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

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.

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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,

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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

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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

Popular name: NREPA

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

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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.

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(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.

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(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.

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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

324.8309 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

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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

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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.

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(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 136*l*, 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

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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

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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

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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

324.8317 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

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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

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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

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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:

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(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.

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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.

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(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

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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

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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.

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(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

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