than 1 cubic foot in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than \$800.00.

(2) A person who violates this part, if the amount of the litter is 1 cubic foot or more but less than 3 cubic feet in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than \$1,500.00.

(3) Except as provided in subsection (4), a person who violates this part, if the amount of the litter is 3 cubic feet or more in volume, is responsible for a state civil infraction and is subject to a civil fine of not more than \$2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not more than \$5,000.00.

(4) A person who violates this part, if the litter is described in section 8901(a)(ii) to (v), is responsible for a state civil infraction and is subject to a civil fine of not less than \$500.00 or more than \$2,500.00. A person found to have committed a violation described in this subsection in a subsequent proceeding is subject to a civil fine of not less than \$1,000.00 or more than \$5,000.00. However, the court shall not order the payment of a fine unless the vehicle has been disposed of under section 252g of the Michigan vehicle code, 1949 PA 300, MCL 257.252g, the abandoned vessel has been disposed of under section 80130k, the ORV that is considered abandoned has been disposed of under section 80130k as made applicable in section 81151, or the snowmobile that is considered abandoned has been disposed of under section 80130k as made applicable in section 82161.

(5) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(6) This section does not apply to a violation of section 8903 or 8905.

**History:** Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998;—Am. 2004, Act 494, Imd. Eff. Dec. 29, 2004;—Am. 2014, Act 549, Eff. Apr. 16, 2015.

**Compiler's note:** Former MCL 324.8905a, which pertained to violations as civil infractions, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8905b Additional penalties or sanctions; community service.**

Sec. 8905b. (1) In addition to any other penalty or sanction provided in this part for a criminal or civil action brought under this part, the court may require the defendant to pay either or both of the following:

(a) The cost of removing all litter which is the subject of the violation and the cost of damages to any land, water, wildlife, vegetation, or other natural resource or to any facility damaged by the violation of this part. Money collected under this subdivision shall be distributed to the governmental entity bringing the enforcement action.

(b) The reasonable expense of impoundment under section 8905c. Money collected under this subdivision shall be distributed to the governmental entity that impounded the vehicle involved in the violation of this part.

(2) In addition to any other penalty or sanction provided for in this part, the court shall impose, under the supervision of the court, community service in the form of litter gathering labor, including, but not limited to, litter connected with the particular violation.

**History:** Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998.

**Compiler's note:** Former MCL 324.8905b, which pertained to payment of additional costs and expenses, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8905c Impoundment of vehicles; lien; forfeiture of bond; foreclosure sale; notice; distribution of proceeds.**

Sec. 8905c. (1) A peace officer may seize and impound a vehicle operated in the commission of a violation of this part if the operator of the vehicle has previously been convicted for a violation of this part. Upon impoundment, the vehicle is subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant may be ordered to pay under this part. The defendant or a person with an ownership interest in the vehicle may post with the court a cash or surety bond in the amount of \$750.00. If such a bond is posted, the vehicle shall be released from impoundment. The vehicle shall also be released, and the lien shall be discharged, upon a judicial determination that the defendant is not responsible for the violation of this part or upon payment of the fine, costs, and damages. Additionally, if the defendant is determined to be not responsible for the violation of this part, the court shall assess against the governmental entity bringing the action costs, payable to the defendant, for any damages that the defendant has sustained due to the impoundment of the vehicle.

(2) If the court determines that the defendant is responsible for the violation of this part and the defendant defaults in the payment of any fine, costs, or damages, or any installment, as ordered pursuant to this part, any bond posted under subsection (1) shall be forfeited and applied to the fine, costs, damages, or installment. The court shall certify any remaining unpaid amount to the attorney for the governmental entity bringing the action. The attorney for the governmental entity may enforce the lien by a foreclosure sale. The foreclosure sale shall be conducted in the manner provided and subject to the same rights as apply in the case of execution sales under sections 6031, 6032, 6041, 6042, and 6044 to 6047 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6031, 600.6032, 600.6041, 600.6042, and 600.6044 to 600.6047.

(3) Not less than 21 days before the foreclosure sale under subsection (2), the attorney for the governmental entity bringing the action shall by certified mail send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle. In addition, not less than 10 days before the foreclosure sale, the attorney shall twice publish notice of the time and place of the foreclosure sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale shall be distributed in the following order of priority:

(a) To discharge any lien on the vehicle that was recorded prior to the creation of the lien under subsection (1).

(b) To the clerk of the court for the payment of the fine, costs, and damages, that the defendant was ordered to pay.

(c) To discharge any lien on the vehicle that was recorded after the creation of the lien under subsection (1).

(d) To the owner of the vehicle.

**History:** Add. 1998, Act 15, Imd. Eff. Mar. 9, 1998.

**Compiler's note:** Former MCL 324.8905c, which pertained to seizure and impoundment of vehicle, was repealed by Act 111 of 1995, Eff. Dec. 31, 1997.

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8906 Posting notices; publication; receptacles for litter.**

Sec. 8906. All public authorities having supervision of public property of this state or any political subdivision of this state may post notice signs and otherwise publicize the requirements of this part. All public authorities having supervision of public property in this state may establish and maintain receptacles for the deposit of litter on the property and publicize the location of those receptacles.

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

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

### **324.8907 Powers of municipalities not limited.**

Sec. 8907. This part does not affect or in any way limit the powers of municipalities to enact and enforce ordinances for the control and elimination of litter.

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

**Popular name:** Act 451

**Popular name:** Littering

**Popular name:** NREPA

## SOIL CONSERVATION, EROSION, AND SEDIMENTATION CONTROL

### PART 91

#### SOIL EROSION AND SEDIMENTATION CONTROL

#### **324.9101 Definitions; A to W.**

Sec. 9101. (1) "Agricultural practices" means all land farming operations except the plowing or tilling of land for the purpose of crop production or the harvesting of crops.

(2) "Authorized public agency" means a state agency or an agency of a local unit of government authorized under section 9110 to implement soil erosion and sedimentation control procedures with regard to earth changes undertaken by it.

(3) "Conservation district" means a conservation district authorized under part 93.

(4) "Consultant" means either of the following:

(a) An individual who has a current certificate of training under section 9123.

(b) A person who employs 1 or more individuals who have current certificates of training under section 9123.

(5) "County agency" means an officer, board, commission, department, or other entity of county government.

(6) "County enforcing agency" means a county agency or a conservation district designated by a county board of commissioners under section 9105.

(7) "County program" or "county's program" means a soil erosion and sedimentation control program established under section 9105.

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

(9) "Earth change" means a human-made change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Earth change does not include the practice of plowing and tilling soil for the purpose of crop production.

(10) "Gardening" means activities necessary to the growing of plants for personal use, consumption, or enjoyment.

(11) "Local ordinance" means an ordinance enacted by a local unit of government under this part providing for soil erosion and sedimentation control.

(12) "Municipal enforcing agency" means an agency designated by a municipality under section 9106 to enforce a local ordinance.

(13) "Municipality" means any of the following:

(a) A city.

(b) A village.

(c) A charter township.

(d) A general law township that is located in a county with a population of 200,000 or more.

(14) "Rules" means the rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(15) "Seawall maintenance" means an earth change activity landward of the seawall.

(16) "Sediment" means solid particulate matter, including both mineral and organic matter, that is in suspension in water, is being transported, or has been removed from its site of origin by the actions of wind, water, or gravity and has been deposited elsewhere.

(17) "Soil erosion" means the wearing away of land by the action of wind, water, gravity, or a combination of wind, water, or gravity.

(18) "State agency" means a principal state department or a state public university.

(19) "Violation of this part" or "violates this part" means a violation of this part, the rules promulgated under this part, a permit issued under this part, or a local ordinance enacted under this part.

(20) "Waters of the state" means the Great Lakes and their connecting waters, inland lakes and streams as defined in rules promulgated under this part, and wetlands regulated under part 303.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2001, Act 227, Imd. Eff.



Jan. 2, 2002;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9102, 324.9103 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.**

**Compiler's note:** The repealed sections pertained to definitions and soil erosion and sedimentation control program.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9104 Rules; availability of information.**

Sec. 9104. (1) The department, with the assistance of the department of agriculture, shall promulgate rules for a unified soil erosion and sedimentation control program, including provisions for the review and approval of site plans, land use plans, or permits relating to soil erosion control and sedimentation control. The department shall notify and make copies of proposed rules available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies for review and comment before promulgation.

(2) The department shall make available to county enforcing agencies, municipal enforcing agencies, and authorized public agencies educational information on soil erosion and sedimentation control techniques and the benefits of implementing soil erosion and sedimentation control measures. County enforcing agencies and municipal enforcing agencies shall distribute this information to persons receiving permits under a county program or a local ordinance and to other interested persons.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 323.1701 et seq. of the Michigan Administrative Code.

### **324.9105 Administration and enforcement of rules; resolution; ordinance; interlocal agreement; review; notice of results; informal meeting; probation; consultant; inspection fees; rescission of order, stipulation, or probation.**

Sec. 9105. (1) Subject to subsection (6), a county is responsible for the administration and enforcement of this part and the rules promulgated under this part throughout the county except as follows:

(a) Within a municipality that has assumed the responsibility for soil erosion and sedimentation control under section 9106.

(b) With regard to earth changes of authorized public agencies.

(2) Subject to subsection (3), the county board of commissioners of each county, by resolution, shall designate a county agency, or a conservation district upon the concurrence of the conservation district, as the county enforcing agency responsible for administration and enforcement of this part and the rules promulgated under this part in the name of the county. The resolution may set forth a schedule of fees for inspections, plan reviews, and permits and may set forth other matters relating to the administration and enforcement of the county program and this part and the rules promulgated under this part.

(3) In lieu of or in addition to a resolution provided for in subsection (2), the county board of commissioners of a county may provide by ordinance for soil erosion and sedimentation control in the county. An ordinance adopted under this subsection may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this subsection is more restrictive than this part and the rules promulgated under this part, the county enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance and may set forth such other matters as the county board of commissioners considers necessary or desirable. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(4) A copy of a resolution or ordinance adopted under this section and all subsequent amendments to the resolution or ordinance shall be forwarded to the department for the department's review and approval. The department shall forward a copy to the conservation district for that county for review and comment.

(5) Two or more counties may provide for joint enforcement and administration of this part and the rules promulgated under this part by entering into an interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(6) The department shall conduct a review of a county's program every 5 years. The review shall be conducted at least 6 months before the expiration of each succeeding 5-year period. The department shall

approve a county's program if all of the following conditions are met:

(a) The county has passed a resolution or enacted an ordinance as provided in this section.

(b) The individuals with decision-making authority who are responsible for administering the county program have current certificates of training under section 9123.

(c) The county has effectively administered and enforced the county program in the past 5 years or has implemented changes in its administration or enforcement procedures that the department determines will result in the county effectively administering and enforcing the county program. In determining whether the county has met the requirement of this subdivision, the department shall consider all of the following:

(i) Whether a mechanism is in place to provide funding to administer the county's program.

(ii) Whether the county has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(iii) The effectiveness of the county's past compliance and enforcement efforts.

(iv) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the county.

(v) The adequacy and effectiveness of the permits issued by the county and the inspections being performed by the county.

(vi) The conditions at construction sites under the jurisdiction of the county as documented by departmental inspections.

(7) Following a review under subsection (6), the department shall notify the county of the results of its review and whether the department proposes to approve or disapprove the county's program. Within 30 days of receipt of the notice under this subsection, a county may request and the department shall hold an informal meeting to discuss the review and the proposed action by the department.

(8) Following the meeting under subsection (7), if requested, and consideration of the review under subsection (6), if the department does not approve a county's program, the department shall enter an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. In addition, at any time that the department determines that a county that was previously approved by the department under subsection (6) is not satisfactorily administering and enforcing the county's program, the department shall enter into an order, stipulation, or consent agreement under section 9112(7) placing the county on probation. During the 6-month period after a county is placed on probation, the department shall consult with the county on how the county could change its administration of the county program in a manner that would result in its approval.

(9) Within 6 months after a county has been placed on probation under subsection (8), the county may notify the department that it intends to hire a consultant to administer the county's program. If, within 60 days after notifying the department, the county hires a consultant that is acceptable to the department, then within 1 year after the county hires the consultant, the department shall conduct a review of the county's program to determine whether or not the county program can be approved.

(10) If any of the following occur, the department shall hire a consultant to administer the county's program:

(a) The county does not notify the department of its intent to hire a consultant under subsection (9).

(b) The county does not hire a consultant that is acceptable to the department within 60 days after notifying the department of its intent to hire a consultant under subsection (9).

(c) The county remains unapproved following the department's review under subsection (9).

(11) Upon hiring a consultant under subsection (10), the department may establish a schedule of fees for inspections, review of soil erosion and sedimentation control plans, and permits for the county's program that will provide sufficient revenues to pay for the cost of the contract with the consultant, or the department may bill the county for the cost of the contract with the consultant. As used in this subsection, "cost of the contract" means the actual cost of a contract with a consultant plus the documented costs to the department in administering the contract, but not to exceed 10% of the actual cost of the contract.

(12) At any time that a county is on probation as provided for in this section, the county may request the department to conduct a review of the county's program. If, upon such review, the county has implemented appropriate changes to the county's program, the department shall approve the county's program. If the department approves a county's program under this subsection, the department shall rescind its order, stipulation, or consent agreement that placed the county on probation.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

**324.9106 Ordinances; written interlocal agreement.**

Sec. 9106. (1) Subject to subsection (4), a municipality by ordinance may provide for soil erosion and sedimentation control on public and private earth changes within its boundaries except that a township ordinance is not applicable within a village that has in effect such an ordinance. An ordinance may be more restrictive than, but shall not make lawful that which is unlawful under, this part and the rules promulgated under this part. If an ordinance adopted under this section is more restrictive than this part and the rules promulgated under this part, the municipal enforcing agency shall notify a person receiving a permit under the ordinance that the ordinance is more restrictive than this part and the rules promulgated under this part. The ordinance shall incorporate by reference the rules promulgated under this part that do not conflict with a more restrictive ordinance, shall designate a municipal enforcing agency responsible for administration and enforcement of the ordinance, and may set forth such other matters as the legislative body considers necessary or desirable. The ordinance shall be applicable and shall be enforced with regard to all private and public earth changes within the municipality except earth changes by an authorized public agency. The municipality may consult with a conservation district for assistance or advice in the preparation of the ordinance. The ordinance may provide penalties for a violation of the ordinance that are consistent with section 9121.

(2) An ordinance related to soil erosion and sedimentation control that is not approved by the department as conforming to the minimum requirements of this part and the rules promulgated under this part has no force or effect. A municipality shall submit a copy of its proposed ordinance or of a proposed amendment to its ordinance to the department for approval before adoption. The department shall forward a copy to the county enforcing agency of the county in which the municipality is located and the appropriate conservation district for review and comment. Within 90 days after the department receives an existing ordinance, proposed ordinance, or amendment, the department shall notify the clerk of the municipality of its approval or disapproval along with recommendations for revision if the ordinance, proposed ordinance, or amendment does not conform to the minimum requirements of this part or the rules promulgated under this part. If the department does not notify the clerk of the local unit within the 90-day period, the ordinance, proposed ordinance, or amendment is considered to have been approved by the department.

(3) Two or more municipalities may provide for joint administration and enforcement of this part and the rules promulgated under this part by entering into a written interlocal agreement pursuant to the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512. However, if all of the municipalities are not located, in whole or in part, in the same county, the agreement does not take effect unless the department approves the agreement in writing. The department shall approve the agreement if the department determines that the agreement will promote the effective administration and enforcement of this part and rules promulgated under this part.

(4) A municipality shall not administer and enforce this part or the rules promulgated under this part or a local ordinance unless the department has approved the municipality. An approval under this section is valid for 5 years, after which the department shall review the municipality for reapproval. At least 6 months before the expiration of each succeeding 5-year approval period, the department shall complete a review of the municipality for reapproval. The department shall approve a municipality if all of the following conditions are met:

(a) The municipality has enacted an ordinance as provided in this section that is at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control program for the municipality have current certificates of training under section 9123.

(c) The municipality has submitted evidence of its ability to effectively administer and enforce a soil erosion and sedimentation control program. In determining whether the municipality has met the requirements of this subdivision, the department shall consider all of the following:

(i) Whether a mechanism is in place to provide funding to administer the municipality's soil erosion and sedimentation control program.

(ii) The adequacy of the documents proposed for use by the municipality including, but not limited to, application forms, soil erosion and sedimentation control plan requirements, permit forms, and inspection reports.

(iii) If the municipality has previously administered a soil erosion and sedimentation control program, whether the municipality effectively administered and enforced the program in the past or has implemented changes in its administration or enforcement procedures that the department determines will result in the municipality effectively administering and enforcing a soil erosion and sedimentation control program in

compliance with this part and the rules promulgated under this part. In determining whether the municipality has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the municipality has had adequate funding to administer the municipality's soil erosion and sedimentation control program.

(B) Whether the municipality has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the municipality's past compliance and enforcement efforts.

(D) The adequacy and effectiveness of the applications and soil erosion and sedimentation control plans being accepted by the municipality.

(E) The adequacy and effectiveness of the permits issued by the municipality and the inspections being performed by the municipality.

(F) The conditions at construction sites under the jurisdiction of the municipality as documented by departmental inspections.

(5) If the department determines that a municipality is not approved under subsection (4) or that a municipality that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying the municipality authority or revoking the municipality's authority to administer a soil erosion and sedimentation control program. Upon entry of this order, stipulation, or consent agreement, the county program for the county in which the municipality is located becomes operative within the municipality.

(6) A municipality that elects to rescind its ordinance shall notify the department. Upon rescission of its ordinance, the county program for the county in which the municipality is located becomes operative within the municipality.

(7) A municipality that rescinds its ordinance or is not approved by the department to administer the program shall retain jurisdiction over projects under permit at the time of the rescission or disapproval. The municipality shall retain jurisdiction until the projects are completed and stabilized or the county agrees to assume jurisdiction over the permitted earth changes.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005;—Am. 2018, Act 419, Eff. Mar. 20, 2019.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9107 Notice of violation.**

Sec. 9107. If a local unit of government has notice that a violation of this part has occurred within the boundaries of that local unit of government, including but not limited to a violation attributable to an earth change by an authorized public agency, the local unit of government shall notify the appropriate county enforcing agency and municipal enforcing agency and the department of the violation.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9108 Permit; deposit as condition for issuance.**

Sec. 9108. As a condition for the issuance of a permit, the county enforcing agency or municipal enforcing agency may require the applicant to deposit with the clerk of the county or municipality in the form of cash, a certified check, or an irrevocable bank letter of credit, whichever the applicant selects, or a surety bond acceptable to the legislative body of the county or municipality or to the county enforcing agency or municipal enforcing agency, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county enforcing agency or municipal enforcing agency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9109 Agreement between public agency or county or municipal enforcing agency and conservation district; purpose; reviews and evaluations of agency's programs or procedures; agreement between person engaged in agricultural practices and conservation district; notification; enforcement.**

Sec. 9109. (1) An authorized public agency, county enforcing agency, or municipal enforcing agency may enter into an agreement with a conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed earth changes, earth change plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control. In addition to or in the absence of such agreements, conservation districts may perform periodic reviews and evaluations of the authorized public agency's, county enforcing agency's, or municipal enforcing agency's programs or procedures pursuant to standards and specifications developed in cooperation with the respective districts and as approved by the department. These reviews and evaluations shall be submitted to the department for appropriate action.

(2) A person engaged in agricultural practices may enter into an agreement with the appropriate conservation district to pursue agricultural practices in accordance with and subject to this part, the rules promulgated under this part, and any applicable local ordinance. If a person enters into an agreement with a conservation district, the conservation district shall notify the county enforcing agency or municipal enforcing agency or the department in writing of the agreement. Upon entering into the agreement under this subsection, a person is not subject to permits required under this part, but is required to develop project specific soil erosion and sedimentation control plans and is subject to the remedies provided for in this part for violations of this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9110 Designation as authorized public agency; application; submission of procedures; variance; approval.**

Sec. 9110. (1) Subject to subsection (4), a state agency or an agency of a local unit of government may apply to the department for designation as an authorized public agency by submitting to the department the soil erosion and sedimentation control procedures governing all earth changes normally undertaken by the agency. If the applicant is an agency of a local unit of government, the department shall submit the procedures to the county enforcing agency and the appropriate conservation district for review. The county enforcing agency and the conservation district shall submit their comments on the procedures to the department within 60 days. If the applicant is a state agency, the department shall submit the procedures to the department of agriculture for review, and the department of agriculture shall submit its comments on the procedures to the department within 60 days.

(2) Subject to subsection (4), if the department finds that the soil erosion and sedimentation control procedures of the state agency or the agency of the local unit of government meet the requirements of this part and rules promulgated under this part, the department shall designate the agency as an authorized public agency.

(3) Subject to subsection (4), after approval of the procedures and designation as an authorized public agency pursuant to subsection (2), all earth changes maintained or undertaken by the authorized public agency shall be undertaken pursuant to the approved procedures. If determined necessary by the department and upon request of an authorized public agency, the department may grant a variance from the provisions of this subsection.

(4) A state agency or an agency of a local unit of government shall not administer and enforce this part and the rules promulgated under this part as an authorized public agency unless the department has approved the agency under this section. An approval under this section is valid for 5 years, after which the department shall review the agency for reapproval. At least 6 months before the expiration of each succeeding 5-year period, the department shall complete a review of the authorized public agency for reapproval. The department shall approve a state agency or an agency of a local unit of government if all of the following conditions are met:

(a) The agency has adopted soil erosion and sedimentation control procedures that are at least as restrictive as this part and the rules promulgated under this part.

(b) The individuals with decision-making authority who are responsible for administering the soil erosion and sedimentation control procedures have current certificates of training under section 9123.

(c) The agency has submitted evidence of its ability to effectively administer soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subdivision, the department shall consider all of the following:

(i) Funding to administer the agency's soil erosion and sedimentation control program.

(ii) The agency's plans for inspections to assure minimization of soil erosion and off-site sedimentation.

(iii) The adequacy of the agency's soil erosion and sedimentation control procedures.

(iv) If the agency has previously administered soil erosion and sedimentation control procedures, the agency has effectively administered these procedures or has implemented changes in their administration that the department determines will result in the agency effectively administering the soil erosion and sedimentation control procedures. In determining whether the agency has met the requirement of this subparagraph, the department shall consider all of the following:

(A) Whether the agency has had adequate funding to administer the agency's soil erosion and sedimentation control program.

(B) Whether the agency has conducted adequate inspections to assure minimization of soil erosion and off-site sedimentation.

(C) The effectiveness of the agency's past compliance and enforcement efforts.

(D) The adequacy of the agency's soil erosion and sedimentation control plans and procedures as required by rule.

(E) The conditions at construction sites under the jurisdiction of the agency as documented by departmental inspections.

(5) If the department determines that a state agency or an agency of a local unit of government is not approved under subsection (4) or that a state agency or an agency of a local unit of government that was previously approved under subsection (4) is not satisfactorily administering and enforcing this part and the rules promulgated under this part, the department shall enter an order, stipulation, or consent agreement under section 9112(7) denying or revoking the designation of the state agency or agency of a local unit of government as an authorized public agency.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9111 Repealed. 2000, Act 504, Imd. Eff. Jan. 11, 2001.**

**Compiler's note:** The repealed section pertained to statements and certificates relating to plats.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9112 Earth change; permit required; effect of property transfer; violation; notice; hearing; answer; evidence; stipulation or consent order; final order of determination.**

Sec. 9112. (1) A person shall not maintain or undertake an earth change governed by this part, the rules promulgated under this part, or an applicable local ordinance, except in accordance with this part and the rules promulgated under this part or with the applicable local ordinance, and except as authorized by a permit issued by the appropriate county enforcing agency or municipal enforcing agency pursuant to part 13.

(2) The owner of property that is subject to a permit under this part is responsible for compliance with the terms of the permit that apply to that property.

(3) Except as provided in subsection (4), if property subject to a permit under this part is transferred, both of the following are transferred with the property:

(a) The permit, including the permit obligations and conditions.

(b) Responsibility for any violations of the permit that exist on the date the property is transferred.

(4) If property is subject to a permit under this part and a parcel of the property, but not the entire property, is transferred, both of the following are transferred with the parcel:

(a) The permit obligations and conditions with respect to that parcel, but not the permit itself.

(b) Responsibility for any violations of the permit with respect to that parcel that exist on the date the parcel is transferred.

(5) If property subject to a permit under this part is proposed to be transferred, the transferor shall notify the transferee of the permit in writing on a form developed by the department and provided by the county enforcing agency or municipal enforcing agency. The notice shall inform the transferee of the requirements of subsection (2) and, as applicable, subsection (3) or (4). The notice shall include a copy of the permit. The transferor and transferee shall sign the notice, and the transferor shall submit the signed notice to the county enforcing agency or municipal enforcing agency before the property is transferred.

(6) A county enforcing agency or municipal enforcing agency may charge a fee for the transfer of a permit under subsection (3) or (4). The fee shall not exceed the administrative costs of transferring the permit. Fees collected under this subsection shall only be used for the enforcement and administration of this part by the enforcing agency.

(7) If in the opinion of the department a person, including an authorized public agency, violates this part,

the rules promulgated under this part, or an applicable local ordinance, or a county enforcing agency or municipal enforcing agency fails to enforce this part, the rules promulgated under this part, or an applicable local ordinance, the department may notify the alleged offender in writing of its determination. If the department places a county on probation under section 9105, a municipality is not approved under section 9106, or a state agency or agency of a local unit of government is not approved under section 9110, or if the department determines that a municipal enforcing agency or authorized public agency is not satisfactorily administering and enforcing this part and rules promulgated under this part, the department shall notify the county, municipality, state agency, or agency of a local unit of government in writing of its determination or action. The notice shall contain, in addition to a statement of the specific violation or failure that the department believes to exist, a proposed order, stipulation for agreement, or other action that the department considers appropriate to assure timely correction of the violation or failure. The notice shall set a date for a hearing not less than 4 nor more than 8 weeks from the date of the notice of determination. Extensions of the date of the hearing may be granted by the department or on request. At the hearing, any interested party may appear, present witnesses, and submit evidence. A person who has been served with a notice of determination may file a written answer to the notice of determination before the date set for hearing or at the hearing may appear and present oral or written testimony and evidence on the charges and proposed requirements of the department to assure correction of the violation or failure. If a person served with the notice of determination agrees with the proposed requirements of the department and notifies the department of that agreement before the date set for the hearing, disposition of the case may be made with the approval of the department by stipulation or consent agreement without further hearing. The final order of determination following the hearing, or the stipulation or consent order as authorized by this section and approved by the department, is conclusive unless reviewed in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, in the circuit court of Ingham county, or of the county in which the violation occurred, upon petition filed within 15 days after the service upon the person of the final order of determination.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2004, Act 565, Imd. Eff. Jan. 3, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9113 Injunction; inspection and investigation.**

Sec. 9113. (1) Notwithstanding the existence or pursuit of any other remedy, the department or a county enforcing agency or municipal enforcing agency may maintain an action in its own name in a court of competent jurisdiction for an injunction or other process against a person to restrain or prevent violations of this part.

(2) At any reasonable time, an agent appointed by the department, a county enforcing agency, or a municipal enforcing agency may enter upon any private or public property for the purpose of inspecting and investigating conditions or practices that may be in violation of this part. However, an investigation or inspection under this subsection shall comply with the United States constitution and the state constitution of 1963.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2005, Act 55, Imd. Eff. June 30, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9114 Additional rules.**

Sec. 9114. In order to carry out their functions under this part, the department and the department of agriculture may promulgate rules in addition to those otherwise authorized in this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 323.1701 et seq. of the Michigan Administrative Code.

### **324.9115 Logging, mining, or land plowing or tilling; permit exemption; "mining" defined.**

Sec. 9115. (1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing or tilling of land for the purpose of crop production or the harvesting of crops is not required to obtain a permit under this part. However, all earth changes associated with the activities listed in this section shall conform to the same standards as if they required a permit under this part. The exemption from obtaining a permit under this subsection does not include either of the following:

(a) Access roads to and from the site where active mining or logging is taking place.

(b) Ancillary activities associated with logging and mining.

(2) This part does not apply to a metallic mineral mining activity that is regulated under a mining and reclamation plan under part 631 or 634 or a mining, reclamation, and environmental protection plan under part 632, if the plan contains soil erosion and sedimentation control provisions and is approved by the department.

(3) A person is not required to obtain a permit from a county enforcing agency or a municipal enforcing agency for earth changes associated with well locations, surface facilities, flowlines, or access roads relating to oil or gas exploration and development activities regulated under part 615 or mineral well exploration and development activities regulated under part 625, if the application for a permit to drill and operate contains a soil erosion and sedimentation control plan that is approved by the department under part 615 or 625. However, those earth changes shall conform to the same standards as required for a permit under this part. This subsection does not apply to a multisource commercial hazardous waste disposal well as defined in section 62506a.

(4) As used in this section, "mining" does not include the removal of clay, gravel, sand, peat, or topsoil.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001;—Am. 2011, Act 214, Imd. Eff. Nov. 8, 2011;—Am. 2017, Act 40, Eff. Aug. 21, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9115a Earth change activities not requiring permit; violations.**

Sec. 9115a. (1) Notwithstanding any other provision of this part, a person is not required to obtain a permit from a county or municipal enforcing agency for earth changes associated with the following agricultural practices if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) The construction, maintenance, or removal of fences and fence lines.

(b) The removal of tree or shrub stumps or roots.

(c) The installation of drainage tile, irrigation, or electrical lines.

(d) The construction or maintenance of 1 or more ponds that meet all of the following:

(i) The earth change associated with the construction or maintenance is less than 5 acres.

(ii) The earth change associated with the construction or maintenance does not result in a discharge of storm water into the waters of the state.

(iii) The earth change associated with the construction or maintenance is not part of a larger plan of development. As used in this subparagraph, "larger plan of development" means a contiguous area where multiple separate and distinct construction activities are occurring under a single plan as identified in documentation or physical demarcation indicating where construction activities may occur.

(2) Notwithstanding any other provision of this part, a residential property owner who causes the following activities to be conducted on individual residential property owned and occupied by him or her is not required to obtain a permit under this part if the earth change activities do not result in or contribute to soil erosion or sedimentation of the waters of the state or a discharge of sediment off-site:

(a) An earth change of a minor nature that is stabilized within 24 hours of the initial earth disturbance.

(b) Gardening, if the natural elevation of the area is not raised.

(c) Post holes for fencing, decks, utility posts, mailboxes, or similar applications, if no additional grading or earth change occurs for use of the post holes.

(d) Removal of tree stumps, shrub stumps, or roots resulting in an earth change not to exceed 100 square feet.

(e) All of the following activities, if soil erosion and sedimentation controls are implemented, the earth change is stabilized within 24 hours of the initial earth disturbance, and soil erosion or sedimentation to adjacent properties or the waters of the state has not or will not reasonably occur:

(i) Planting of trees, shrubs, or other similar plants.

(ii) Seeding or reseeded of lawns of less than 1 acre if the seeded area is at least 100 feet from the waters of the state.

(iii) Seeding or reseeded of lawns closer than 100 feet from the waters of the state if the area to be seeded or reseeded does not exceed 100 square feet.

(iv) The temporary stockpiling of soil, sand, or gravel not greater than a total of 10 cubic yards on the property if the stockpiling occurs at least 100 feet from the waters of the state.

(v) Seawall maintenance that does not exceed 100 square feet.

(3) Exemptions provided in this section shall not be construed as exemptions from enforcement procedures



under this part or the rules promulgated under this part if the exempted activities cause or result in a violation of this part or the rules promulgated under this part.

**History:** Add. 2005, Act 56, Imd. Eff. June 30, 2005;—Am. 2016, Act 2, Eff. Feb. 25, 2016.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9116 Reduction of soil erosion or sedimentation by owner.**

Sec. 9116. A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain soil erosion and sedimentation control measures that will effectively reduce soil erosion or sedimentation from the land on which the earth change has been made.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9117 Notice of determination.**

Sec. 9117. If the county enforcing agency or municipal enforcing agency that is responsible for enforcing this part and the rules promulgated under this part determines that soil erosion or sedimentation of adjacent properties or the waters of the state has or will reasonably occur from land in violation of this part or the rules promulgated under this part or an applicable local ordinance, the county enforcing agency or municipal enforcing agency may seek to enforce a violation of this part by notifying the person who owns the land, by mail, with return receipt requested, of its determination. The notice shall contain a description of the violation and what must be done to remedy the violation and shall specify a time to comply with this part and the rules promulgated under this part or an applicable local ordinance.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9118 Compliance; time.**

Sec. 9118. Within 5 days after a notice of violation has been issued under section 9117, a person who owns land subject to this part and the rules promulgated under this part shall implement and maintain soil erosion and sedimentation control measures in conformance with this part, the rules promulgated under this part, or an applicable local ordinance.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9119 Entry upon land; construction, implementation, and maintenance of soil erosion and sedimentation control measures; cost.**

Sec. 9119. Except as otherwise provided in this section, not sooner than 5 days after notice of violation of this part has been mailed under section 9117, if the condition of the land, in the opinion of the county enforcing agency or municipal enforcing agency, may result in or contribute to soil erosion or sedimentation of adjacent properties or to the waters of the state, and if soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance are not in place, the county enforcing agency or municipal enforcing agency, or a designee of either of these agencies, may enter upon the land and construct, implement, and maintain soil erosion and sedimentation control measures in conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, the enforcing agency shall not expend more than \$10,000.00 for the cost of the work, materials, labor, and administration without prior written notice in the notice provided in section 9117 for the person who owns the land that the expenditure of more than \$10,000.00 may be made. If more than \$10,000.00 is to be expended under this section, then the work shall not begin until at least 10 days after the notice of violation has been mailed.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9120 Reimbursement of county or municipal enforcing agency; lien for expenses;**

**priority; collection and treatment of lien.**

Sec. 9120. (1) All expenses incurred by a county enforcing agency or a municipal enforcing agency under section 9119 to construct, implement, and maintain soil erosion and sedimentation control measures to bring land into conformance with this part and the rules promulgated under this part or an applicable local ordinance shall be reimbursed to the county enforcing agency or municipal enforcing agency by the person who owns the land.

(2) The county enforcing agency or municipal enforcing agency shall have a lien for the expenses incurred under section 9119 of bringing the land into conformance with this part and the rules promulgated under this part or an applicable local ordinance. However, with respect to single-family or multifamily residential property, the lien for such expenses shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. With respect to all other property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

**324.9121 Violations; penalties.**

Sec. 9121. (1) A person who violates this part is responsible for either of the following:

(a) If the action is brought by a county enforcing agency or a municipal enforcing agency of a local unit of government that has enacted an ordinance under this part that provides a penalty for violations, the person is responsible for a municipal civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.

(b) If the action is brought by the state or a county enforcing agency of a county that has not enacted an ordinance under this part, the person is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$2,500.00.

(2) A person who knowingly violates this part or knowingly makes a false statement in an application for a permit or in a soil erosion and sedimentation control plan is responsible for the payment of a civil fine of not more than \$10,000.00 for each day of violation.

(3) A person who knowingly violates this part after receiving a notice of determination under section 9112 or 9117 is responsible for the payment of a civil fine of not less than \$2,500.00 or more than \$25,000.00 for each day of violation.

(4) Civil fines collected under subsections (2) and (3) shall be deposited as follows:

(a) If the state filed the action under this section, in the general fund of the state.

(b) If a county enforcing agency or municipal enforcing agency filed the action under this section, with the county or municipality that filed the action.

(c) If an action was filed jointly by the state and a county enforcing agency or municipal enforcing agency, the civil fines collected under this subsection shall be divided in proportion to each agency's involvement as mutually agreed upon by the agencies. All fines going to the department shall be deposited into the general fund of the state.

(5) A default in the payment of a civil fine or costs ordered under this section or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(6) In addition to a fine assessed under this section, a person who violates this part is liable to the state for damages for injury to, destruction of, or loss of natural resources resulting from the violation. The court may order a person who violates this part to restore the area or areas affected by the violation to their condition as existing immediately prior to the violation.

(7) This section applies to an authorized public agency, in addition to other persons. This section does not apply to a county enforcing agency or a municipal enforcing agency with respect to its administration and enforcement of this part and rules promulgated under this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1996, Act 173, Imd. Eff. Apr. 18, 1996;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

**324.9122 Severability.**

Sec. 9122. If any provision of this part is declared by a court to be invalid, the invalid provision shall not affect the remaining provisions of the part that can be given effect without the invalid provision. The validity of the part as a whole or in part shall not be affected, other than the provision invalidated.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9123 Training program; certificate; fees.**

Sec. 9123. (1) Beginning 3 years after the effective date of the 2000 amendments to this section, each individual who is responsible for administering this part and the rules promulgated under this part or a local ordinance and who has decision-making authority for soil erosion and sedimentation control plan development or review, inspections, permit issuance, or enforcement shall be trained by the department. The department shall issue a certificate of training to individuals under this section if they do both of the following:

(a) Complete a soil erosion and sedimentation control training program sponsored by the department.

(b) Pass an examination on the subject matter covered in the training program under subdivision (a).

(2) A certificate of training under subsection (1) is valid for 5 years. For recertifications, the department may offer a refresher course or other update in lieu of the requirements of subsection (1)(a) and (b).

(3) The department may charge fees for administering the training program and the examination under this section that are not greater than the department's cost of administering the training program and the examination. All fees collected under this section shall be deposited into the soil erosion and sedimentation control training fund created in section 9123a.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9123a Soil erosion and sedimentation control training fund; creation; disposition of funds; lapse; expenditures.**

Sec. 9123a. (1) The soil erosion and sedimentation control training fund is created within the state treasury.

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

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

(4) The department shall expend money from the fund, upon appropriation, only to administer the soil erosion and sedimentation control training program and examination under section 9123.

**History:** Add. 2000, Act 504, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 451

**Popular name:** NREPA

## PART 93

### SOIL CONSERVATION DISTRICTS

#### **324.9301 Definitions.**

Sec. 9301. As used in this part:

(a) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(b) "Board" or "conservation district board" means the governing body of a conservation district.

(c) "Compliance assistance agent" means an individual who provides technical assistance to individuals, organizations, agencies, or others to aid them in complying with federal and state laws and local conservation ordinances.

(d) "Conservation species" means those plant species beneficial for conservation practices as included on the list prepared under section 9304a by the conservation species advisory panel.

(e) "Conservation species advisory panel" means the conservation species advisory panel created in section 9304a.

(f) "Department" means the department of agriculture and rural development.

(g) "Director" means 1 of the members of the conservation district board, elected or appointed in accordance with this part.

(h) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this part, for the purposes, with the powers, and subject to

the restrictions set forth in this part.

(i) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(j) "Landowner" includes any person who holds title to or has contracted to purchase any land lying within a district organized under this part or former 1937 PA 297.

(k) "Person" means an individual, partnership, or corporation.

(l) "Plant rescue" means to physically move native conservation species of plants from 1 location in Michigan to another location in Michigan for the purpose of reestablishing the native conservation species.

(m) "Qualified forester" means that term as defined in section 51301.

(n) "Resident" means a person who is of legal age to vote and can demonstrate residency in the district with 1 piece of identification.

(o) "State" means this state.

(p) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9302 Declaration of policy.**

Sec. 9302. It is the policy of the legislature to provide for the conservation of the natural resources of the state, including soil, water, farmland, forestland, and other natural resources, and to provide for the control and prevention of soil erosion, and thereby to conserve the natural resources of this state, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9303 Conducting business at public meeting; notice; availability of writings to public.**

Sec. 9303. (1) The business that a conservation district board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, in addition to any other notice prescribed in this part.

(2) A writing prepared, owned, used, in the possession of, or retained by a conservation district board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9304 Additional duties and powers of department.**

Sec. 9304. In addition to the other duties and powers conferred upon the department under this part, the department has the following duties and powers:

(a) To offer such assistance as may be appropriate to the directors of conservation districts in implementing any of their responsibilities under this part and as otherwise provided by law.

(b) To keep the directors of each of the districts informed of the activities and experience of all other districts and to facilitate cooperation and sharing of advice and experience between the districts.

(c) To approve and coordinate the programs of all conservation districts.

(d) To secure the cooperation and assistance of the United States and any of its agencies, and the state and any of its agencies, in the work of the districts, and to formulate policies and procedures as the department considers necessary for the extension of aid in any form from federal or state agencies to the districts.

(e) To disseminate information throughout the state concerning the activities and programs of the conservation districts and to encourage the formation of districts in areas where their organization is desirable.

(f) To review district budgets and financial information, including audit reports.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9304a Conservation species advisory panel; creation; membership; establishment of conservation species list.**

Sec. 9304a. (1) The conservation species advisory panel is created within the department. The conservation species advisory panel shall consist of the following members selected by the director of the department and approved by the commission of agriculture:

- (a) Two representatives of the department as follows:
  - (i) One individual from the pesticide and plant management division or its successor agency.
  - (ii) One individual from the environmental division or its successor agency.
- (b) One individual representing the department of natural resources.
- (c) One individual representing the natural resource conservation service.
- (d) Two representatives from Michigan state university as follows:
  - (i) One individual from the department of horticulture or its successor department.
  - (ii) One individual from the department of forestry or its successor department.
- (e) One individual representing conservation districts.
- (f) One individual from a statewide organization representing nursery and landscaping interests in the state.
- (g) One individual from a statewide organization representing seedling growers' interests in the state.

(2) By December 1 of each year, the conservation species advisory panel shall establish a list of conservation species for the following calendar year that may be propagated, planted, harvested, sold, or rescued as part of a plant rescue operation. However, conservation species on this list that are propagated, planted, or rescued during that calendar year may be sold, removed, or reestablished in subsequent years even if the species is removed from the list in a subsequent year.

**History:** Add. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9305 Boundaries; petition to change district's name.**

Sec. 9305. (1) Boundaries of conservation districts shall include cities, townships, and incorporated villages.

(2) A conservation district's board may petition the department to change the district's name. The petition form shall be provided by the department. The department shall give due consideration to the petition and, if the request is determined to be needed and practical, shall approve the change in name and request the secretary of state to enter the new name in the secretary of state's official records of the district.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9306 Repealed. 1998, Act 463, Imd. Eff. Jan. 4, 1999.**

**Compiler's note:** The repealed section pertained to election of district directors.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9307 Conservation district board; directors; chairperson; terms; annual meeting; election; notice; vacancies; certification; special election; quorum; expenses; employees; legal services; delegation of powers and duties; copies of documents; duties of board; eligibility for grant; duties of professional forester; rules; duties of conservation district; removal of director; designation and function of legislative representative.**

Sec. 9307. (1) A conservation district board shall consist of 5 directors elected or appointed as provided in this part. The board shall designate a chairperson annually.

(2) Except as provided in subsection (6), the term of office of each director is 4 years. Except as otherwise provided in this section, all directors shall be elected at an annual meeting by residents of the district. The election shall be nonpartisan and the directors shall be elected by the residents of the district at large. To become a candidate for director, at least 60 days prior to the annual meeting, an individual shall file at the district office a petition signed by 5 residents of the district. A candidate must be a resident of the district. The

annual meeting shall be held at a date determined by the board. Notice of the annual meeting shall be published in the official newspaper of record for the area in which the district is located at least 45 days prior to the date of the annual meeting. This notice shall include the date, time, and location of the annual meeting, an agenda of items to be considered at the meeting, and a list of all candidates for directors of the district. A resident of a district who is unable to attend the annual meeting may vote for the directors of the district by absentee ballot as follows:

(a) In person at the district office, during regular business hours of the district office, at any time after publication of the notice and prior to the annual meeting.

(b) By mail received at the district office at any time after publication of the notice and prior to the annual meeting.

(3) Following the annual meeting, director elections shall be certified by the department. A director shall hold office until a successor has been elected and qualified. Vacancies shall be filled by appointment by the board until the next annual meeting.

(4) The department shall notify the district of its determination on election certification within 90 days after the election. If the department does not certify the director election, the board shall call a special election. The procedures for the special election shall be the same as those for an election at the annual meeting. However, if the board received notification that the department would not be able to certify the director elections from a special election at least 120 days before the next annual meeting, the vacancies shall be filled at the next annual meeting.

(5) A majority of the directors constitutes a quorum of the board, and the concurrence of a majority in any matter within their duties is required for the board's determination. A director is entitled to expenses, including traveling expenses necessarily incurred in the discharge of his or her duties. A director may be paid a per diem for time spent undertaking his or her duties as a director.

(6) If at any time the board has an insufficient number of directors to constitute a quorum, the department shall appoint directors to fill the vacancies on the board. The appointed directors shall serve until new directors are elected as provided for in this section at the next annual meeting and the election is certified by the department. However, new directors who are elected to fill vacancies shall serve for the remainder of the vacated terms.

(7) The board may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as the board may require, and shall determine their qualifications, duties, and compensation. Upon request of the board, the attorney general may, at his or her discretion, provide legal services to the district. The board may delegate to its chairperson, to 1 or more directors, or to 1 or more agents or employees any powers and duties that the board considers proper. The board shall furnish to the department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, and other documents that the board adopts or utilizes and any other information concerning the board's activities that the department may require in the performance of its duties under this part.

(8) The board shall do all of the following:

(a) Provide for the execution of surety bonds for all district employees and officers who are entrusted with funds or property.

(b) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted.

(c) Determine the fiscal year of the district.

(9) To be eligible for a grant of \$50,000.00 or more from the department, a district shall do all of the following:

(a) Annually submit to the department a budget setting forth the purpose and amount of the expenses expected to be incurred and the source and amount of revenue expected to be received during the ensuing fiscal year.

(b) Maintain accurate financial records of receipts and disbursements and uniform accounting in accordance with generally accepted accounting principles under procedures prescribed by the department.

(c) Provide for a biennial independent certified audit by a certified public accountant of the financial records, accounts, and procedures of the district. The audit report shall show profits and losses and the financial condition of the district.

(d) Agree to comply with subsection (10), and agree to return any grant funds received if subsection (10) is violated.

(10) A professional forester employed under a grant described in subsection (9) shall not use his or her position to do either or both of the following:

(a) Compete with a private sector business.

(b) Develop a client base for forestry consultation during hours when he or she is not employed by the

district.

(11) The department may promulgate rules to implement subsection (9). However, rules promulgated under this subsection shall remain in effect not later than June 11, 2016.

(12) The board is responsible for the exercise of the powers and the performance of the duties of a conservation district under this part.

(13) Any director may be removed by the department upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(14) The board may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the board on all questions of program and policy that may affect the property, water supply, or other interests of the municipality or county.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Eff. June 1, 1999;—Am. 2002, Act 107, Imd. Eff. Mar. 27, 2002;—Am. 2004, Act 439, Imd. Eff. Dec. 21, 2004;—Am. 2013, Act 45, Imd. Eff. June 6, 2013;—Am. 2013, Act 114, Imd. Eff. Sept. 24, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9308 Powers of district and board generally; restrictions.**

Sec. 9308. (1) A conservation district organized under this part constitutes a governmental subdivision of this state and a public body corporate and politic, exercising public powers, and a conservation district and the conservation district board has all of the following powers, in addition to powers otherwise granted in this part:

(a) To conduct surveys, investigations, and research relating to the conservation of farmland, forestland, and natural resources, to publish the results of the surveys, investigations, or research, and to disseminate that information upon obtaining the consent of the landowner or the necessary rights or interest in the lands. In order to avoid duplication of research activities, a district shall not initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States.

(b) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the owner of the lands or the necessary rights or interest in the lands, to demonstrate by example the means, methods, and measures by which farmland, forestland, and natural resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.

(c) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other measures to achieve purposes listed in declaration of policy, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the lands, and on any other lands within the district upon obtaining the consent of the landowners or the necessary rights or interests in the lands.

(d) To cooperate or enter into agreements with and, within the limits of appropriations made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any landowner within the district or his or her designated representative, in the conducting of erosion-control and prevention operations within the district, subject to conditions as the directors consider necessary to advance the purposes of this part.

(e) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in property; to maintain, administer, and improve any properties acquired, to receive income from the properties, and to expend income in carrying out the purposes and provisions of this part; and to sell, lease, or otherwise dispose of any of its property or interests in property in furtherance of the purposes and provisions of this part.

(f) To make available, on the terms it prescribes, to landowners or their designated representatives within the district and to other conservation districts, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and other material or equipment that will assist landowners or their designated representatives to carry on operations upon their lands for the conservation of farmland, forestland, and natural resources and for the prevention and control of soil erosion.

(g) To engage in plant rescue operations and to propagate, plant, harvest, and, subject to section 9304a, sell only conservation species. A conservation district that violates this subdivision is subject to a civil fine of not more than \$100.00 per day of violation. An action to enforce this subdivision may be brought by the state or a county in the circuit court for the county in which the conservation district is located or in which the violation

occurred.

(h) To provide technical assistance to other conservation districts.

(i) To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this part.

(j) To develop comprehensive plans for the conservation of farmland, forestland, and natural resources and for the control and prevention of soil erosion within the district or other conservation districts. The plans shall specify, in such detail as is possible, the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish the plans and information described in this subdivision and bring them to the attention of residents of the district.

(k) To take over, by purchase, lease, or otherwise, and to administer any farmland, forestland, or natural resource conservation project located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any farmland, forestland, or natural resource conservation project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any farmland, forestland, or natural resource conservation project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies or from this state or any of its agencies, and to use or expend the money, services, materials, or other contributions in carrying on its operations; and to accept money, gifts, and donations from any other source not specified in this subdivision.

(l) To sue and be sued in the name of the district; to have a seal that is judicially noticed; to have perpetual succession unless terminated as provided in this part; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, and from time to time amend and repeal, rules and regulations in a manner that is not inconsistent with this part to carry into effect its purposes and powers.

(m) To borrow money for facilities or equipment for conservation purposes and pledge the assets of the district as collateral against loans. Any money borrowed shall be solely the obligation of the conservation district and not the obligation of the state or any other public entity in the state.

(n) As a condition to the extension of any benefit under this part to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operation conferring the benefits, and may require landowners to enter into and perform agreements or covenants as to the permanent use of the lands that will tend to prevent or control erosion on those lands.

(o) To act as a compliance assistance agent for other federal, state, and county laws.

(p) To act as the enforcing agency for a county if designated under section 9105.

(q) To collaborate with the department in reviewing applications for exemption as qualified forest property under section 7jj of the general property tax act, 1893 PA 206, MCL 211.7jj[1].

(r) Subject to subsection (2), in cooperation with the department, to evaluate nonindustrial private forestlands.

(s) Subject to subsection (3), to provide landowners any of the following:

(i) Technical assistance regarding potential environmental, ecological, and economic benefits of forestry, wildlife habitat, and wetland development and restoration.

(ii) Contact information for qualified foresters.

(iii) Contact information for other forest resource professionals that may have voluntarily provided information to the department.

(2) Except as otherwise provided in this subsection, a conservation district shall not develop management plans for nonindustrial private forestlands. A district shall provide a landowner upon request with a list of qualified foresters to develop management plans. The list shall be developed and maintained by the department. If requested by a landowner, the conservation district shall post on its website notice that the landowner is seeking forest management plan preparation; timber harvesting, marketing, or thinning; or similar services. If, after the notice is posted for at least 30 days on the conservation district's website, a landowner is unable to identify a private forester willing to develop a forest management plan, the conservation district may, upon approval by the department, prepare a forest management plan for the landowner.

(3) The exercise of powers under subsection (1)(s) does not affect the regulatory authority of any state department.

(4) Unless authorized by the county board of commissioners of each county in which a conservation



district is located, a conservation district shall not enforce state or federal laws.

(5) Unless otherwise specifically provided by law, provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district organized under this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9309 Cooperation between districts.**

Sec. 9309. The directors of any 2 or more districts organized under this part may cooperate with one another in the exercise of any or all powers conferred in this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9310 Cooperation of state agencies; agreements.**

Sec. 9310. (1) Agencies of this state that have jurisdiction over, or are charged with the administration of, any state owned lands, and agencies of any county or other governmental subdivision of the state that have jurisdiction over, or are charged with the administration of, any county owned or other publicly owned lands, lying within the boundaries of any conservation district, shall cooperate to the fullest extent with the district in the effectuation of programs and operations undertaken by the district under this part. Agents of the district shall be given free access to enter and perform work upon such publicly owned lands.

(2) A conservation district may cooperate with and enter into agreements with a county, township, municipality, or other subdivision of state government in implementing soil, water, forestland, and related land-use projects. A county, township, municipality, or other subdivision of state government through its governing body may cooperate with and enter into agreement with a conservation district in carrying out this part and may assist a district by providing it with such materials, equipment, money, personnel, and other services.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999;—Am. 2013, Act 45, Imd. Eff. June 6, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9311 Repealed. 1998, Act 463, Imd. Eff. Jan. 4, 1999.**

**Compiler's note:** The repealed section pertained to termination of district.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9312 Revision of boundaries; procedure.**

Sec. 9312. (1) One or more conservation districts may petition the department for a revision in the boundaries of 1 or more conservation districts. The department shall not take action on the petition unless it is signed by a majority of the directors of each of the districts involved in the proposed revision. Within 30 days after receipt of a proper petition, the department shall cause notice of hearing to be given to the residents in the area or areas affected by the proposed revision as identified by the directors of a district and within 60 days hold a hearing to receive comments relative to the proposed change.

(2) The department shall determine if the proposed revision as petitioned for is desirable. If it finds in the affirmative, the department shall issue an order that states that the boundaries of the districts are to be moved, merged, consolidated, or separated at a date specified in the order and includes the name and the revision of the boundaries of the revised district or districts.

(3) Upon transmission of the order to the secretary of state, a certificate of due organization under seal of the state shall issue, if necessary, to the directors of the district as provided in this part. The revised district or districts shall have the same powers, duties, and functions as other districts organized under this part.

(4) The department shall appoint the first board of directors of the revised district, 1 of whom shall be appointed for a term of 1 year, 2 for a term of 2 years, and 2 for a term of 3 years. Thereafter, directors shall be elected as provided in section 9307.

(5) All assets, liabilities, records, documents, writings, or other property of whatever kind of the districts of which the consolidated district is composed shall become the property of the consolidated district, and all agreements made by, and obligations of, the former districts shall be binding upon and enforceable by the

consolidated district. At the date specified in the department's order, the districts of which the consolidated district is composed shall cease to exist, and their powers and duties shall cease after that date. The consolidated district shall be governed by this part.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9313 Appropriations.**

Sec. 9313. The necessary expenses of any conservation districts shall be made from appropriations made for those purposes.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 463, Imd. Eff. Jan. 4, 1999.

**Popular name:** Act 451

**Popular name:** NREPA

## WATERCRAFT POLLUTION

### PART 95

## WATERCRAFT POLLUTION CONTROL

### **324.9501 Definitions.**

Sec. 9501. As used in this part:

(a) "Approved holding tank" means a holding tank certified by the United States coast guard under part 159 of subchapter O of chapter I of title 33 of the code of federal regulations, 33 C.F.R. part 159.

(b) "Discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) "Docking facility" means a public, private, or commercial marina, yacht club, dock, or wharf used for mooring, serving, or otherwise handling watercraft.

(d) "Litter" means rubbish, refuse, waste material, garbage, offal, paper, glass, cans, bottles, trash, debris, oil, or other foreign substances of every kind and description.

(e) "Marine sanitation device" means equipment designed for installation on board a watercraft or installed on board a watercraft to receive, retain, treat, or discharge sewage.

(f) "Oil" means oil of any kind or in any form, including petroleum, fuel oil, sludge, and oil refuse.

(g) "Police officer" means a police officer as defined in section 42 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.42 of the Michigan Compiled Laws, and a conservation officer.

(h) "Portable" means not permanently affixed to a watercraft and capable of being immediately removed from a watercraft.

(i) "Sewage" means human body wastes, treated or untreated.

(j) "Watercraft" means a contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels engaged in commerce upon the waters of this state, passenger or other cargo-carrying vessels, and privately owned recreational watercraft.

(k) "Waters of this state" means waters within the territorial limits of this state including the waters of the Great Lakes that are under the jurisdiction of this state.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9502 Prohibition of discharges into water.**

Sec. 9502. (1) A person shall not place, throw, deposit, discharge, or cause to be discharged into or onto the waters of this state, any litter, sewage, oil, or other liquid or solid materials that render the water unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment of the water for recreational purposes.

(2) A person shall not discharge, dump, throw, or deposit garbage, litter, sewage, or oil from a recreational, domestic, or foreign watercraft used for pleasure or for the purpose of carrying passengers, cargo, or otherwise engaged in commerce on the waters of this state.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.9503 Pollution control devices as condition to mooring or operating watercraft; rendering bypass connection, pump, or other device incapable of discharging sewage; exempting certain watercraft by rule; inspection; sticker.**

Sec. 9503. (1) Except as otherwise provided in this section, a person shall not moor or operate a watercraft, or permit the mooring or operation of his or her watercraft, on the waters of this state if the watercraft has a marine sanitation device, unless the marine sanitation device is equipped with 1 or more of the following pollution control devices:

(a) An approved holding tank that will retain all sewage produced on the watercraft for subsequent disposal at approved dockside or onshore collection and treatment facilities.

(b) An incinerating device that will reduce to ash all sewage produced on the watercraft. The ash shall be disposed of onshore in a manner that will preclude pollution.

(2) Except as otherwise provided in this section, a person shall not moor or operate a watercraft on the waters of this state if the watercraft has a marine sanitation device that is equipped with any type of bypass connection, pump, or other means of directly or indirectly discharging sewage into the waters of this state, unless the bypass connection, pump, or other device has been rendered incapable of directly or indirectly discharging sewage into the waters of this state. This subsection does not prohibit a properly installed discharge line used to empty a holding tank or retention device at an onshore sewage pump-out station, or prohibit the use of a portable marine sanitation device. A bypass connection, pump, or other device shall be rendered incapable of directly or indirectly discharging sewage into the waters of this state by 1 of the following methods:

(a) Removing a section of the pipe or tubing that allows discharge of sewage into the waters of this state, placing a cap over the pipe or tubing that remains attached to the marine sanitation device, and placing a seal approved by the department over the cap in a manner that precludes reattaching the pipe or tubing without breaking the seal. To comply with the requirements of this subsection, the seal must be unbroken at the time an inspection occurs.

(b) Closing a valve that will prevent all discharge of sewage into the waters of the state, and placing a seal approved by the department over the valve handle in a manner that precludes reopening the valve without breaking the seal. To comply with the requirements of this subsection, the seal must be unbroken at the time an inspection occurs.

(3) The department, by rule, may exempt certain oceangoing watercraft from the requirements of this section.

(4) If the department conducts an inspection to determine whether a watercraft is in compliance with this section and finds that the watercraft is in compliance, the department shall place a sticker on the watercraft that lists the date that the watercraft was inspected. The department shall not inspect a watercraft for compliance with this section more than once per year except upon probable cause.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.9504 Pump-out facilities.**

Sec. 9504. (1) Except as otherwise provided in this section, all docking facilities shall provide pump-out facilities approved by the department of public health for marine sanitation device holding tanks on the watercraft. All pump-out facility plans and installations shall be approved by the department of public health or its authorized representative.

(2) An existing docking facility that would otherwise be required by this section to have pump-out facilities is not required to have those facilities if it has a contract to use, and does use, the pump-out facilities of a docking facility in the vicinity. A contract between docking facilities under this subsection shall be approved by the department. This subsection does not apply to any docking facility that is constructed after May 1, 1990, or whose capacity is expanded by a cumulative amount exceeding 25%, or more than 15 slips, whichever is less, of the capacity existing on May 1, 1990.

(3) A docking facility that is constructed after May 1, 1990 or whose capacity is expanded by a cumulative amount exceeding 25%, or more than 15 slips, whichever is less, of the capacity existing on May 1, 1990 shall provide pump-out facilities as required by this part.

(4) A docking facility that has a capacity of 15 watercraft or less is exempt from the requirement of subsection (1).

(5) A docking facility holding only small watercraft of a type not equipped with a marine sanitation device is exempt from the requirements of subsection (1).

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9505 Discharge of oil prohibited; removal of oil from waters, shorelines, or beaches.**

Sec. 9505. (1) A person shall not discharge or permit the discharge of oil from a watercraft or a docking facility into or onto the waters of this state.

(2) The owner or operator of a watercraft who, whether directly or through any person concerned in the operation, navigation, or management of the watercraft, discharges, permits, or causes or contributes to the discharge of oil into or onto the waters of this state or adjoining shorelines or beaches shall immediately remove the oil from the waters, shorelines, or beaches. If the state removes the oil that was discharged from the watercraft, the owner or operator, or both, are liable to the state for the full amount of the costs reasonably incurred for its removal. The state may bring action against the owner or operator, or both, to recover such costs in any court of competent jurisdiction.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9506 Inspection of watercraft, marinas and docks; facilities required.**

Sec. 9506. All watercraft moored, operated, or located upon the waters of this state are subject to inspection by the department, or any peace, conservation, or police officer for the purpose of determining if the watercraft is equipped in compliance with the requirements of this part. The department may inspect marinas and other waterside facilities used by watercraft for launching, docking, or mooring purposes to determine if they are equipped with trash receptacles, sewage disposal equipment, or both. Commercial docks and wharfs designed for receiving and loading cargo or freight, or both, from commercial watercraft shall furnish facilities, if determined necessary, as prescribed by the department, to accommodate discharge of sewage from heads and galleys and for deposit of litter, garbage, trash, or bilge waters from the watercraft that utilize the docks or wharfs.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9507 State rights reserves; prohibition of local regulations.**

Sec. 9507. The state fully reserves to itself the exclusive right to establish requirements with reference to the disposal or discharge of sewage, litter, and oil from all watercraft. In order to assure statewide uniformity, the regulation by any political subdivision of the state of waste disposal from watercraft is prohibited.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9508 Rules.**

Sec. 9508. (1) The department may promulgate rules that are necessary or convenient to implement this part.

(2) The department of public health may promulgate rules necessary for the regulation of docking facility water supplies and sewage systems, pump-out facilities, and dockside sanitary facilities.

(3) Before promulgating a rule under this section, the department or the department of public health shall appoint and consult with an advisory committee that is representative of the major interests affected by the proposed rule.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.9510 Violation of part or rules as misdemeanor; penalty.**

Sec. 9510. A person who violates this part or the rules promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 92 days or a fine of not more than \$500.00, or both.

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

**Popular name:** Act 451

**Popular name:** NREPA